

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. SUCV2016-00969

MASSACHUSETTS ASSOCIATION OF
COURT INTERPRETERS, INC., MOUSSA
ABBOUD, SOLEDADE GOMES
DEBARROS, ANAHIT FLANAGAN,
NORMA V. ROSEN-MANN, and MICHAEL
R. LENZ, individually, and on behalf of other
persons similarly situated,

Plaintiffs,

v.

EXECUTIVE OFFICE OF THE TRIAL
COURT,

Defendant.

**THE TRIAL COURT'S MOTION TO COMPEL
RESPONSES TO INTERROGATORIES**

The defendant, the Trial Court, moves to compel plaintiff Massachusetts Association of Court Interpreters, Inc. ("MACI") to produce responses to the Trial Court's interrogatory requesting the identity of MACI's members. This action is a breach of contract dispute in which MACI and five individuals claim that the Trial Court has failed to provide compensation and benefits to *per diem* court interpreters in accordance with the terms of a contract. The individual plaintiffs bring this action on behalf of themselves and on behalf of a putative class of similarly situated *per diem* court interpreters, while MACI seeks monetary relief on behalf of its members. The Trial Court cannot defend against MACI's monetary breach of contract claim, brought on behalf of MACI's members, without discovery relating to the identity of those members.

BACKGROUND

Procedural History

After the filing of the original complaint amended complaints, and the Court's order allowing in part and denying in part the Trial Court's motion to dismiss, plaintiffs filed a Substituted Amended Complaint on August 21, 2018.

The Trial Court moved for partial summary judgment on August 29, 2019, seeking dismissal of (1) plaintiff MACI for lack of standing, and (2) the Rule 23 class allegations for failure to satisfy the requirement of Rule 23. On February 10, 2020, the Court denied without prejudice the motion as it pertains to MACI's standing. The Court found that "**at this time that** MACI has sufficient standing to assert a breach of contract claim against the Trial Court on behalf of its members, and takes no action on the Trial Court's motion without further discovery." Feb. 10, 2020 Order at 1-2 (emphasis in original). The Court took no action on the Trial Court's motion as to Plaintiffs' satisfaction of the Rule 23 requirements for class certification, and required that Plaintiffs were to propose discovery pertaining to class certification to the Court within 30 days of the order, i.e., by March 10, 2020, and that discovery pertaining to class certification was to be completed within 120 days of the submissions to the Court. *See* Feb. 10, 2020 Order at 2.

Due to the outbreak of COVID-19, the parties filed a joint motion to extend the deadline to December 1, 2020 by which to complete discovery on class certification, which the Court allowed. On February 3, 2021, the parties jointly requested a status conference regarding further extension of the deadlines for discovery pertaining to class certification.

Discovery Requests Relating to MACI's Membership

On October 26, 2018, the Trial Court served interrogatories on MACI, including a request that MACI “[i]dentify every individual who is or has been a member of MACI at some time between November 1, 2014 and the present.” *See* Appendix at 1 (Interr. No. 2). MACI objected on the grounds that being required to disclose its membership would violate its members’ freedom of association in violation of the Fourteenth Amendment. After the Court’s February 10, 2020 Order, the Trial Court reiterated its request that MACI identify its members. Again, MACI objected to this disclosure. To date MACI has produced no information in response to the Trial Court’s request for the identity of MACI’s members from November 1, 2014 to the present.

ARGUMENT

I. THE IDENTITY OF MACI’S MEMBERS IS RELEVANT TO MACI’S BREACH OF CONTRACT CLAIM.

Because MACI seeks monetary relief on behalf of its members for purported violations of a contract between the Trial Court and per diem court interpreters, the identity of its members is relevant for at least three purposes.

First, the identity of MACI’s members is relevant to the issue of associational standing. In order for MACI to have associational standing on behalf of its members, it must establish that: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Modified Motorcycle Ass’n of Mass., Inc. v. Commonwealth*, 60 Mass. App. Ct. 83, 85 (2003) (citing *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). Indeed, upon the Trial Court’s motion for partial summary judgment as to MACI, on the grounds that MACI lacked

standing, the Court “took no action” on the the motion “at this time . . . without further discovery” pertaining to MACI’s associational standing. Feb. 10, 2020 Order at 1-2. The Trial Court maintains that MACI’s lack of standing could have been resolved at summary judgment without further discovery, as MACI cannot obtain relief on a breach of contract claim without “the participation of individual members in the lawsuit.” *Modified Motorcycle*, 60 Mass. App. Ct. at 85 (cited in Def.’s Mem. in Supp. of Partial Summ. J. at 17). Nevertheless, the Trial Court is entitled to discovery on the identity of MACI’s members in order to complete discovery pertaining to MACI’s associational standing—including whether MACI’s “members would otherwise have standing to sue.” *Modified Motorcycle*, 60 Mass. App. Ct. at 85.

