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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
and  
GLENDA HERRING,**

Plaintiffs,

vs.

**Case No. : 8:01-CV-379-T-27EAJ**

**NORSTAN APPAREL SHOPS, INC.,  
d/b/a FASHION CENTS,**

Defendant.

\_\_\_\_\_ /

**O R D E R**

Before this court are **Plaintiff/Intervenor's Motion to Compel Production of Documents and Request for Attorney's Fees and Sanctions** (Dkt. 42), and Defendant's response in opposition (Dkt. 43).

**BACKGROUND**

This action originated when the Equal Employment Opportunity Commission (EEOC) filed a lawsuit on behalf of Glenda Herring, claiming retaliation pursuant to Title VII of the Civil Rights Act of 1964. The EEOC alleges that Defendant illegally terminated

Herring from her position as manager of Fashion Cents<sup>1</sup> clothing store at the Tampa Bay Mall in retaliation for her reports that another manager, Ricardo Moyers, was sexually harassing store employees. Initially, Ricardo Moyers worked with Plaintiff at Defendant's Tampa Bay Mall store. Later, he worked at Defendant's University Square Mall store.<sup>2</sup>

Herring (hereinafter "Plaintiff") intervened in this action, adopting the EEOC's retaliation claim and adding eight state law tort claims: conspiracy, constructive fraud, false imprisonment, defamation, negligent hiring and training, negligent supervision, negligent retention, and assault and battery.

Plaintiff now seeks an order compelling Defendant to respond to 30 of the 42 requests to produce that she served upon Defendant.<sup>3</sup> For the most part, Defendant objects to Plaintiff's requests.

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1

Fashion Cents is a retail clothing store owned and operated by Defendant.

2

In 1999, when Plaintiff worked for Defendant, Defendant operated stores in Tampa, Jacksonville, and Orlando, among others.

3

On pages 9 and 10 of her motion to compel, Plaintiff references interrogatory numbers 11, 12, 21, and 22, indicating that "the main question as to the interrogatories is whether Defendants' responses . . . are 'evasive or incomplete.'" (Dkt. 42 at 10 (citation omitted)). These interrogatories are not at issue in Plaintiff's motion. Accordingly, this court will not address Plaintiff's interrogatories.

### DISCUSSION

In **request number 3**, Plaintiff seeks profit and loss statements or other corporate documents reflecting sales comparisons from the Tampa, Jacksonville, and Orlando Fashion Cents stores for the period May 1, 1998, through January of 2002. Plaintiff argues that these documents are relevant to a determination of whether "Plaintiff or others similarly situated made any profit or created losses for the Defendant." (Dkt. 42 at 9.) Plaintiff argues that such determination is relevant to demonstrate pretext because "Plaintiff was hired to make a profit for the Defendant corporation." (Dkt. 42 at 9.)

Defendant argues that its reasons for terminating Plaintiff are related to her "overall performance" as a store manager: "chronic attendance and tardiness issues, poor management of the store, unacceptable condition of the store and store appearance, failure to properly inventory and stock merchandise, failure to hire adequate assistance in management of the store, as well as a negative attitude toward her job, title, and responsibilities." (Dkt. 43 at 10.) Additionally, Defendant argues that these records would serve no useful comparison, even if such comparison were relevant to the claims or defenses at issue, because sales vary from store-to-store based on different factors affecting each location.

Given Defendant's stated reasons for terminating Plaintiff,

profit and loss information is irrelevant to the issue of pretext, as Defendant has not cited as a reason for terminating Plaintiff that she failed to meet profit and loss expectations. Accordingly, with regard to request number 3, the documents sought are irrelevant and Plaintiff's motion to compel is **DENIED**.

**Request number 4** seeks "any and all documents and/or writings identifying the name, current and last known address and telephone numbers" of each of Defendant's current and former employees for the period January 1999 to January 2002 for the Tampa, Orlando, and Jacksonville stores.

Plaintiff indicates in her motion that she "agree[d] to limit #4 [to] January 1999 to January 2001." (Dkt. 42 at 2.) With regard to relevance, Plaintiff contends that other employees of Defendant's company are relevant to Plaintiff's negligent training, supervision, and retention claims, as well as to Defendant's claim that it terminated Plaintiff for legitimate reasons.

Defendant argues that the only individuals relevant to Plaintiff's negligent training, supervision, and retention claims are those individuals who managed or supervised other employees: Rick Moyer, Glenda Herring, Monica Barr, Jean Aldridge, and Stephanie Roper. (Dkt. 43 at 13.)

