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Gerber Products Co. Order on Plaintiff's Motion to Compel Discovery

Alice D. Bonner

Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

GERBER PRODUCTS COMPANY)	
d/b/a NESTLÉ INFANT NUTRITION,)	
)	
Plaintiff,)	
)	Civil Action File No.
v.)	2015CV258330
)	
GEORGIA DEPARTMENT OF)	
PUBLIC HEALTH,)	
)	
Defendant.)	

ORDER ON PLAINTIFF'S MOTION TO COMPEL DISCOVERY

This matter is before the Court on Plaintiff's Motion to Compel Discovery. After consideration of the motions and briefs submitted, the Court finds as follows:

Plaintiff Gerber Products Company d/b/a Nestle Infant Nutrition ("Nestle") and the Georgia Department of Community Health ("DCH") entered into a contract (the "Contract") effective October 2010 whereby Nestle would 1) serve as the primary infant formula manufacturer for the Georgia Special Supplemental Nutrition Program for Women, Infants and Children ("WIC Program") and 2) would pay rebates to DCH for each can of infant formula redeemed under the WIC Program. The Contract was terminated in June 2013, due in part to the creation of Defendant Georgia Department of Public Health ("DPH"), which by statute succeeded to the contracts entered into by DCH which related to the functions transferred to DPH. After the termination of the contract, Plaintiff alleged that Defendant improperly invoiced Plaintiff for vouchers that had not been properly redeemed during the time the Contract was in force and brought suit. Plaintiff contends DPH committed various breaches of contract and breached the

implied duty of good faith and fair dealing through its mismanagement of the WIC Program.

Throughout discovery Plaintiff has sought a variety of information concerning nearly 200 vendors Plaintiff suspects may have obtained improper benefits under the WIC Program during the relevant contract period from October 2010 to June 2013. This discovery dispute arises in connection with Plaintiff's Fourth Request for Production of Documents ("Fourth Request") which was served upon Defendant on October 21, 2016. In addition to information related to specific vendors suspected of taking advantage of the WIC Program, Plaintiffs sought vendor applications and individually captured screenshots from DPH's administrative database related to 689 vendors which were only identified by vendor number in Exhibit C to the Fourth Request.¹ The 689 vendors mostly consist of large chain grocery stores where there have been no allegations of fraudulent activity under the WIC Program, but are all located within 5 miles of one or more of the suspect stores. Plaintiff claims the information concerning those stores is relevant and necessary to conduct a comparison of data from those large chain stores with the suspect stores in the same vicinity. Plaintiff expects the comparison will show that many of the suspect stores had substantially higher volumes of redemption to nearby stores even though the 689 vendors offered a larger selection of WIC-eligible food at cheaper prices. The United States Department of Agriculture ("USDA") had conducted a similar study in 2010 where it compared stores it suspected of WIC Program fraud to larger WIC Program stores to check for disparities in redemptions. In

¹ The Fourth Request contained 72 individual requests for production. Defendant objected to Requests Nos. 63 and 69 only in regards to information concerning the 689 vendors listed in Exhibit C.

2013, USDA suggested that DPH conduct a similar analysis to investigate whether "smaller stores [could be] 'trafficking' [WIC vouchers] since they are unable to support with invoices/receipts, etc. the WIC redemptions that have been paid."

Request for Production No. 63: Current printouts from the Vendor Integrity System (VIPS) of the following: "Volume of Business Indicators;" "High Risk Indicators;" and "Vendor Profile" for each WIC vendor listed on Exhibits B and C.

Request for Production No. 69: Each vendor application submitted to DPH for each WIC vendor listed on Exhibit C.

Defendant objected to each Request that sought information concerning the vendors on Exhibit C through Special Objection 2 which stated:

DPH objects to all requests that seek documents related to vendors described in Exhibit C as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible or relevant evidence. All of Nestle's previous requests for production of vendor materials have specifically identified the vendors for which documents were requested by name in requests specifically related to the claims in Nestle's complaint... Exhibit C neither identifies the vendors by name nor gives any indication of the vendor's connection with or relevance to the claims contained in Nestle's complaint...

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." O.C.G.A. § 9-11-26(b)(1). Ordinarily, the courts interpret "relevancy" very broadly to include requests that are reasonably calculated to lead to admissible evidence. See *Bowden v. Medical Center, Inc.*, 297 Ga. 285, 291 (2015); see also *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). However, under O.C.G.A. § 9-11-26(c), the Court may "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

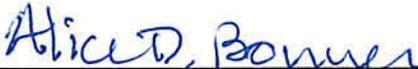
expense.” See also *Bd. of Regents of Univ. Sys. Of Georgia v. Ambati*, 299 Ga. App. 804, 811 (2009) (“in some circumstances the interest in gathering information must yield to the interest in protecting a party”).

The Court finds the documents requested in Requests Nos. 63 and 69 are relevant to the subject matter of the pending litigation and discoverable. However, Defendant argues the cost of production of documents related to Exhibit C vendors would be an undue burden. To produce similar documents relevant to WIC vendors accused of wrongdoing, Defendant had to retain two full-time temporary employees to produce materials in response to 108 separate requests, ultimately producing around 173,000 pages that include 211 WIC vendor files.

Defendant is **ORDERED** to produce documents in response to Requests Nos. 63 and 69 of Plaintiff’s Fourth Request in relation to the Exhibit C vendors on the condition that Plaintiff will be required to pay the costs incurred with collecting and producing the paper vendor files and VIPS reports for each of the 689 Exhibit C vendors.

With the conditions stated above, Plaintiff’s Motion to Compel Discovery is **GRANTED**.

SO ORDERED this 28 day of March, 2017.


ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

Copies to:

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