

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-22452-CIV-GOLD/TURNOFF

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

BJ's WHOLESALE CLUB, INC.,

Defendant.

ORDER

THIS CAUSE is before the Court upon Defendant's Second Motion to Compel Better Discovery Responses. [DE 40]. The Court has considered the oral and written arguments, the applicable law, and the Court file. The instant Motion pertains to Interrogatories 1, 3, 4 and 5, and Requests for Production 1, 2, 4, 5, 9, and 10.

The Interrogatories at issue sought, *inter alia*, (1) information regarding William Lundy's and Jesus Santos' employment history including a list of names, business addresses, dates of employment, and rates of pay for the past ten (10) years; (2) a list of names and addresses of Lundy's and Santos' physicians, medical facilities, or other health care providers over the last ten (10) years; a list of names and addresses of Lundy's and Santos' mental health providers who provided treatment or consultation; and (3) the identity of all former or present employees to whom EEOC sent a cover letter and/or other materials regarding this litigation.

The Requests for Production at issue sought, *inter alia*, (1) all cover letters and questionnaires sent to and received from former or present agents of Defendant; (2) signed and notarized authorizations and releases for Lundy's and Santos' employment information,

psychotherapy notes, protected health information, unemployment compensation records, and income tax information; and (3) documents supporting Plaintiff's claims for compensatory and punitive damages.

It is hereby **ORDERED AND ADJUDGED** that Defendant's Second Motion to Compel Better Discovery Responses [DE 40] is **Granted-in-part and Denied-in-part**. With respect to the Interrogatories, 1) Plaintiff shall provide responses to Interrogatory Nos. 1 and 3 limited to five (5) years prior to Lundy's and Santos' employment with Defendant. 2) Because Lundy and Santos testified that they have never seen a mental health provider during their lifetime, Interrogatory 4 was withdrawn by Defendant and is moot. 3) Plaintiff shall provide a response to No. 5.

With respect to the Requests for Production, (1) Plaintiff shall produce all documents responsive to Nos. 1 and 2. (2) With respect to Requests 4 and 5, Plaintiff shall produce signed and notarized releases for Lundy's and Santos' employment information limited to five (5) years prior to their employment with Defendant, signed and notarized releases for Lundy's and Santos' Records for Agency for Work Force Innovation, and signed waivers from Lundy and Santos so Defendant may obtain their income tax information for 2005 and 2006. The portion of Requests 4 and 5 that relate to signed and notarized releases for psychotherapy notes were withdrawn by Defendant and are moot. Defendant's Motion to Compel the portion of Requests 4 and 5 that relate to signed authorizations and releases for Lundy's and Santos' protected health information is **Denied**. Plaintiff has agreed to make the following stipulation: Plaintiff shall be precluded at trial from introducing any evidence that Lundy or Santos sought any medical treatment for any condition arising from the alleged discrimination. (3) With respect to Requests 9 and 10, Plaintiff shall produce all responsive documents or specify that no such documents exist.

Defendant's request for fees is also **Denied**.

Plaintiff is to comply with this Order forthwith.

DONE AND ORDERED in Chambers, at Miami, Florida, this 17 day of September
2007.



WILLIAM C. TURNOFF
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
Honorable Alan S. Gold
Counsel of record