

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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LUIS SANTIAGO :
 : 3:05 CV 405 (JBA)
 :
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 V. :
 :
 OWENS-ILLINOIS, INC. AND :
 CONTINENTAL AFA DISPENSING CO. :
 AND CONTINENTAL DISPENSING CO. :
 d/b/a CONTINENTAL SPRAYERS : DATE: MARCH 17, 2006
 INTERNATIONAL, INC. :
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RULING ON PLAINTIFF'S MOTION TO COMPEL

On March 7, 2005, defendants Owens-Illinois, Inc., Continental AFA Dispensing Company and Continental AFA Dispensing Company d/b/a Continental Sprayer International, Inc. [collectively "defendants"] removed this employment action filed by plaintiff Luis Santiago in the Connecticut Superior Court. (Dkt. #1). On March 16, 2006, plaintiff filed his [Second] Amended Complaint, in which plaintiff alleges race and age discrimination in violation of Connecticut General Statute §§ 46-60(a)(1) and 46a-60(a)(5) (First Count), negligent misrepresentation (Second Count), and breach of contract (Third Count) by defendants, resulting from plaintiff's termination due to the sale of defendant Owens-Illinois's manufacturing facility to defendant Continental AFA Dispensing Company. (Dkt. #84; see Dkts. ##49, 53 & 82).

On July 14, 2005, United States District Judge Janet Bond Arterton referred this case to this Magistrate Judge for purposes of supervising discovery. (Dkts. ##31-32). After several extensions of the discovery deadline, discovery is now scheduled to close on May 19, 2006. (Dkt. #83; see also Dkts. ##2, 34, 52 & 77).

On February 8, 2006, plaintiff filed the pending Motion to Compel (Dkt. #72).¹ On March 1, 2006, defendant Owens-Illinois filed its brief in opposition and affidavits in support. (Dkt. #80).² That same day, defendant Continental AFA Dispensing Company filed its brief in opposition. (Dkt. #81).

For the reasons stated below, plaintiff's Motion to Compel (Dkt. #72) is granted in part.

I. DISCUSSION

On December 14, 2005, plaintiff served on defendants a request for production of any and all contracts and agreements relating to the sale of the Bridgeport manufacturing facility of defendant Owens-Illinois to defendant Continental AFA Dispensing Company. (Dkt. #72, Exh. A; Dkt. #80, Exhs. A-B). On January 20, 2006, defendants filed their responses objecting to plaintiff's request for production and offering, without waiver of their objections, to enter into a mutually acceptable protective order, pursuant to which defendants will produce "limited" "relevant portions" of the Asset Purchase Agreement. (Dkt. #72, Exh. B; Dkt. #80, Exhs. C-D). The parties engaged in discussions in an attempt to resolve this

¹Attached to plaintiff's motion (Dkt. # 72) are the following four exhibits: copies of Plaintiff's Second Set of Requests for Production directed to defendant Owens-Illinois and to Continental AFA Dispensing Company and Continental Sprayers International, dated December 14, 2005 (Exh. A); copies of defendant Continental AFA Dispensing Company's Responses to Plaintiff's Second Set of Requests for Production, dated January 6, 2006 (Exh. B); copy of Table of Contents of Asset Purchase Agreement (Exh. C); and copy of case law (Exh. D).

²Attached to defendant Owens-Illinois's brief in opposition (Dkt. #80-1) is an affidavit of Ryan H. Haywood, sworn to March 1, 2006 ["Haywood Aff't"]; a certification of defendant counsel, Lisa Yennella-Granese, dated March 1, 2006 ["Yennella-Granese Cert."]; and the following four exhibits: another copy of Plaintiff's Second Set of Requests for Production directed to defendant Owens-Illinois, dated December 14, 2005 (Exh. A); another copy of Plaintiff's Second Set of Requests for Production directed to defendant Continental AFA Dispensing Company and Continental Dispensing Company d/b/a Continental Sprayers International, Inc., dated December 14, 2005 (Exh. B); copy of defendant Owens-Illinois's Responses to Plaintiff's Second Set of Requests for Production, dated January 20, 2006 (Exh. C); and another copy of Defendant Continental AFA Dispensing Company's Responses to Plaintiff's Second Set of Requests for Production, dated January 6, 2006 (Exh. D).

