

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CARL HANKERSON,

Plaintiff,

Case No.: 15-cv-60785

v.

FORT LAUDERDALE SCRAP INC.,
a Florida corporation, A&B IMPORT
EXPORT, INC., a Florida corporation,
and AMIR SATTAR,
individually,

Defendants.

**PLAINTIFF'S REPLY IN SUPPORT OF HIS MOTION TO OVERRULE
DEFENDANT'S OBJECTIONS AND COMPEL DEFENDANT TO PERMIT
INSPECTION**

COMES NOW, Plaintiff, Carl Hankerson ("Plaintiff"), by and through his undersigned counsel and pursuant to Federal Rules of Civil Procedure and Local Rules of the Southern District of Florida, and hereby files his Reply in Support of his Motion to Compel Inspection of Electronically Stored Information, and in support thereof, states as follows:

1. On January 13, 2016, the Plaintiff filed a Motion to Compel Inspection of Electronically Stored Information (hereinafter "Motion to Compel"). [D.E. 55]. Therein, the Plaintiff addresses the inconsistencies in the paystubs produced by the Defendant, the paystubs produced by the Plaintiff, the conflict between the two, and the likelihood that the Defendant altered or changed such records after the fact.

2. The Defendant subsequently filed a Response in Opposition to Plaintiff's Motion (hereinafter "Response in Opposition"). [D.E. 59]. Defendant's arguments are long winded filibusters without legal authority, logic or reason. Further, Defendant's Response in Opposition

improperly tries to shift the focus of the Requests by making conclusory allegations regarding the Plaintiff's allegedly admitted "substance abuse infirmities, which make his memory wholly unreliable, fails to show a wage/hour/pay discrepancy in his Motion ... and the failed to appear for his ... deposition" See [D.E. 59].

3. First, the aforementioned allegations regarding drug use and memory problems are not "**ADDITIONAL UNDISPUTED MATERIAL FACTS**" as Defendant's Response in Opposition alleges – Plaintiff vehemently denies each and every allegation regarding his alleged substance abuse and unreliable memory. Second, the Plaintiff did not fail to appear for his deposition as there is a Motion for Protective Order currently pending based upon the fact that the Defendants have already taken Plaintiff's deposition. Third, there clearly is a discrepancy in the pay records as evidenced by the two (2) December 13, 2013 paystubs Plaintiff attached to the Motion to Compel.

4. The Defendant's Response in Opposition focuses on these irrelevant fallacies to avoid the fact that it altered documents, both time records and payroll records, upon receiving Plaintiff's Second Request for Production in an effort to cover up its failure to comply with the Fair Labor Standards Act and pay the Plaintiff overtime compensation.

5. The Response in Opposition consists of conclusory, self-serving contentions that are: 1) not accurate and 2) not true.¹ The Response in Opposition is completely devoid of any judicial support for the applicability of the objections asserted in Defendant's Response, lacks any valid basis for not permitting inspection, and otherwise fails to provide sufficient grounds for sustaining its objections in light of the liberal discovery standards governing this matter.

¹ Paragraph 14 of the Response in Opposition states that Exhibits E & F both list the same pay amount of \$440.91 and therefore no discrepancy exists. However, a simple cursory review of the two documents clearly evidences that there are significant differences between the two (2) documents, and that that difference goes to the crux of the Plaintiff's claims, and the Defendant's defenses, in this lawsuit.

6. Thus, for the reasons set forth herein and in the Plaintiff's Motion to Compel, the Plaintiff respectfully requests that this Honorable Court enter an Order granting Plaintiff's Motion, overruling the Defendant's objections and compelling the Defendant to permit inspection of the requests identified in Plaintiff's Second Request for Production.

MEMORANDUM OF LAW

As illustrated in the Plaintiff's Motion to Compel, the information requested in the discovery requests is relevant to the Plaintiff's claim for relief and "appears reasonably calculated to lead to the discovery of admissible evidence." It is, therefore, by definition, discoverable under the federal discovery rules. *See* Fed. R. Civ. P. 26(b)(1). As such, the governing discovery rules and judicial authorities require that the Defendant permit inspection of the computers or other electronic devices used to create the paystubs and time records, if any, and all digital files relating to the same. Rather than comply with these discovery rules, however, the Defendant has asserted various generalized objections without sufficiently describing the applicability of said objections to the respective Requests. Such practice is not permitted under the discovery rules. *See* S.D. Fla. Local R. 26(g)(3)(A).

