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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

ALLSTATE INSURANCE COMPANY,

Defendant

)
)
)
)
)
)
)

Case No (LT)
3:20-cv-00905-MMH-JRK

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR PROTECTIVE ORDER ON
NON-PARTY JANICE BRADLEY**

Plaintiff, ELIAS MAKERE, on this 4th day of January 2021, respectfully asks this Honorable Court to deny '*Defendant's Motion for Protective Order on Non-Party Janice Bradley*' (hereinafter "That Motion").

Key Points:

A.) Grounds Relevant non-party; 3-part test

B.) Bifurcated A separate response to That Motion was delivered^{1/}

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Background: Plaintiff propounded discovery on a non-party
Problem: Defendant moved to prohibit all discovery on the non-party
Request: This Court permits discovery on the non-party

Rule 26(b) (1) | Fed. R. Civ. P. | Discovery Scope and Limits

"Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case"

Rule 26(c) (2) | Fed R. Civ. P. | Protective Orders

"If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery"

Rule 45(d) (3) | Fed. R. Civ. P. | Subpoena Enforcement

"(A) When Required. On timely motion, the court for the district where compliance is required..."

"(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required..."

Precedence

- 2:18-cv-00826-JLB-NPM - USFLMD (8/17/20)
 - 8:19-cv-01275-SCB-PDB - USFLMD (9/15/20)
- USFLMD recently denied motions for protective orders

Abbreviations

[C###] - Paragraph ### from The Complaint^{2/}

[M###] - Page ### from That Motion^{3/}

[R###] - Page ### from That Response^{6/}

[S###] - Page ### from The Subpoena^{4/}

[X@##] - Page ## from Exhibit @ in The Notice^{5/}

USFLMD - US District Court, Florida, Middle District

RESPONSE

I. Substantive Facts

1. The substantive facts of this case will not be repeated herein, as they have been more fully detailed in "*Plaintiff's Response to Defendant's Motion to Quash...*" (hereinafter "That Response") [R001]-[R004].
2. This filing's attached affidavit further amplifies the issues presented in his complaint (as it pertains to the subject non-party).

II. Procedural Facts

3. Likewise, Plaintiff duly incorporates [R005]-[R010] in this response.

III. Direct Rebuttal

4. Plaintiff hereby reasserts his need to propound discovery on Ms. Janice Bradley (hereinafter "Their Employee"). A non-party who is employed by Defendant, and who has information pertinent to Defendant's discriminatory employment practices.
5. Practices which include (but are not limited to):
 - (i) Discriminatory terminations;
 - (ii) Discriminatory terms & conditions;
 - (iii) Disparate pay; and
 - (iv) Disparate treatment/privileges;
6. In That Motion, Defendant argued that this Court should prohibit Plaintiff from obtaining discovery on these above-listed matters. As explained in That Response, though, Defendant was lacking in standing and merit for its requested relief.
7. That Motion also asked this Court to prohibit discovery on Their Employee altogether; saying the following [M005]:

"because of Plaintiff's overbroad, overly burdensome and otherwise objectionable subpoena served on Defendant's employee, this Court should enter an order precluding the discovery sought by Plaintiff in the Subpoena."

Conclusory Statements Fall Short

8. Defendant's boilerplate objection falls short of the mark. It is well established that generalized objections that discovery requests are vague (or overly broad) unacceptable; and will be overruled. As said in the following ruling from Auto-Owners vs SE Floating Docks, 231 FRD 426 (MD Fla. 2005) (also see Bank of NY v Meridien Biao Bank, 171 FRD 135, 143 (SDNY 1997); Panola Land Buyer's Assn. v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985)) (emphasis added):

"the party seeking a protective order has the burden to demonstrate good cause, and must make a 'particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements' supporting the need for a protective order."

Rule 26 Fed. R. Civ. P.

9. Instead, the Auto-Owners decision pointed to Rule 26(c) Fed. R. Civ. P. for guidance; which says, in pertinent part (emphasis added):

"The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense"

10. A reading of That Motion reveals zero claims of annoyance or oppression.

So, this Court cannot provide relief on those two grounds.

