

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

**J & R BAKER FARMS, LLC, and,
J & R FARMS PARTNERSHIP,**

Defendants.

Civil Action No. 7:14-CV-136 (HL)

ORDER

This case is before the Court on Defendants' Motion to Compel Discovery Responses from Plaintiff (Doc. 23) and Plaintiff's Motion to Quash or in the Alternative for Protective Order (Doc. 37). Following a hearing held on September 8, 2015, the Court granted Defendants' motion and denied Plaintiff's motion. This Order memorializes the Court's oral rulings.

I. DEFENDANTS' MOTION TO COMPEL

Defendants J & R Baker Farms, LLC and J & R Baker Farms Partnership ("Defendants") filed the present Motion to Compel to seek the Court's assistance obtaining Plaintiff's responses to Defendants' First Interrogatories and Requests for Production. Defendants served the subject written discovery requests to Plaintiff on December 30, 2014. The parties subsequently agreed to a series of informal discovery extensions. Plaintiff submitted responses on March 3, 2015.

While Plaintiff responded to each propounded interrogatory, virtually all of the responses made by Plaintiff include a statement that Plaintiff will supplement its responses at a later date. Defendants object to Plaintiff's responses as being incomplete and ask the Court to require Plaintiff to prepare a more comprehensive response.

Plaintiff's primary objections to Defendants' interrogatories and requests for production are that (1) Defendants' request that Plaintiff provide anecdotal information regarding the claims for each potential class member exceeds the scope of discovery in this pattern or practice claim, which largely will be proved through statistical data; and (2) Defendants' requests seek privileged information. In the course of addressing these concerns at the September 8, 2015 hearing, it became apparent to the Court that the parties have a fundamental misunderstanding about the nature of the information sought by Defendants. It is also clear to the Court that Plaintiff has only collected pertinent information from a very small percentage of the alleged class, having interviewed 60 members of a class believed to be comprised of approximately 2000 members.

Defendants do not disagree that under the circumstances of an ordinary claim alleging a pattern or practice of disproportionate termination, Defendants would not necessarily be entitled to discover specific details relating to each known class member. However, in this case, Plaintiff presents a hybrid scenario, alleging that some class members were involuntarily discharged and others were

constructively discharged. Defendants' interrogatories requesting that Plaintiff provide a list of those class members who fall into each category does not venture outside the scope of discovery, nor is this specific request unduly burdensome.

All parties are aware of the total number of American-born workers employed by Defendants during the relevant time period. Accordingly, there is no need for Plaintiff to duplicate that information. Plaintiff is ordered to provide the following information to Defendants by no later than November 8, 2015:

- 1) a list of all known class members who allege they were involuntarily terminated and when the termination occurred;
- 2) a list of all known class members who allege they were constructively discharged and when the discharge occurred; and
- 3) detailed anecdotal information for a representative portion of the class members, which the Court finds to be at least 250 individuals.

In order to identify and gather information relevant to the putative class members, Plaintiff developed a detailed questionnaire that was mailed to each individual. The parties disagree about the nature of the potential privilege attached to these questionnaires. However, Defendants state that they seek the information contained within the questionnaires and not the actual documents. Accordingly, Plaintiff's objection to the production of the questionnaires is now

moot. Plaintiff shall utilize the questionnaires to develop the responses herein required by the Court.

II. PLAINTIFF'S MOTION TO QUASH

On June 30, 2015, Defendants served Plaintiff with the Notice of Deposition Duces Tecum 30(b)(6) and the Notice of Deposition Duces Tecum to Jennifer Vanairsdale. Plaintiff moves to quash both notices or, alternatively, asks the Court to enter a protective order limiting the scope of the depositions.

Jennifer Vanairsdale is the EEOC investigator responsible for conducting the investigation into complaints of discrimination filed by numerous past employees of Defendants, many of whom are named as complaining parties by Plaintiff or who have intervened as Plaintiffs in this action. Ms. Vanairsdale also participated in the conciliation efforts between Plaintiff and Defendants prior to the filing of this lawsuit. Plaintiff objects to Defendants deposing Ms. Vanairsdale, primarily on the basis that any line of questioning posed by Defendants will breach the deliberative process privilege enjoyed by Plaintiff as a governmental agency. Plaintiff also objects to the deposition to the extent that Defendants will delve into the sufficiency of the conciliation process, which the United States Supreme Court recently explained is not permissible. See Mach Mining, LLC v. EEOC, 135 S. Ct. 1645, 1655 (2015). Finally, Plaintiff notes that it already provided Defendants with the complete investigative file, and there is little, if any,

information Ms. Vanairsdale may offer that is not contained within those documents, making the deposition superfluous.

Defendants concede that the law limits the questions they may pose relating in any way to the conciliation process. Defendants further note that they have no intension of inquiring about why the EEOC made certain decisions in the course of the underlying investigation. Defendants do want to know what particular steps Plaintiff undertook to gather information during the investigation.

Plaintiff's motion to quash the notice of deposition issued to Jennifer Vanairsdale is denied. The Court recognizes that the scope of the information Ms. Vanairsdale may be in a position to offer is potentially limited. However, the Court will afford Defendants the opportunity to pose their questions with the precaution that Defendants are not to venture into the territory of the adequacy of the conciliation process. The Court encourages Plaintiff to raise any pertinent objections during the deposition and to contact the Court in the event of an insurmountable disagreement about the scope of the deposition.

Plaintiff's motion to quash the notice of deposition issued by Defendants pursuant to Federal Rule of Civil Procedure 30(b)(6) is likewise denied. Plaintiff initiated the lawsuit against Defendants not based on claims involving the agency but to assert the rights of the claimants to be free from discrimination by Defendants. Thus, no employee of Plaintiff has personal knowledge of the events underlying Plaintiff's Complaint. Plaintiff argues that because the only persons

with any knowledge about the course and scope of the lawsuit at this juncture are the attorneys, the 30(b)(6) notice effectively notices the deposition of one of Plaintiff's attorneys. That may well be the case. However, rather than filing the motion to quash, Plaintiff simply should notify Defendants that they have no witness who meets the requisite criteria listed in the notice.

III. CONCLUSION

Upon consideration of the briefs submitted by the parties, and after a thorough hearing, the Court grants Defendants' Motion to Compel Discovery Responses from Plaintiff. (Doc. 23). Plaintiff is ordered to provide the information discussed herein to Defendants by November 8, 2015.

Plaintiff's Motion to Quash or in the Alternative for Protective Order (Doc. 37) is denied. The parties agree that Defendants shall not reissue the notices of deposition until after Plaintiff has the opportunity to comply with the Court's directive to supply responses to Defendants' interrogatories.

The Court again cautions the parties about informal agreements to vary from the Court's discovery order. The parties proceed at their own peril by so doing. The Court is here to assist the parties with completing the discovery process as expeditiously as possible and to help resolve any conflicts that may arise along the way. The Court encourages the parties to communicate with the Court about any disputes before those disagreements engender the filing of additional discovery-related motions.

SO ORDERED, this 9th day of September, 2015.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

aks