dispute, during which counsel for Owens-Illinois provided to plaintiff's counsel the Table of Contents for the Asset Purchase Agreement. (See Dkt. #72, Exh. C; Dkt. #72, at 2; Dkt. #80, at 4). Thereafter, plaintiff filed this pending Motion to Compel. (Dkt. #72).

In plaintiff's Motion to Compel, plaintiff contends that the Asset Purchase Agreement is "clearly relevant pertaining to the [d]efendants' employment obligations when the Bridgeport manufacturing facility was transferred between the parties." (Dkt. #72, at 3).³ Plaintiff asserts that of particular relevance are the sections of the Asset Purchase Agreement relating to "employees and employee benefits (Sections 2.13, 2.14, 3.1, 7.1, 7.2, 7.3, 8.11, 8.13, Schedules 1.1(h), 2.1, 2.13(a), 2.13(b), 2.14)" and the sections pertaining to the "closing date (Section 7.1), Seller[']s closing obligations (7.2), Buyer[']s closing obligations (7.3) and Post Closing Actions (8.14)." (Dkt. #72, at 3-4). According to plaintiff, such information is "pertinent" since defendant Continental, "for the first time[,] has alleged in a letter" seeking permission from the court to file a motion for summary judgment, "that the reason for . . . [p]laintiff's discharge was the reduction in orders from one customer which resulted in a delay of the closing of the Bridgeport manufacturing facility and the alleged need to discharge . . . [p]laintiff." (Dkt. #72, at 4).⁴

³Plaintiff also requests that defendants "identify and produce any and all other contracts and agreements between the [d]efendants relating to the sale and purchase of the Bridgeport manufacturing facility." (Dkt. #72, at 4).

Defendants respond that they are "not presently aware of any other final Asset Purchase Agreement governing the sale of the Bridgeport facility between Continental Sprayers International, Inc. and Owens-Illinois Closure Inc." (Dkt. #80, at 7; see Yennella-Granese Cert., ¶ 6).

To the extent such additional contracts and agreements exist, the portions relating to defendants' employees and employment obligations shall be produced to plaintiff pursuant to a mutually agreed upon protective order. See n.7 infra.

⁴Plaintiff also observes that defendant Continental's new allegations were further substantiated at the recent deposition of Bradford Smythe, defendant's Plant Manager, wherein Smythe testified that "he made the decision to terminate . . . [p]laintiff after he spoke to representatives of [d]efendant, Continental, about the reduction in work from a customer which occurred near the date of the closing and resulted in a delay in the closing." (Dkt. #72, at 4).

Defendants⁵ respond that (1) plaintiff's request is vague, overly broad, unduly burdensome, and seeks proprietary, sensitive, and confidential business information that is not relevant to the claims and defenses in this action (Dkt. #80, at 4-7); (2) production of the Asset Purchase Agreement, if required, should be limited to Section 8.1 and Schedule 8.1 "Employment Obligations" (id. at 7-8); and (3) if the Court is inclined to compel production of any portion of the Asset Purchase Agreement, production should be in accordance with a protective order, to which plaintiff has not raised any objection (id. at 8-9).

Plaintiff alleges in his Amended Complaint that he was assured by defendants that plaintiff, as a thirty-seven year employee of defendant Owens-Illinois, would be a part of the "take-over and retained by" defendant Continental AFA Dispensing Company once the sale of the Bridgeport manufacturing facility was complete. (Dkt. #84, at 1-2). According to plaintiff, defendants failed to follow their past practice, policy and procedure of laying off employees on the basis of seniority, which, if such practice was followed, plaintiff would not have been laid off. (Id. at 3-5). Plaintiff contends that defendants' actions were discriminatory due to plaintiff's age and race, and as a result of defendants' actions, plaintiff was "depriv[ed] of his position and employment with [defendants]". (Id. at 3-6).