This court agrees that Defendant's employees at the Tampa, Jacksonville, and Orlando stores who worked at the same time that Moyers, Herring, Barr, Aldridge, or Roper were managers or

supervisors may have information relevant to Plaintiff's negligent training, supervision, and retention claims. However, Plaintiff's request for "[a]ny and all documents" containing an employee's address and telephone numbers is overbroad. See, e.g., Mosier v. American Home Patient, Inc., 203 F.R.D. 645, 647 (N.D. Fla. 2001) (request seeking every document in Defendant's possession that contained the name of an employee was "plainly too broad").

Additionally, the court finds a more reasonable time-frame to be January 1999 through January 2000.

Accordingly, Plaintiff's motion to compel with regard to request number 4 is **GRANTED** to the extent that Defendant shall provide a list of any and all employees, including each employee's name, current and last known address, current and last known telephone number, and current and last known cellular telephone number, if any, from Defendant's Tampa, Jacksonville, and Orlando stores for the period January 1999 through January 2000. Plaintiff's motion with regard to request number 4 is otherwise **DENIED**.

**Request number 5** seeks various forms, located in Defendant's training manual, for all of Defendant's employees in the Tampa, Jacksonville, and Orlando stores from January of 1999 to January of 2001.

A request for training forms for all employees from three stores over a three-year period is overbroad and overly burdensome.

The court finds a more reasonable time-frame to be January 1999 through January 2000.

In response to this request, Defendant contends that it has agreed to produce personnel files, which contain training information for employees Herring, Moyers, Barr, Aldridge, Roper, Sherylynn Augustin, Nakita Robinson, Janelle Scales, Kim Brooks, Roszetta Thomas, Antoinette Jackson, and Belinda Godfrey. (Dkt. 43, Ex. B at 4, ¶ 5.) To the extent that this list of individuals does not include all supervisors and managers who worked at Defendant's Tampa, Orlando, or Jacksonville stores, or supervised Tampa, Orlando, or Jacksonville managers, from January 1999 through January 2000, Defendant shall supplement its production. Plaintiff's motion to compel with regard to request number 5 is thus **GRANTED in part.**

In **request number 6**, Plaintiff seeks time cards and hour sheets, or similar documents reflecting the dates and times that store managers at Defendant's Tampa, Orlando, and Jacksonville stores worked for the period May 1, 1998, through January of 2002.

In response, Defendant argues that testimony established that the district manager used the alarm company reports to ascertain when the stores opened and closed. Thus, its production of 1999 alarm reports for the Tampa Bay store is sufficient, Defendant argues, to demonstrate when managers opened and closed that store in 1999. Defendant also argues that it agreed to produce weekly

time sheets for the Tampa Bay store from March 1999 though December 1999.

Plaintiff's request for documents demonstrating the times that other employees worked is not unreasonable considering that Defendant's stated reasons for terminating Plaintiff include "chronic attendance and tardiness issues." (Dkt. 43 at 5.) While the district manager may have used alarm reports as a basis for determining when managers opened and closed their stores, any other documents that show hours worked for employees similarly situated to Plaintiff, to the extent they exist, are also relevant. Moreover, Defendant has not indicated that such documents from the Orlando, Jacksonville, and University Mall stores would not serve as a useful comparison.

The time-frame of this request, however, is overbroad. A more appropriate time-frame is January 1999 through January 2000.

Thus, Plaintiff's motion to compel is **GRANTED in part** as it relates to request number 6 and Defendant shall produce documents responsive to this request, as amended herein. Additionally, to the extent it has not already done so, Defendant shall produce alarm records for the same period of time from Defendant's Tampa, Jacksonville, and Orlando stores indicating when the stores opened and closed.

Plaintiff's motion to compel is **DENIED** with regard to **request number 7**, as Defendant indicates in its response to Plaintiff's

motion that documents responsive to this request, if they exist, are contained within the personnel files of the requested employees (Barr, Moyers, Herring, and Roper), which Defendant has already produced.

In **request number 9**, Plaintiff seeks "[a]ny and all documents and/or writing which evidence and/or refer to claims of missing inventory and shrinkage documents" from Defendant's Tampa, Orlando, and Jacksonville stores for the period May 1, 1998, to the present. Defendant argues that such information is irrelevant. Plaintiff did not address this request in her motion to compel, except to say that it "require[s] court ruling." (Dkt. 42 at 2.)

Defendant does not purport to have terminated Plaintiff for inventory or shrinkage problems. Without any other guidance as to how such documents might lead to the discovery of admissible evidence, this court agrees with Defendant that this request seeks irrelevant information. Accordingly, Plaintiff's motion to compel is **DENIED** with regard to request number 9.