11. Likewise, Defendant's request made only one claim of "significant burden and expense" [M009]. This Court cannot grant relief on these two grounds either for two reasons.

(i) Reason Number 1: those claims were tied to RFP J310 and J311. Two discovery requests that Plaintiff suspended prior to That Motion's filing. Therefore, Defendant's claim was moot.

i. Nevertheless, Plaintiff will take this opportunity to further certify that he does not seek discovery on his six (6) suspended requests (please see Appendix A).

(ii) Reason Number 2: those claims were unsupported. Indeed, Defendant never supplied any facts on how much discovery would cost Their Employee. Nor did Defendant detail accessibility difficulties.

12. Thus, Defendant's one-off claim of expense/burden is unpersuasive. Rendered as such by the 11th Circuit's decision in Leigh v Warner Bros, 212 F.3d 1210 (11th Cir. 2000):

"This court has consistently held that conclusory allegations without specific supporting facts have no probative value."

13. Lastly, That Motion made the same "stereotyped statement" when it used the word "embarrass" on its sixth page. This was an empty statement that Defendant never even attempted to corroborate. Plaintiff contends that Defendant cannot factually support its statement for two reasons:

(i) First, Plaintiff has never tried to embarrass non-party Bradley.

(ii) Second, Defendant has never witnessed Plaintiff attempt to embarrass anyone. Plaintiff just does not aim to do that.

14. What Plaintiff does aim to do, however, is obtain the six remaining RFPs in his non-party subpoena to Their Employee. So, he will take this response one step further by applying the 3-prong test for protective orders.

3-Prong Test

15. The decision in American Standard v Pfizer, 828 F. 2d 734 (Fed. Cir. 1987) created a three-part test for use in reviewing motions for protective orders (emphasis added).

"One seeking a protective order under [Rule 26(c)] must establish that the information sought is confidential... ..Having shown the information sought to be confidential, one seeking a protective order must then demonstrate that disclosure might be harmful... ..[upon satisfying these first two elements], the burden shifts to the party seeking discovery to establish that disclosure of trade secrets and confidential information is relevant and necessary to its case."

16. In short, Defendant was required to show that:

- [1] it wanted to protect confidential information; and
- [2] disclosure of that information would have been harmful;

17. Then, Plaintiff would have the burden of showing that:

- [3] the information was relevant to his case

18. Afterwards, the Court would weigh the need for the information against the potential injury caused by its disclosure.

19. In the instant case, Defendant cannot claim that Their Employee's own discoverable information is being held in Defendant's confidence. Secondly, Defendant never claimed a right to it (see [R005] - [R006]). Thus, That Motion falls short on the first prong of the analysis.

20. Notwithstanding, Defendant would not have been able to quench the second element either. Defendant could not - and did not - claim that Their Employee's involvement in discovery would bring it harm.

21. Nevertheless, even assuming the burden could somehow shift to Plaintiff, he has already articulated the need to involve Their Employee in this lawsuit (see That Response, see **Affidavit**).

22. Simply put, Ms. Janice Bradley (ie, Their Employee), is inextricably linked to this employment discrimination case. Largely because a jury will need to see the disparate ways in which Defendant treated (a) Plaintiff; and (b) different demographic groups.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to deny '*Defendant's Motion for Protective Order on Non-Party Janice Bradley*'. Plaintiff also asks this Honorable Court to couple this bifurcated response with "*Plaintiff's Response to Defendant's Motion to Quash...*" (filed on-or-around 1/4/2021).

Dated this 4th day of January 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January 2021, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. I also emailed it to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} Please see *"Plaintiff's Response to Defendant's Motion to Quash..."* (filed on-or-around January 4, 2021). ^{6/} That Response = *"Plaintiff's Response to Defendant's Motion to Quash..."* (Dkt No. 34; 1/4/21).

^{2/} The Complaint = *"Complaint Against Allstate Insurance Company with Jury Demand"* (Dkt No. 1; 8/12/20).

^{3/} That Motion = *"Motion... to Quash... Janice Bradley..."* (Dkt No. 27; 12/18/20).

^{4/} The Subpoena = *'Subpoena Duces Tecum Without Deposition'* (Dkt No. 29; Exhibit; 12/18/20).

