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United States District Court,
D. Oregon.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,
and
Wendy BAKER, Christine Thompson, Laurie
Dametz, and Donna Emerson, Intervenor,
UNITED STATES BAKERY, Defendant.

No. CV 03-64-HA. | Nov. 20, 2003.

Attorneys and Law Firms

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Defendant.

Opinion

OPINION AND ORDER

HAGGERTY, Chief J.

*1 The Equal Employment Opportunity Commission (EEOC) filed this action on January 16, 2003, alleging unlawful employment practices by defendant United States Bakery (USB) in violation of 42 U.S.C. §§ 2000e-2(a) and 3(a) (Title VII). The EEOC asserts that defendant sexually harassed Wendy Baker, Donna Emerson, Laurie DaMetz, and Christine Thompson. On June 18, 2003, these four individuals filed a Motion to Intervene in the federal claims, which this court granted on July 15, 2003. On September 29, 2003, the EEOC filed a Motion to Compel Responsive Answers to the EEOC's Interrogatories and Requests for Production of Documents (Doc. # 24). This motion is currently before the court.

BACKGROUND

The EEOC claims that USB has unreasonably refused to provide responsive answers to one interrogatory and two requests for production in the EEOC's First Set of Interrogatories and Requests for Production of Documents ("First Requests"). First, the EEOC posed an

interrogatory seeking the basis for USB's third affirmative defense that plaintiffs' claims are barred by a statute of limitations. EEOC's Interrog. No. 14; Def.'s Answer, Affirmative Defenses, and Countercl. at 2. USB objected on the ground that Local Rule of Civil Practice 33.1(d) prohibits "contention" interrogatories that seek the factual and legal basis for affirmative defenses. Def.'s Resp. to First Requests at 8.

Second, the EEOC seeks production of all documents pertaining to any allegations of discrimination by Jeff Fahlman and Tom Caudle, employees of defendant. EEOC's Req. for Produc. No. 4. USB objected, stating that the request was vague and ambiguous, but that it would produce any non-privileged documents of investigation and action taken by USB against Fahlman and Caudle. Def.'s Resp. to First Requests at 11. Third, the EEOC seeks production of USB's annual report. EEOC's Req. for Produc. No. 9. USB refuses to produce it "on the basis that the financial worth is not relevant nor reasonably calculated to lead to admissible evidence." Def.'s Resp. to First Requests at 13.

STANDARDS

a. Discovery

Discoverable material includes "any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Fed.R.Civ.P. 26(b)(1). This Rule is interpreted to allow liberal discovery of all information reasonably calculated to lead to the discovery of admissible evidence, although the discoverable information itself need not be admissible at trial. *Id.*; see also *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir.1993). Particularly in Title VII cases, courts are generous in providing broad discovery parameters and refusing to allow "procedural technicalities [to] impede the full vindication of guaranteed rights." *United States v. City of Torrence*, 164 F.R.D. 493, 496 (C.D.Cal.1995) (quoting *Trevino v. Celanese Corp.*, 701 F.2d 397, 405 (5th Cir.1983)).

*2 If during discovery a party refuses to answer interrogatories or produce requested discovery that is relevant and not otherwise subject to privilege, the requesting party may seek an order compelling discovery. Fed.R.Civ.P. 34; 37(a)(2)(B). In response to such an order, the party resisting discovery has a heavy burden of showing why discovery should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir.1975); *Cable and Computer Tech. Inc. v. Lockheed Saunders, Inc.*, 175 F.R.D. 646, 650 (C.D.Calif., 1997) (the party resisting

discovery must clarify, explain, and support its objections).

b. The Federal Rules of Civil Procedure and Local Rules

Courts may adopt local rules under Fed.R.Civ.P. 83 if they are not inconsistent with federal law. *Hamilton v. Keystone Tankship Corp.*, 539 F.2d 684, 686 (9th Cir.1976). A court's local rule is invalid if it conflicts with the Federal Rules of Civil Procedure. *Mutual Fund Investors, Inc. v. Putnam Mgmt.*, 553 F.2d 620, 625 (9th Cir.1977); *see also Hajek v. Burlington N. R.R. Co.*, 186 F.3d 1105, 1109 (9th Cir.1999) (invalidating local rules regarding consent to proceed before a magistrate because they were in conflict with the Federal Rules of Civil Procedure).

ANALYSIS

1. EEOC's Interrogatory No. 14

In its interrogatories, the EEOC asks USB to "[d]escribe the factual and legal basis for the third affirmative defense identified in defendant's February 17, 2003 Answer to Plaintiff's Complaint that 'the claims are barred in part or fully by applicable statute of limitations.'" EEOC's Interrog. No. 14. In its response, USB refuses to answer claiming that the interrogatory seeks the factual and legal basis for USB's affirmative defense in violation of Local Rule 33.1(d). *See* L.R. 33.1(d) ("Broad general interrogatories such as those which ask an opposing party to 'state all facts on which a contention is based or to 'apply law to facts' are not permitted.") (emphasis in original). Def.'s Resp. to First Requests at 8. However, the Federal Rules of Civil Procedure state, "An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact...."). Fed.R.Civ.P. 33(c).