The Court agrees with defendants that the production of the entire Asset and Purchase Agreement is overly broad, particularly because portions of the thirty page Agreement, which includes more than seventy sections and forty attached schedules, are not relevant to the claims outlined in plaintiff's Amended Complaint. That notwithstanding, plaintiff is entitled to the production of the relevant portions of the Asset and Purchase Agreement relating to defendants' employees and employment obligations when the

⁵Defendant Continental AFA Dispensing Company "adopts the position articulated" by defendant Owens-Illinois "in its entirety". (Dkt. #81). Accordingly, the Court refers to "defendants" when addressing the arguments outlined in defendant Owens-Illinois's brief.

Bridgeport manufacturing facility was transferred between the parties. Specifically, defendants shall produce to plaintiff the following sections, as outlined in the Table of Contents before the Court: Sections 2.13 "Employees"; 2.14 "Employee Benefit Plans"; 3.1 "Organization"; 7.1 "Closing Date and Place"; 7.2 "Seller's Closing Obligations"; 7.3 "Buyer's Closing Obligations"; 8.1 "Employment Obligations"; 8.11 "Public Announcements"; 8.13 "Notices"; 8.14 "Post Closing Actions"; and Schedules 1.1(h) "Purchase Commitments and Contracts"; 2.1 "Organization"; 2.13(a) "Employees"; 2.13(b) "Employees"; 2.14 "Employee Benefit Plan"; and 8.1 "Employment Obligations."

Moreover, the parties agree that the production of the discoverable portions of the Asset and Purchase Agreement shall be done pursuant to a mutually agreed upon protective order maintaining the confidential nature of these documents.⁶ Therefore, **on or before March 31, 2006**, the parties shall submit to the Court an agreed upon protective order. Pursuant to the terms of the protective order, defendants shall produce the aforementioned nine sections and six schedules of the Asset and Purchase Agreement **on or before April 7, 2006**.⁷

II. CONCLUSION

For the reasons stated above, plaintiff's Motion to Compel (Dkt. #72) is **granted in**

⁶The Assistant General Counsel of defendant Owens-Illinois avers that Owens-Illinois has engaged in a "significant number of transactions in which it purchases or sells companies and/or the assets of such companies," the confidential consideration for which totals "several billion dollars". (Haywood Aff't, ¶¶ 1, 3 & 5). Accordingly, the "confidential methods of engaging in such transactions and the terms found in the agreements" "are of significant importance to [defendants]", and defendants stand "to suffer significant and irreparable harm in conducting its business operations, including future transactions, if the Asset Purchase Agreement, or any portions thereof, are produced to plaintiff without the protection of a protective order and the ability to keep any such documents filed with the Court under seal." (*Id.* ¶¶ 7-8).

⁷Defendants shall also produce any other documents, to the extent they exist, **on or before April 21, 2006** and such documents shall also be subject to the terms of the protective order. See n. 3 supra.

part.⁸

This is not a Recommended Ruling but a Ruling on discovery, the standard of review of which is specified in 28 U.S.C. § 636; FED. R. CIV. P. 6(a), 6(e) & 72; and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the District Judge upon timely made objection.

_____ See 28 U.S.C. § 636(b)(**written objections to ruling must be filed within ten days after service of same**); FED. R. CIV. P. 6(a), 6(e) & 72; Rule 2 of the Local Rules for United States Magistrate Judges, United States District Court for the District of Connecticut; Small v. Secretary, H&HS, 892 F.2d. 15, 16 (2d Cir. 1989)(**failure to file timely objection to Magistrate Judge's recommended ruling may preclude further appeal to Second Circuit**).

Dated at New Haven, Connecticut, this 17th day of March, 2006.

/s/
Joan Glazer Margolis
United States Magistrate Judge

⁸Counsel shall contact Chambers if he or she believes that a settlement conference would be productive.