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BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	U.S. EQUAL EMPLOYMENT)	Civil No. 00cv0779 B(RBB)
12	OPPORTUNITY COMMISSION,)	
13	Plaintiff,)	ORDER GRANTING IN PART AND
14	v.)	DENYING IN PART PLAINTIFF'S
15	VULCAN MATERIALS CO., dba)	MOTION TO COMPEL RESPONSES TO
16	CALMAT CO.,)	INTERROGATORIES AND PRODUCTION
17	Defendant.)	OF DOCUMENTS [DOC. NO. 20]

On February 12, 2001, the Court conducted a hearing on Plaintiff's Motion to Compel Responses to Interrogatories and Production of Documents [Doc. No. 20]. Dana Johnson appeared on behalf of the Equal Employment Opportunity Commission. Christopher Scanlan, of Fenewick & West, appeared on behalf of Defendant.

Plaintiff served its second sets of interrogatories and production requests on October 16, 2000. (Johnson Decl. ¶ 2.) Defendant served its responses on November 15, 2000. (Id. ¶ 3.) Plaintiff filed its motion to compel when the parties could not reach agreement on Defendant's responses to interrogatory numbers

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1 four through six and eight and production requests numbers six, and
2 nine through eleven.

3 **A. Interrogatory Nos. 4-6 and Production Request Nos. 6 and 10**

4 During oral arguments, the parties stated that they had
5 reached agreement on interrogatory numbers four through six and
6 production request numbers six and ten. Accordingly, Plaintiff's
7 motion to compel regarding these discovery requests is **DENIED AS**
8 **MOOT.**

9 **B. Interrogatory No. 8**

10 Interrogatory number eight seeks "all facts supporting each
11 asserted affirmative defense, including any witnesses who could
12 testify to such facts and documents which tend to establish such
13 facts." (Jonson Decl. Ex. B.) Defendant's Answer asserted
14 thirteen affirmative defenses; however, Judge Rudi M. Brewster has
15 issued an Order [Doc. No. 35] granting Defendant leave to file a
16 First Amended Answer asserting only nine affirmative defenses.

17 The local rules require that a party obtain leave of court
18 before it may serve more than twenty-five interrogatories on an
19 opposing party. S.D. Cal. Civ. L. R. 33.1.a. Discreet subparts of
20 an interrogatory are counted as separate interrogatories. See Fed.
21 R. Civ. P. 33(a); Safeco of America v. Rawstron, 181 F.R.D. 441,
22 446 (C.D. Cal. 1998) (holding that interrogatory asking party to
23 identify facts supporting its denial of any request for admission
24 must be construed as a discreet subpart for each request for
25 admission).

26 The EEOC's first set of interrogatories contained three
27 interrogatories. Interrogatory number three required Defendants to
28 identify the factual basis for its refusal to admit any of

1 Plaintiff's first set of requests for admission. (See Opp. to
2 Def.'s Nov. 9, 2000, Mot. to Compel Ex. C.) Because this
3 interrogatory required Defendant to address seven requests for
4 admission, it must be counted as seven interrogatories under
5 Safeco. Accordingly, Plaintiff's first set of interrogatories must
6 be construed as containing a minimum of nine interrogatories.

7 Plaintiff's second set of interrogatories contains twenty-
8 three interrogatories -- six regular interrogatories and two
9 interrogatories that contained multiple subparts. Interrogatory
10 number four requested that Defendant identify all facts supporting
11 its refusal to admit any of Plaintiff's second set of requests for
12 admission. (See Johnson Decl. Ex. E at 3-5.) This interrogatory
13 required Defendant to address four requests for admission (see
14 id.), and must be construed as four interrogatories. Interrogatory
15 number eight required Vulcan to identify the factual support for
16 each of its affirmative defenses. (See id. at 10-15.) At the time
17 this interrogatory was served on Defendants, it required Vulcan to
18 address thirteen affirmative defenses (see id.) and therefore must
19 be construed as containing thirteen discreet subparts.

20 In total, Plaintiff served at least thirty-two interrogatories
21 on Defendant -- seven more than the twenty-five interrogatory limit
22 established by local rule number 33.1.a. Plaintiff has exceeded
23 the permissible number of interrogatories without leave of the
24 Court, and its motion to compel further responses to interrogatory
25 number eight is **DENIED**.