Second, even if MACI could establish associational standing to bring a contract claim against the Trial Court, the identity of MACI’s members is relevant to the issue of the Trial Court’s liability and damages. MACI’s request is not an equitable claim—e.g., an injunction that would apply uniformly across a group of people—but rather, a request for individual relief that would vary across members. In order for MACI to obtain monetary relief against the Trial Court on behalf of its members, it must establish that its members had a contract with the Trial Court, that the contract was violated vis-à-vis those members, that those members suffered damages, and the amount of such damages. Such essential elements of MACI’s breach of contract claim cannot be resolved without disclosing the identity of MACI’s members.

Third, to the extent that MACI intends to seek relief on behalf of the proposed class pursuant to Rule 23, the identity of its members would again be relevant. Although the Trial Court maintains that MACI could not satisfy the requirements of Rule 23 under any circumstance, MACI’s membership is particularly relevant to the Rule 23(a)(3) requirement that the claims of the named plaintiffs are “typical” of the claims of the rest of the class, and the Rule

23(a)(4) requirement that the named plaintiffs can fairly and adequately represent the interests of the class. MACI could not meet these Rule 23 requirements without disclosing the identity of its members.

II. THE IDENTITY OF MACI'S MEMBERS IS NOT CONSTITUTIONALLY PROTECTED FROM DISCLOSURE.

MACI has objected to the disclosure not on relevance grounds, but rather, on the grounds that MACI is protected from making such disclosure by the Fourteenth Amendment, citing *NAACP v. Alabama*, 357 U.S. 449 (1958). In that case, the Supreme Court addressed an equity action by the Attorney General of Alabama to disqualify the NAACP from conducting business in the state. The Attorney General requested the production of a large category of documents to support its claim for injunctive relief, including the NAACP's membership lists. *Id.* at 453. The Supreme Court held that where an order may restrain the right to free association, the requesting party must "demonstrate[] an interest in obtaining the disclosures it seeks from petitioner which is sufficient to justify the deterrent effect which we have concluded these disclosures may well have." *Id.* at 463.

Here, the *NAACP v. Alabama* balancing test weighs in favor of the disclosure of MACI's members to the Trial Court. The identity of MACI's members is relevant to several aspects of MACI's breach of contract claim, *see supra* Part I, unlike the claim brought in *NAACP v. Alabama*. *See* 357 U.S. at 453. Also unlike in *NAACP v. Alabama*, MACI's claim is for monetary, not injunctive, relief—and brought *by* the organization itself, not *against* the organization. In circumstances such as these, where an organization has voluntarily initiated a civil action for monetary relief, courts have found that the interest in obtaining disclosure regarding that organization's members outweighs the organization's interest in keeping the information confidential. *See, e.g., Hastings v. N.E. Indep. Sch. Dist.*, 615 F.2d 628, 632 (5th

Cir. 1980) (holding that a class action and monetary damages are reasons for justifying a disclosure of membership information under *NAACP v. Alabama*). MACI has elected to thrust its membership at the center of its claim by seeking monetary damages on behalf of MACI members. Just as a plaintiff may waive certain attorney-client privilege by offensively injecting certain claims into a case, thereby putting them “at issue” in the litigation, so too does an organization lose the ability to use constitutional safeguards as a shield against discovery when it offensively injects a claim that is dependent on the identity and fact of its membership. *See Clair v. Clair*, 464 Mass. 205, 218-19 (2013) (discussing the “at issue” waiver and offensive use doctrine in Massachusetts).

CONCLUSION

For the foregoing reasons, the Trial Court requests that the Court allow the motion and order plaintiff Massachusetts Association of Court Interpreters, Inc. to identify every individual who is or has been a member of MACI at some time between November 1, 2014 and the present.

Respectfully submitted,

Defendant THE TRIAL COURT

By its Attorneys,

MAURA HEALEY,
ATTORNEY GENERAL

/s/ Katherine B. Dirks

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Date: February 3, 2021

SUPERIOR COURT RULE 9C CERTIFICATE OF COMPLIANCE

I, Katherine Dirks, counsel for the defendant, hereby certify that on December 4 and 2020 and January 27, 2021, I had a telephone conference with Alan Rom, counsel for Plaintiffs, pursuant to Superior Court Rule 9C(a). The parties attempted to narrow or resolve the dispute that is the subject of the instant motion but were unable to do so.

/s/ Katherine B. Dirks
Katherine B. Dirks
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this day, February 3, 2021, served the foregoing document upon all parties, by emailing a copy to:

Alan Jay Rom, Esq.
Rom Law P.C.
alan@romlawoffice.com.

/s/ Katherine B. Dirks
Katherine B. Dirks

APPENDIX

**DEFENDANT'S FIRST SET OF INTERROGATORIES TO
PLAINTIFF MASSACHUSETTS ASSOCIATION OF COURT INTERPRETERS**

INTERROGATORY NO. 2

Identify every individual who is or has been a member of MACI at some time between November 1, 2014 and the present.

RESPONSE TO INTERROGATORY NO. 2:

[None received.]