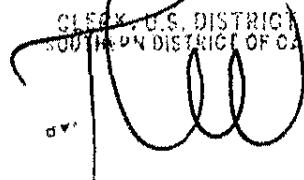


FILED

00 DEC 22 PM 4:21

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA



DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT	)	Civil No. 00cv0779 B(RBB)
OPPORTUNITY COMMISSION,	)	
	)	ORDER GRANTING IN PART AND
Plaintiff,	)	DENYING IN PART PLAINTIFF'S
	)	MOTION TO COMPEL FURTHER
v.	)	ANSWERS TO INTERROGATORIES AND
	)	PRODUCTION OF DOCUMENTS [DOC.
VULCAN MATERIALS CO., dba	)	NO. 12]
CALMAT CO.,	)	
	)	
Defendant.	)	

On December 18, 2000, this Court held a hearing on Plaintiff's motion to compel further answers to interrogatories and production of documents [Doc. No. 12]. Dana Johnson appeared on behalf of the Equal Employment Opportunity Commission. Carol Uyeno, of Fenewick & West, appeared on behalf of Defendant.

I. PROCEDURAL HISTORY

On September 8, 2000, Plaintiff served its First Interrogatories (see Mot. Ex. A) and First Request to Produce Documents. (See Mot. Ex. C.) Vulcan served its responses on October 11, 2000, objecting to interrogatory no. 3 and document request nos. 1-3 and 5 as irrelevant, overbroad, and seeking



1 information that was equally available to the Commission. (See  
2 Mot. Exs. B, D.)

3 The parties met and conferred regarding Vulcan's responses  
4 several times between October 17 and 30, 2000. (Johnson Decl. ¶  
5 3.) The parties were unable to resolve their conflict over  
6 Defendant's objections.

7 The parties also discussed the wording of Defendant's response  
8 to interrogatory no. 1. Defendant agreed to amend this response,  
9 and on November 3, 2000, Vulcan served its First Amended Response  
10 which stated, in pertinent part:

11 Relevant witnesses include, *without limitation*, Benny  
12 White Sr. and Penny Adamo. Relevant documents include,  
13 *without limitation*, Adamo's application, and other  
documents provided to the EEOC in its initial  
investigation.

14 (Mot. Ex. E at 4 (emphasis added).)

15 Plaintiff was not satisfied with the amended response, and on  
16 November 9, 2000, the Commission filed its motion to compel further  
17 responses and production of documents. Defendant filed an  
18 Opposition on December 4, 2000, noting that it had served a Second  
19 Amended Response to Plaintiff's interrogatories on November 28,  
20 2000. (Opp. Ex. D.) The relevant portion of the Second Amended  
21 Response stated:

22 Relevant witnesses identified to date include Benny  
23 White, Sr., Tina Hall, and Penny Adamo. Relevant  
documents identified to date *may include* Adamo's  
24 application, responsive documents produced in two sets to  
the EEOC and bates-stamped VUL 000001-000017 and VUL  
25 000018 - 000109, and *other documents* already provided to  
the EEOC in its initial investigation.

26 (Id. at 4 (emphasis added).)

27

28

1 Plaintiffs filed a Reply on December 11, 2000, stating that  
2 the language employed in the Second Amended Response was still  
3 unsatisfactory.

4 **II. THE PARTIES' ARGUMENTS**

5 The Commission contends that Defendant's Second Amended  
6 Responses to interrogatory nos. 1 and 3 are incomplete. Plaintiff  
7 also maintains that Defendant has not produced all responsive  
8 documents to its production requests.

9 **A. Interrogatory No. 1**

10 Interrogatory no. 1 sought Defendant's factual basis for  
11 denying its Requests to Admit. Specifically, the interrogatory  
12 sought "all facts supporting [Vulcan's refusal to admit], including  
13 any witnesses who would testify to such facts and documents which  
14 would establish such fact." (Mot. Ex. A at 2.)

15 Plaintiff objects to the portion of Defendant's Second Amended  
16 Response which states that "[r]elevant witnesses identified to date  
17 include . . . . Relevant documents identified to date *may include*  
18 . . . ." (Opp. Ex. D at 4 (emphasis added).) The Commission  
19 argues that such equivocal language is impermissible and urges the  
20 Court to compel Defendants to supplement its Second Amended  
21 Response to clearly state that the list of percipient witnesses and  
22 documents it provides is complete.

23 **B. Interrogatory No. 3**

24 This interrogatory required Vulcan to identify "each woman in  
25 each job category of driver (including but not limited to OTR  
26 Drivers, Rock Driver, Concrete Mixer Pit and each other type of  
27 drivers) separately, on January 1 and June 1 of 1995, 1996, 1997,  
28

1 1998, 1999, and 2000, and the total number of men in each category  
2 on each date." (Mot. Ex. A at 2.)

3 Defendant provided information on the number of men and women  
4 hired as mixer drivers during the applicable time period but did  
5 not provide information relating to other driver positions and  
6 failed to break the information down along the January 1/June 1  
7 lines required by the interrogatory. (See Opp. Ex. D at 7-8.)  
8 Plaintiff asks the Court to compel Vulcan to provide information on  
9 all driver positions. Defendant maintains that because this case  
10 involves a single applicant who interviewed for a mixer driver  
11 position in 1996, the request is overbroad as to both time and job  
12 category.