The Motion to Compel contains an extensive explanation regarding the relevancy of the Inspection Requests at issue, including the subject matter and time periods for the information sought. The Defendant's Response in Opposition fails to successfully dispute the sufficiency of the Requests to establish the applicability of the non-particularized objections asserted. Simply put, the Defendant has failed to satisfy its burden of establishing that the requested discovery is irrelevant, overbroad, or otherwise objectionable under the governing standards. *Buckley Towers Condo. Inc. v. QBE Ins. Corp.*, 2008 WL 2645680 *1 (S.D. Fla. 2008) (stating that a party objecting to a request based on relevancy must show that the "requested discovery has no

possible bearing on the claims and defenses”); *Union Pac. R. Co. v. Gred’s Foundries, Inc.*, 2008 WL 4148591 *2 (D. Kan. 2008) (noting that a party objecting to a request as overbroad must prove that the request requires him to “exercise unnecessary time and effort to ponder, speculate, and decide to what extent it must rummage through documents to distinguish what is and what is not responsive”). As such, the Defendant’s objections should be overruled, and it should be required to fully comply with the Plaintiff’s Requests.

A. Production Request Number 1

Production Request 1 seeks “[t]he computer or other electronic device used to create the paystubs and time records Defendant provided in response to Plaintiff’s First Request for Production, including the computer and all other electronic devices themselves, their hard drives and hardware components. The inspection will necessarily include, but it not limited to, an analysis by a person selected by the Plaintiff or his agents of the computer’s internal clock to determine whether it is accurate or has in anyway been tampered with, as well as an analysis to determine whether the metadata concerning save and creation dates of the electronic files on the computer are being accurately recorded. The inspection will be performed in a manner that will not permanently alter or destroy the computer related items, or computer files.”

This Request is simple and straightforward, and the materials sought are sufficiently specific. There is certainly a difference between the payroll stub produced by the Plaintiff and that of the Defendant. It is the Plaintiff’s contention that the Defendant altered payroll documents upon receiving Plaintiff’s Second Request for Production in an attempt to cover up its failure to keep accurate records and properly compensate the Plaintiff under the FLSA. If it is discovered that the Defendant created these paystubs and time records to cover up its failure to comply with the law, that is certainly relevant to the Plaintiff’s claims and damages sought.

Further, it may tend to undermine the Defendant's defenses in this case and could potentially lead to the records produced by the Defendant as being stricken from the record.

This Request is limited in scope, will be conducted by a third-party meta-data company and will not alter or destroy the Defendant's property. Further, the Request is limited to the computer or other electronic device used to create the paystubs and time records, if any, and will be further be limited to a review of those documents, only. The Plaintiff has no interest in harassing the Defendant nor does he have an interest in reviewing information completely unrelated to this lawsuit. Rather, the sole purpose of the Request is to uncover the reason for the discrepancies in the payroll documents produced by the Plaintiff and those produced by the Defendant. The Request is not overbroad, is certainly relevant given the difference between the paystubs submitted by each Party and, as a result, the Defendant's objections should be overruled.

B. Production Request Number 2

Production Request Number 2 seeks “[a]ll electronic/digital files relating to the paystubs and time records Defendant provided in response to Plaintiff's First Request for Production, including but not limited to, any Acrobat Portable Document Format (“PDF”) files, Joint Photographic Experts Group (“JPEG”) files, Tagged Image File Format (“TIFF”) files, 3DMfiles, and any other CAD files and graphic files. The inspection will necessarily include, but it is not limited to, an analysis to determine whether the metadata concerning save and creation dates of the electronic files on the computer or electronic device are being accurately recorded. The inspection will be performed in a manner that will no permanently alter or destroy the computer, related items, or computer files.”

To echo the aforementioned, this Request is simple and straightforward. This is not a fishing expedition. The Plaintiff has good reason to believe the records produced by the Defendant have been altered or changed based on the differences in records provided by each Party. The Plaintiff believes this was done in an attempt by the Defendant to cover up its failure to keep accurate records and compensate the Plaintiff as required by the FLSA. By reviewing the electronic/digital files, a third-party meta-data company will be able to determine the date that the records produced by the Defendant were created, and/or if they have been changed or altered. This is relevant to both the claims and defenses of this lawsuit and will certainly narrow the issues should this case go to trial. *Union Pac. R. Co. v. Gred's Foundries, Inc.*, 2008 WL 4148591 *2 (D. Kan. 2008). The Defendant has not demonstrated that this Request is overbroad or irrelevant and, thus, such objections should be overruled, and the Plaintiff should be permitted to inspect information requested in his Second Request for Production.

WHEREFORE, the Plaintiff, CARL HANKERSON, respectfully requests that this Honorable Court grant Plaintiff's Motion to Compel the Defendant to permit the Plaintiff to inspect what is requested in his Second Request for Production, and award such further relief that the Court deems appropriate under the circumstances.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 1st day of February 2016, we electronically filed the foregoing with the Clerk of the Court using the CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronic Notices of Electronic Filing.

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