

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

CASE NO.: 99-CV-1371-T-17A

RIO BRAVO INTERNATIONAL, INC.,
and INNOVATIVE RESTAURANT
CONCEPTS, INC., and APPLEBEE'S
INTERNATIONAL, INC., d/b/a RIO
BRAVO CANTINA,

Defendants.

ORDER

Before the Court is Defendants' Motion to Compel Plaintiff EEOC to Produce Documents (doc. 54-1) or to Compel Plaintiff EEOC to Produce a Privilege Log Complying with this Court's order dated July 21, 2000 (doc. 54-2), and Plaintiff's response thereto (doc. 76). By its motion, Defendants seek (a) to compel Plaintiff to produce certain documents as requested in Defendants' First Request for Production, request no. 1, served on Plaintiff September 3, 1999, or, in the alternative, (b) to compel Plaintiff to amend its privilege log with the same sufficient specificity as required of Defendants by this Court in its order dated July 21, 2000. (See doc. 45) Plaintiff objects to Defendants' motion by arguing the information provided in its privilege log is more than sufficient to justify withholding the documents pursuant to the governmental deliberative process privilege. Plaintiff asserts the description of each document contained in the log

provides (a) the author of the document, (b) the recipient, (c) the date, if known, and (d) the nature of each document.

The Plaintiff's contention that its privilege log is "more than sufficient" is not well-taken by this Court. This Court finds, after review of the certain log entries as reproduced in Defendant's motion, the Plaintiff's log does not comply with the privilege log requirements set forth by this Court for this particular case. On July 21, 2000, this Court directed the Defendants to produce a privilege log in compliance with Federal Rules of Civil Procedure rule 26(b)(5) (doc. 45). Accordingly, the privilege log must specify which Request(s) to Produce applies. In addition, the log shall identify with sufficient specificity any of the following: (1) the identity of the document; (2) the individuals who were parties to the communications; (3) the relationship between the individuals listed in the log and the litigating parties; (4) specific facts and details as to each document which would suffice to establish each element of each privilege claimed. *CSX Transportation, Inc. v. Admiral Ins. Co.*, 1995 WL 855421, *5 (M.D. Fla. July 20, 1995)(citing *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 474 (S.D.N.Y. 1993)).

Plaintiff's log does not meet these requirements. Therefore, Plaintiff shall have 30 days from the date of this order to provide Defendants with an amended privilege log and supporting evidentiary material that complies with the requirements discussed above. The log shall address each withheld document individually, though Plaintiff may designate groups of documents that are related in an effort to maintain organization.

Thereafter, if Defendants reasonably believe the asserted privileges have not been sufficiently established, they shall meet and confer with Plaintiff in a good faith attempt

to resolve these issues without court intervention. If the parties still cannot agree on the appropriate discovery to which Defendants are entitled, Defendants may renew their motion to compel Plaintiff to produce documents at that time.

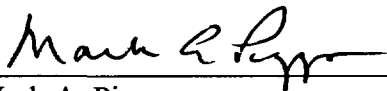
Accordingly, it is hereby

ORDERED that:

1. The Defendants' Motion to Compel Plaintiff EEOC to Produce Documents (doc. 54-1) is **DENIED** without prejudice.
2. The Defendant's Motion to Compel Plaintiff EEOC to Produce a Privilege Log Complying with the Court's Order Dated July 21, 2000 (doc. 54-2) is **GRANTED**. The Plaintiff is directed to revise its privilege log as set forth in this order.
3. If Defendants reasonably believe the asserted privileges have not been sufficiently established, it is directed to confer with Plaintiff within twenty (20) days of the submission of Plaintiff's revised privilege log in a good faith effort to resolve the issues raised by Defendants' Motion to Compel (doc. 54). The parties are urged to meet face to face in order to fulfill the good faith requirement of Local Rule 3.01(g).
4. In the event Defendants determine an amended motion to compel is necessary with regard to its Request for Production, Defendants are directed to comply with Local Rule 3.04. With regard to each request and individual subpart, Defendants shall include the following information:

- a. quote in full each request for production,
- b. the Plaintiff's objections and grounds therefor,
- c. the Defendants' assertions as to why Plaintiff's objections should be overruled.
- d. The above information should be set forth **separately** with regard to each request and each subpart.

DONE and ORDERED in chambers at Tampa, Florida on this 13 day of December, 2000.



Mark A. Pizzo
United States Magistrate Judge

Copies to: Counsel of Record