### 13 C. Production Requests

14 Finally, Plaintiff argues that Defendant has not produced all  
15 documents responsive to its First Request to Produce Documents.  
16 Specifically, the Commission maintains that Vulcan must produce  
17 responsive documents relating to all categories of drivers not just  
18 mixer drivers. Defendant disagrees, raising essentially the same  
19 argument made with regard to interrogatory no. 3.

### 20 III. DISCUSSION

21 Defendant's Second Amended Response to interrogatory no. 1 is  
22 insufficient. Rule 33 of the Federal Rules of Civil Procedure  
23 requires Vulcan to provide a response that is complete to the best  
24 of it's knowledge on the date the response is signed. See 7 James  
25 Wm. Moore et al., Moore's Federal Practice § 33.102[1] at 33-68 (3d  
26 ed. 2000). To the extent Defendant's response is equivocal or  
27 suggests that the list of percipient witnesses and relevant  
28

1 documents provided is incomplete, it is improper and must be  
2 supplemented. Id.

3 Defendant must also supplement its Second Amended Response to  
4 interrogatory no. 3. Plaintiff is entitled to seek discovery  
5 relating to any claim or defense raised in the suit. Fed. R. Civ.  
6 P. 26(b)(1). Here, Plaintiff's Complaint alleges that Penny Adamo  
7 applied for a position "as a Driver." (Compl. at 3.) The  
8 Commission also claims that Vulcan was interviewing for several  
9 driver positions at the time Penny Adamo applied. (Mot. at 8.)  
10 Because Plaintiff's Complaint appears to refer to a class of  
11 positions rather than a single position, information regarding male  
12 and female applicants for all driver positions is relevant to the  
13 Commission's claim, and interrogatory no. 3 is not overbroad as to  
14 job category. See Lynn v. Regents of the Univ. of Cal., 656 F.2d  
15 1337, 1342 (9th Cir. 1981) (holding that defendant's university-  
16 wide tenure policy, not just that of the departments directly  
17 involved in the suit, was relevant in a disparate impact case).

18 Plaintiff may also seek supporting and statistical information  
19 on Defendant's hiring practices for a reasonable amount of time  
20 preceding and following the date Penny Adamo submitted her  
21 application to Defendant. See Onwuka v. Federal Express Corp., 178  
22 F.R.D. 508, 517 (D. Minn. 1997) ("Courts have frequently tailored  
23 discovery requests, as to historic company records, to encompass a  
24 'reasonable time period,' both before and after the discriminatory  
25 event being alleged.")

26 Plaintiff appears to allege that Adamo applied with Defendant  
27 on June 25, 1996. (See Compl. at 3.) Interrogatory no. 3 seeks  
28 statistical information from 1995 to 2000. (See Mot. Ex. A at 2.)

1 Plaintiff's request for information on hiring practices four years  
2 following Penny Adamo's application is overbroad as to time. A  
3 "reasonable time period" would encompass the period beginning on  
4 January 1, 1995, and ending on December 31, 1998, or the last day  
5 of the calendar year during which Benny White Sr. was employed by  
6 Defendant, whichever is shorter.

7 The same reasoning applies to Production request nos. 1-3 and  
8 5. Although the requests are not overbroad as to job category, the  
9 requests should be limited to responsive documents relating to the  
10 time period beginning on January 1, 1995, and ending on the later  
11 of December 31, 1998, or the last day of the calendar year during  
12 which Benny White, Sr., was employed by the Defendant, whichever is  
13 shorter.

14 Finally, the Defendant is not required to compile information  
15 to conform with random dates selected by the Plaintiff. It may  
16 utilize the provisions of rule 33(d) of the Federal Rules of Civil  
17 Procedure.

### 18 III. CONCLUSION

19 Having considered the arguments raised in the pleadings and  
20 during oral argument, the Court rules as follows:

21 1) Plaintiff's motion to compel further response to  
22 Interrogatory No. 1 is **GRANTED**. Defendant shall supplement its  
23 Second Amended Response to correct the deficiencies identified in  
24 this order.

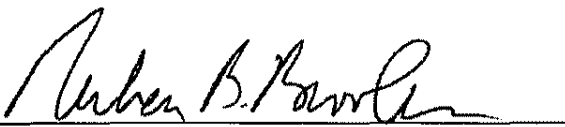
25 2) Plaintiff's motion to compel further response to  
26 Interrogatory No. 3 is **GRANTED IN PART AND DENIED IN PART**.  
27 Defendant shall supplement its Second Amended Response to include  
28

1 information relating to all driver positions during the time period  
2 set forth in this order.

3 3) Plaintiff's motion to compel production of documents  
4 responsive to production request nos. 1-3 and 5 is **GRANTED IN PART**  
5 **AND DENIED IN PART.** Defendant shall produce responsive documents  
6 relating to all driver positions during the time period set forth  
7 in this order.

8 **IT IS SO ORDERED.**

9  
10 Date: December 22, 2000



RUBEN B. BROOKS  
United States Magistrate Judge

11  
12 cc: Judge Brewster  
13 All Parties of Record  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28