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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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U.S. EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	2:04-cv-01257-RLH-LRL
v.	)	
	)	<b>ORDER</b>
RIVIERA OPERATING CORP.,	)	
	)	
Defendant.	)	
_____	)	

Before the court is Plaintiff EEOC’s Motion for a Protective Order that Defendant’s 30(b)(6) Deposition Not be Taken (# 24), defendant’s Opposition (# 25), and plaintiff’s Reply (# 26).

This action, which is brought under Title VII and the ADEA, alleges that certain individuals and a class of people similarly situated were unlawfully retaliated against for having participated as witnesses in the EEOC’s enforcement efforts against defendant. The discovery dispute centers on an alleged communication between EEOC attorney Samantha Blake and EEOC investigator LaTanya Williams.

The EEOC refuses to produce certain documentation under claims of privilege. Defendant has already deposed Samantha Blake. Defendant now wishes to depose LaTanya Williams as to the “investigation conducted by the EEOC relating to a Charge of Discrimination filed by Jo-Anna Harris, EEOC Charge No.: 340-2003-09859; and . . . [ the I]nvestigation conducted by the EEOC relating to a Charge of Discrimination filed by Ronni Hill, EEOC Charge No.: 340-2003-10093.”

1 The EEOC seeks a protective order precluding the deposition of LaTanya Williams on the  
2 ground that her testimony is not relevant. The EEOC argues that any testimony by LaTanya Williams  
3 is cumulative and duplicative, that Riviera can obtain the information from more convenient sources,  
4 and that the burden of production outweighs any particular benefit to Riviera. The EEOC argues this  
5 lawsuit involves a trial *de novo* and an employer may not litigate the adequacy of the investigator's  
6 initial determination that the employee was the object of discrimination. Therefore, Williams's  
7 testimony is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
8 Additionally, the EEOC states it has produced the entire investigative file in this matter, except for  
9 privileged materials. Production includes all of Williams' interview notes, with certain portions  
10 redacted because of privilege. Williams' Declaration states that since this investigation took place she  
11 has handled 75 files and has no independent recollection of the factual information developed during  
12 this investigation. Mot. (# 24) at 15.

13 Riviera opposes the motion, arguing that the EEOC has failed to meet its burden of showing why  
14 a protective order should be granted. Relying on *Plummer v. Western Intern. Hotels Co., Inc.*, 656 F.2d  
15 502, 505 n.9 (9th Cir. 1981), Riviera contends that the Ninth Circuit "allows a party to point out  
16 deficiencies in the EEOC's investigation at trial." Opp'n (# 25) at 16. Finally, Riviera contends that  
17 the EEOC has failed to show why the request is burdensome.

18 Rule 26(b)(1) of the Federal Rules of Civil Procedure permits discovery of any matter, not  
19 privileged, "relevant to the claim or defense of any party." However, the scope of discovery is not  
20 unlimited. Discovery requests must not only be relevant to a claim or defense, but may not be  
21 unreasonably cumulative, duplicative, or unnecessarily burdensome in light of their benefit. Fed. R.  
22 Civ. P. 26(b)(2); *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 (1978). The court has broad  
23 discretion in controlling discovery. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988).

24 The court is persuaded that the EEOC has produced all the factual information in its  
25 investigative file, and that Williams can offer no more factual information than Riviera already  
26 possesses. Additionally, an employer may not litigate the adequacy of the EEOC's investigation and

1 determination, *see EEOC v. KECO Industries, Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984), unless a  
2 plaintiff enters the EEOC's letter of determination as evidence, in which case the defendant is free to  
3 point out deficiencies in the investigation. That is not the case here.

4 Accordingly, and for good cause shown,

5 IT IS ORDERED that the EEOC's Motion for a Protective Order that Defendant's 30(b)(6)  
6 Deposition Not be Taken (# 24) is GRANTED.

7 DATED this 8<sup>th</sup> day of August, 2006.

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**LAWRENCE R. LEAVITT**  
11 **UNITED STATES MAGISTRATE JUDGE**