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IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

DEPUTY CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Plaintiff,

vs.

TRI-SPUR INVESTMENT COMPANY,
INC., dba SBARRO'S ITALIAN EATERY,

Defendant.

**ORDER GRANTING
MOTION TO COMPEL**

CRYSTLE COLLINS,

Plaintiff in Intervention,

vs.

TRI-SPUR INVESTMENT COMPANY,
INC., et al.,

Defendants in Intervention.

Case No: 2:00 CV 774 DB

District Judge Dee Benson

Magistrate Judge David Nuffer

Defendant has moved to compel production of documents¹ from Plaintiff. Interestingly, Defendant seeks *copies* of documents Plaintiff made from Defendant's original documents. Defendant alleges that Plaintiff took those originals when Plaintiff investigated this claim, before suit was filed, copied the originals, Bates-stamped the copies, and then returned only *some* of the

¹ Motion to Compel Production of Documents, docket no. 372, filed September 23, 2003.

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originals to Defendant.² Plaintiff resists the motion, claiming that Defendant has all the originals, and that there is no legal authority to require Plaintiff to make the production. Plaintiff says that there is no request for production for these items and the fact that Plaintiff listed the Bates-stamped documents on Plaintiff's initial disclosures does not obligate Plaintiff to produce them.³

Defendant replies that the Plaintiff should be ordered to produce the Bates-stamped documents because Plaintiff listed them in Plaintiff's First Supplement to Initial Disclosures,⁴ but failed to state their location or provide copies, as the rule alternatively requires.⁵

To enable the resolution of the dispute about loss of documents and completeness of the exhibits, this motion should be granted. Comparing the copies and originals is something that needs to be done. This is, however, a case in which there is substantial justification for the prior refusal of the EEOC to produce the copies, so an award of expenses is not appropriate.⁶

This case is set for an omnibus hearing on pre-trial motions on December 10, 2003, before the district judge and set for trial in early February 2004. The comparison should happen sooner rather than later.

² [Defendant's] Memorandum in Support of Motion to Compel Production of Documents, docket no. 373, filed September 23, 2003.

³ Plaintiff EEOC's Opposition to Defendant's Motion to Compel Production of Documents ("EEOC's Opposition"), docket no. 409, filed October 9, 2003.

⁴ Attached as Exhibit B to the Affidavit of Sandra J. Padegimas, which is Exhibit 1 to the EEOC's Opposition.

⁵ [Defendant's] Reply Memorandum in Support of Motion to Compel Production of Documents, docket no. 412, filed October 22, 2003. *See* Fed. R. Civ. P. 26(a)(1)(B).

⁶ Fed. R. Civ. P. 37(c)(1) and (b)(2) and compare 37(a)(4)(A).

IT IS HEREBY ORDERED that the motion to compel production of documents⁷ is GRANTED. Plaintiff shall produce the Bates-stamped copies for inspection at the hearing December 10, 2003, or at an alternative time and place mutually agreed by the parties. If the production is made at the time of the hearing, Defendant shall provide staff to enable comparison of the originals and Bates-stamped copies during the hearing, without requiring the time of counsel who are participating in the hearing. Whenever the production and inspection is made, cost of copies shall be borne by Defendant.

November 18, 2003.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

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Docket no. 372, filed September 23, 2003.

United States District Court
for the
District of Utah
November 19, 2003

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cv-00774

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