In **request number 10**, Plaintiff seeks "[a]ny and all documents and/or writings which evidence and/or refer to complaints or concerns [from Defendant's Florida and Georgia stores] of sexual harassment, wrongful termination, retaliation, or other violations of Title VII of the Civil Rights Act or the Florida Civil Rights Act" for the period May 1, 1998, through the present. Defendant argues that this request is overbroad and "should be limited to



complaints or concerns regarding Ricardo Moyers.” (Dkt. 43, attachment B at 6, ¶ 10.)

This court agrees that the request is overbroad, and Plaintiff has failed to present any argument to persuade this court that the request should be narrowed. Thus, the motion to compel is **DENIED** as to request number 10.

**Request number 11**, which seeks comparative store sales for Defendant’s Florida stores for the period January 1998 through January 2002, seeks essentially the same documents as request number 3, which sought profit and loss statements or other documents reflecting sales comparisons. Defendant argues that such documents are irrelevant. While Plaintiff did not specifically address this request in her motion, she argues generally that “documents pertaining to [Defendant’s] three Florida stores located in Orlando, Jacksonville, and Tampa” are relevant and necessary to Plaintiff’s claim that Defendant terminated her for an illegitimate purpose.

This court **DENIES** Plaintiff’s motion with regard to request number 11. Sales, profits, and losses are not relevant to Plaintiff’s claims because Defendant does not purport to have fired Plaintiff based on her sales volume or based on the store’s revenues.

For the same reason, the motion to compel **request number 13**, which seeks “documents of sales and inventory results for the

Fashion Cents stores during the employment of two store managers who preceded Glenda Herring as store manager," is also **DENIED**.

Plaintiff's **request number 12** seeks information regarding the manager who preceded Plaintiff as manager of Defendant's Tampa Bay Mall store. Plaintiff fails to address this request in her motion to compel, and the motion to compel is **DENIED** as to this request.

Plaintiff's motion to compel with regard to **request number 15** is **DENIED**, as Defendant indicates that "any such documents responsive to this request are contained in the identified individual's personnel files which have been produced." (Dkt. 43, attachment B at 8, ¶ 15.)

Plaintiff's motion to compel with regard to **request number 16** is **DENIED**, as Defendant indicates that it has produced documents responsive to this request. (Dkt. 43, attachment B at 8, ¶ 16.)

**Request number 19** requires Defendant to: 1) identify the security alarm company with whom it contracts for its Tampa stores; 2) provide documents reflecting the name, address, account number, and telephone number for the local and corporate branches of the alarm company; and 3) provide the name, address, and phone number for the alarm company's local sales and service representatives.

Defendant states that it has provided the name and address of the security alarm company but information regarding the company's independent contractors "is obtainable from another source that is more convenient, in the form of a nonparty request for documents."

(Dkt. 42, attachment B at 9, ¶ 20.)

The court agrees that contact information for the alarm company, including its sales and service representatives, is relevant and should be produced by Defendant. However, the request is overbroad. Accordingly, this court **GRANTS** Plaintiff's motion to compel with regard to request number 19 to the extent that Defendant shall provide Plaintiff with a list that contains the name, address, account number, and telephone number for: 1) the local and corporate branches of the alarm company (or companies) that installed and monitored the alarms located at the front and back of Defendant's Tampa stores; and 2) the alarm company's (or companies') local sales and service representatives. It is otherwise **DENIED**.

**Request number 20** seeks a copy of Defendant's contract with the alarm company and all alarm service records.

Defendant's objections notwithstanding, it appears that Defendant has complied with Plaintiff's request number 20 by indicating that it does not have a contract with the alarm company and by providing alarm service records for its Tampa stores for calendar year 1999. The court finds the scope of the production reasonable given the ambiguity of the request for alarm service records and the facts of this case. Moreover, the court finds the time-frame reasonable and consistent with this court's ruling on other requests. Accordingly, Plaintiff's motion to compel with

respect to request number 20 is **DENIED**.

**Request number 21** seeks bank records of deposits made by the managers of Defendant's Tampa stores from January 1998 through January 2002. Plaintiff specifically seeks those portions of the bank records that reflect the time and location that the managers made the deposits. Plaintiff argues that the information is relevant because Defendant contends that it terminated Plaintiff for, among other reasons, making bank deposits late, which caused her to be late to work. Defendant argues that the bank deposit records may not reflect accurately the time the deposits were made. Moreover, Defendant argues that the request is overbroad.

The court agrees that the request is overbroad and of limited relevance. The motion to compel as to request number 21 is therefore **DENIED**.

Plaintiff's **request numbers 22 and 23** seek various information regarding "key holders" for Defendant's Fashion Cents stores in Tampa, Jacksonville, and Orlando. Plaintiff offers no support in her motion with regard to these requests; accordingly, Plaintiff's motion to compel is **DENIED** with respect to request numbers 22 and 23.