26 **C. Production Request No. 9**

27 At the outset of the hearing, Plaintiff notified the Court
28 that the only document it was seeking to compel under this request

1 was the acquisition agreement between CalMat and Vulcan d/b/a
2 CalMat. Plaintiff believes this document will identify pending or
3 potential gender discrimination claims against Defendant involving
4 Benny White, Sr.

5 To the extent this interrogatory seeks information regarding
6 gender discrimination claims against Defendant that involved Benny
7 White, Sr., it is duplicative of production request number eleven,
8 which seeks:

9 any and all documents which constitute, evidence or
10 reflect complaints, charges, claims or grievances
11 regarding gender discrimination, hostile environment
12 based on gender or sexual harassment in which Benny
13 White, Sr., was alleged to have, or did have, a
14 percipient, supervisory, investigatory or decision-making
15 roll during his employment with CalMat or Vulcan d/b/a
16 CalMat.

17 (Johnson Decl. Ex. C.) Plaintiff's motion to compel production of
18 documents responsive to this request is **DENIED**.

19 **D. Production Request No. 11**

20 Plaintiff claims that Defendant has not produced all documents
21 responsive to this request. Specifically, Plaintiff notes that
22 Defendant has not produced all responsive documents from a 1999
23 civil suit brought against Defendant in state court by Pegi Lubic,
24 a former CalMat employee. Defendant contends that the Lubic
25 documents are not responsive to production request number eleven.
26 The parties also dispute whether or not Defendant must give the
27 EEOC notice of any future dates it on which it intends to depose
28 Pegi Lubic.

Plaintiff's motion to compel is **GRANTED** to the extent it seeks
to compel responsive documents from the Lubic litigation. To the

1 extent Defendant has possession or control of responsive documents
2 from the Lubic case, it must produce them.

3 Plaintiff's motion to require Defendant to give it notice of
4 any future deposition dates in the Lubic case is **DENIED**. A party
5 deposing a witness is only required to serve notice of the
6 deposition on other parties to the action. See Fed. R. Civ. P.
7 30(b)(1). Because it is not a party to the Lubic case, Plaintiff
8 is not entitled to notice of future depositions in the Lubic case.
9 Defendant does, however, have a continuing duty to supplement its
10 response to production request number eleven and must produce any
11 future Lubic documents that are responsive to this request. Fed.
12 R. Civ. P. 26(e).

13 **D. Sanctions**

14 The EEOC seeks sanctions under rules 26(g) and 37(a)(4)(A) of
15 the Federal Rules of Civil Procedure. Plaintiff seeks rule 26(g)
16 sanctions based on Defense counsel's failure to disclose the Lubic
17 documents in response to production request number eleven and seeks
18 rule 37 sanctions to recover its cost in bringing the motion to
19 compel.

20 Defendant argues that rule 26(g) sanctions are not appropriate
21 because: 1) Defense counsel reasonably believed that the Lubic
22 documents were not responsive to production request number eleven;
23 and 2) defense counsel's administrative staff conducted an
24 extensive search and did not uncover the Lubic documents. Neither
25 argument is persuasive.

26 To the extent defense counsel believed the Lubic documents
27 were not responsive to request number eleven, the belief was not
28 substantially justified. Further, the fact that defense counsel's

1 administrative staff rather than defense counsel herself conducted
2 the search for documents responsive to this request does not
3 relieve defense counsel from her duties under rule 26(g). Defense
4 counsel's signature on Defendant's discovery responses certified
5 that she had a good faith belief that the responses were accurate.
6 See Fed. R. Civ. P. 26(g)(1). Here, attorney Carol Uyeno signed
7 Defendant's responses at approximately the same time she and
8 attorney Shawna Swanson were working on the Lubic case. Ms. Uyeno
9 should reasonably have known that the Lubic documents were
10 responsive to production request number eleven. Plaintiff's motion
11 for sanctions under rule 26(g) is **GRANTED**. Sanctions in the amount
12 of \$500.00 are imposed on defense counsel Fenewick & West. Payment
13 shall be made to the Department of the Treasury or other
14 appropriate agency no later than March 14, 2001.

15 Plaintiff's request for costs under rule 37 is **DENIED**.

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17 **IT IS SO ORDERED.**

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19 Date: February 14, 2001



RUBEN B. BROOKS
United States Magistrate Judge

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21 cc: Judge Brewster
22 All Parties of Record
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