Local Rule 33.1(d) is not inconsistent with the Federal Rules of Civil Procedure. The Federal Rules provide that an interrogatory is not objectionable merely because it requests an opinion or contention relating to facts or the application of law to facts. Fed.R.Civ.P. 33(c). Federal Rule of Civil Procedure 33(c) was adopted in recognition of the need to narrow and sharpen issues in the discovery process. *See* Advisory Committee Notes of the 1970 Amendments Subdivision (b). Although interrogatories may not extend to legal issues *unrelated* to the facts of the case, a party may appropriately pose an interrogatory that calls for a factual opinion or contention relating to the facts of the case or the application of law to the facts of the case. *Id.* This provision is not inconsistent with Local

Rule 33.1(d)'s prohibition against overly broad interrogatories that ask for the general application of law to fact.

*3 The EEOC's interrogatory is in compliance with Federal Rule of Civil Procedure 33(c) and does not violate Local Rule 33.1(d). Interrogatory No. 14 is not a "broad general interrogatory" requesting USB to "state all facts on which a contention is based." It is also not a "broad general interrogatory" requesting USB to "apply law to facts." The interrogatory is narrow and specific in that it requests the factual and legal basis USB relies on in its third affirmative defense set forth in its Answer that plaintiffs' claims are barred by a statute of limitations. Accordingly, USB is ordered to respond to plaintiffs' Interrogatory No. 14.

2. Documents Regarding Fahlman and Caudle

The EEOC seeks production of documents "regarding any alleged harassing or discriminating behavior" on the part of Fahlman and Caudle. EEOC's Request for Produc. No. 4. The EEOC asserts this request conforms to Fed.R.Civ.P. 34, which allows the discovering party to set forth the items to be inspected by category as long as each category is described with reasonable specificity. Fed.R.Civ.P. 34(b).

USB objects to this request because it is vague and not reasonably specific. USB claims it has engaged in a good faith search for all known documentation regarding investigations and actions taken by USB in response to complaints of harassment or discrimination by Fahlman and Caudle and has produced all documents responsive to the EEOC's request. Accordingly, USB has responded to the EEOC's Request for Production No. 4.

3. USB's Financial Records

The EEOC seeks production of USB's financial status, stating it is relevant to the EEOC's request for punitive damages. EEOC's Request for Produc. No. 9. The EEOC relies on *EEOC v. Klockner H & K Machines Incorporated*, 168 F.R.D. 233 (E.D.Wis.1996), for the proposition that "a defendant's financial status is relevant when a claim for punitive damages has been made." *Id.* at 235. USB refuses to produce such information arguing that under *Heller v. Ebb Auto Co.*, 1990 WL 103704, financial records are not subject to production until the requesting party has made a *prima facie* showing of entitlement to punitive damages.

Heller was decided pursuant to O.R.S. 41.315(2) in which evidence of the financial condition of a party was not admissible until the requesting party presented sufficient evidence to justify a *prima facie* claim of punitive

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damages. *See id.* at *1; *Lakin v. Senco Prod., Inc.*, 144 Or.App. 52, 925 P.2d 107, 120 fn. 18 (Or.1996). However, O.R.S. 41.315(2) was repealed in 1995. *Lakin*, 925 P.2d at 120; Or. Laws 1995, ch. 688, § 6. Since the repeal of O.R.S. 41.315, the Ninth Circuit has not addressed the issue of whether a party seeking punitive damages is entitled to financial documents of another party without first making a *prima facie* showing of entitlement to punitive damages.

However, in *Hangarter v. Paul Revere Life Insurance Company*, 236 F.Supp.2d 1069 (N.D.Cal.2002), the court suggests that *Heller*'s reasoning still applies. ("The purpose of precluding evidence of a defendant's financial condition is to minimize prejudice prior to the jury's determination of a *prima facie* case of liability for punitive damages."). *Id.* at 1095; *see also Jabro v. Superior Court*, 115 Cal.Rptr. 843, 845–46 (Cal.App.4th 2002) (vacating trial court's order granting discovery of a party's financial condition before a *prima facie* showing

of entitlement to punitive damages was made). Therefore, insofar as the EEOC's Motion to Compel relates to the production of USB's financial records, it is denied with leave to renew after a *prima facie* showing that punitive damages is warranted under the facts of this case.

CONCLUSION

*4 For the foregoing reasons, the EEOC's Unopposed Motion for Leave to File a Reply in Support of the EEOC's Motion to Compel (Doc. # 34) is GRANTED, and the EEOC's Motion to Compel (Doc. # 24) is GRANTED in part and DENIED in part.

IT IS SO ORDERED.