Similarly, Plaintiff provides no rationale for **request number 24**, which seeks a copy of the lease agreement between Defendant and Tampa Bay Mall and "any separate agreement" between Defendant and Tampa Bay Mall's security service, and **request number 27**, which

seeks various expenses claimed by Stephanie Manley Roper, Monica Barr, and Ricardo Moyers while employed by Defendant. Accordingly, Plaintiff's motion to compel is **DENIED** with respect to request numbers 24 and 27.

**Request number 25** seeks "copies of any documents recording fines levied by the Tampa Bay Mall for late openings or warnings of late openings by the Tampa Bay Mall." (Dkt. 42, ex. A at 12, ¶ 25.) This information is relevant, as Defendant claims that it received information from Tampa Bay Mall that Plaintiff was tardy in opening the Fashion Cents store and that Plaintiff's absences and tardiness comprise legitimate reasons for terminating Plaintiff. Accordingly, Plaintiff's motion to compel with regard to request number 25 is **GRANTED**, to the extent that Defendant shall provide the requested information for the period of time Plaintiff worked at Defendant's Tampa Bay Mall store: March 9, 1999, through May 27, 1999.

**Request number 28** seeks the names and copies of any and all standardized tests that Defendant used to evaluate its employees' suitability for working "in any level position of employment." Plaintiff argues that this information is relevant to prove negligence in training, supervision, and retention. Defendant argues that the request is overbroad because it seeks testing information for *all* Norstan employees, when the only employees relevant to Plaintiff's negligent training, supervision, and

retention claims are the managers and supervisors. Defendant further states that the standardized test that it used to evaluate Ricardo Moyers is in his personnel file, which it has already produced.

This court agrees with Defendant's overbreadth objection and will not narrow this request because Plaintiff repeatedly fails to do so on her own. Accordingly, Plaintiff's motion to compel is **DENIED** as to request number 28.

In **request number 34**, Plaintiff seeks employment applications for all of Defendant's Georgia and Florida employees who Defendant terminated from 1998 to 2001. Defendant argues that this request is overbroad and unreasonable because the reasons alleged as a basis for Plaintiff's termination are specific to management employees only, whose files Defendant has already provided. Defendant further argues that the relevant store is the Tampa Bay Mall store, where Plaintiff worked. Lastly, Defendant argues that responding to this request would take months and would be very expensive.

This court agrees. For these reasons, Plaintiff's motion to compel with regard to request number 34 is **DENIED**.

Plaintiff seeks in **request number 35** any and all information regarding Defendant's background check for Barr, Moyers, Roper, Jackson, all other assistant managers and managers employed in Florida by Defendant from January of 1998 through the present, and

all full-time and probationary employees hired by Defendant for the Florida stores from January of 1999 to the present. Defendant argues that the only background check relevant to the issues in this lawsuit is that of Mr. Moyers.

Once again, this request is clearly overbroad and Plaintiff offers no argument specific to this request. Accordingly, the motion is **DENIED** with regard to request number 35.

Plaintiff's **request number 38, subsections (a), (b), and (c)** seek educational and training materials that Defendant uses to train its non-management and management employees "in following corporate procedures for recruiting, hiring, terminating, managing and supervising Norstan personnel."

Plaintiff's motion with respect to subsections (a) and (b) of request number 38, which seek training material, is **GRANTED**.

Subsection (c) of request 38 seeks "corporate documents that name every Florida and Georgia Fashion Cents [e]mployee that received any of the training," including the training dates, the name of the person who administered the training, the location of the training, and copies of all test results or certificates of completion. As worded, this request is overbroad and overly burdensome and is therefore **DENIED**.

With regard to **request numbers 36, 40, and 41**, Plaintiff's motion to compel is **DENIED**, as Defendant argues that it has produced documents responsive to these requests and Plaintiff has

not persuaded this court otherwise.


Defendant shall produce within twenty days from the date of this order any documents at issue.

This court declines at this time to award sanctions to either party, but may revisit this ruling if circumstances warrant.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

- 1) Plaintiff/Intervenor's Motion to Compel Production of Documents and Request for Attorney's Fees and Sanctions (Dkt. 42) is **GRANTED in part** and **DENIED in part**, as outlined above; and
- 2) Plaintiff's request for sanctions is **DENIED**.

**DONE** and **ORDERED** at Tampa, Florida this 4<sup>th</sup> day of June, 2002.

  
\_\_\_\_\_  
ELIZABETH A. JENKINS  
United States Magistrate Judge

Copies to:  
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Date Printed: 06/04/2002

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