^{5/} The Notice = *'Notice to the Courts to Take Judicial Notice'* (Dkt No. 31; Exhibits; 12/21/20).

SERVICE LIST

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(*defendant's trial lawyers*)

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
	)	Case No (LT)
Petitioner	)	3:20-cv-00905-MMH-JRK
	)	
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
	)	
Respondent	)	

**PLAINTIFF'S CERTIFICATION ON SUSPENDED DISCOVERY
[PERSON 310, NON-PARTY JANICE BRADLEY]**

PLEASE TAKE NOTICE that Plaintiff, ELIAS MAKERE, will not seek discovery for the below-listed RFPs from Non-Party Janice Bradley **unless he first receives a court order to compel.**

<u>ID</u>	<u>Title</u>	<u>Subpoena Page</u>
J103	Communications (Allstate)	23
J104	Communications (SOA)	24
J225	Littler Emails	28
J226	Legal Representation	29
J310	Myrick	32
J311	Higgins	33

1. On December 4, 2020, Plaintiff effectuated subpoena service for a *Request for Production*. It was directed to Janice Bradley (a non-party).
2. On December 18, 2020, Plaintiff notified Defendant that he would suspend the above-listed discovery requests.

Dated this 4th day of January 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

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PLAINTIFF'S AFFIDAVIT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Petitioner	)	3:20-cv-00905-MMH-JRK
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Respondent	)	

**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE
IN OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE
ORDER ON NON-PARTY JANICE BRADLEY**

The affiant, Elias Makere, swears or affirms as follows:

Background

2. I am over the age of eighteen (18).
3. I am a plaintiff in the above-captioned case.
4. This affidavit is made in good faith.

Familiarity

5. I have read the Local Rules of Court, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and parts of the Middle District's Discovery Handbook (more shortly).
6. The information in this affidavit is based on my own personal knowledge.

Facts

7. Contrary to what they implied, Allstate never gave me a chance to stay employed with the company. A quick recap is in order:

- a. In May 2016, I took my 9th actuarial exam.
 - b. Those exam results didn't come out for two months.
 - c. When they did arrive in mid-July 2016 I relayed them to Allstate. I didn't pass.
 - d. Allstate never removed me from the Actuarial Career Program ("ACP"), though. It would've been inconsequential:
 - i. Other employees had also failed exams, and they reported that "nothing changed" in their employment.
 - ii. Still others - like Non-Party Janice Bradley - never even attempted an exam (let alone pass one).
 - iii. I was already paying for my own exam materials and registration fees (unlike others). So, a formal removal would've meant nothing.
 - iv. The majority of people in the actuarial department were not in the ACP. And Allstate never accosted their employment.
 - e. Instead, Allstate fired me on Friday, August 12, 2016. They executed the termination two (2) days after I refused another one of my manager's date requests (note: she requested my termination within hours of my refusal).
8. During the termination meeting, the HR manager (Mr. Ellis Manucy), told me I could apply for new employment upon the expiration of 30 days. This same manager told state administrative authorities that Allstate would've treated any application from me as a new job application.

9. In other words, Allstate fired me and deemed me eligible for rehire.

a. as an aside: I never reapplied (never inquired either).

10. I think any reasonable person can recognize that firing someone without warning is significantly different than giving someone a chance to retain employment.

11. Unfortunately, Allstate's recent motion suggested that the company did the latter. This is false.

12. To reiterate: Allstate never gave me a chance to stay employed.

Importance

13. These facts are valuable in understanding the relevance of the Non-Party Bradley subpoena for two main reasons.

14. First, they debunk Allstate's hollow statement that it removed me from the ACP and I failed to secure a different position within the company.

a. Allstate never removed me from the ACP (§7d).

b. Allstate never conditioned my continued employment on finding a new job within the company (§7e, §8).

15. Second, these facts show that Ms. Bradley is a viable comparator.

a. Allstate permitted Ms. Bradley to be employed without any actuarial exam success (or ACP membership). In fact, her entire employment lacked any need to take/pass an exam.

b. Allstate never allowed me to do the same.

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 31st day of December 2020.

UNITED STATES OF AMERICA



12/31/2020

Elias Makere, Plaintiff/Affiant

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