**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

ALTUS GARDNER,

                          Plaintiff,

vs.   Case No. 08-CV-646-TCK-FHM

SEARS HOLDINGS CORPORATION,
ET AL.,

                          Defendant.

OPINION AND ORDER

Plaintiff's Motion to Compel, [Dkt. 33], is before the undersigned United States Magistrate Judge. Defendant's have filed a response brief objecting to the motion, [Dkt. 36], no reply has been filed by Plaintiff and the time for reply has passed. Plaintiff's Motion to Compel, [Dkt. 33], is DENIED.

Background

On October 10, 2008, Plaintiff served the subject discovery requests on Defendants. Defendants responded to the discovery requests, objected to many of the requests as being, *inter alia,* overly broad and burdensome, requested that Plaintiff limit the temporal and geographic scope of the requests, and further explained that for several of the Defendants,[1] the response to Plaintiff's requests would be "none" because Plaintiff was not employed by those entities. [Dkt. 36-6]. Defendant made a supplemental production on April 6, 2009. On April 21, 2009, counsel met and conferred about discovery issues. By letter dated May 1, 2009, the agreements reached during the meet and confer were confirmed. [Dkt. 36-9]. Defendant Kmart Corporation produced additional documents

---

[1] Kmart, Kmart Management Corporation, Kmart Holding Corporation, and Sears Holding Corporation.

on May 26 and on June 9, 2009. On June 26, 2009, the discovery deadline date, Plaintiff filed the instant motion.

Analysis

Plaintiff's Motion to Compel seeks an order requiring Defendants to answer 21 interrogatories[2] and Request for Production Nos. 35-58. In conformity with LCvR 37.2(d), Plaintiff's opening brief contains a verbatim recitation of each interrogatory and Defendant's answer. However, the brief does not include any of Defendant's supplemental responses, nor does it include a recitation of the content of Request for Production Nos. 35-58. Defendants' response brief provided the text of its supplemental responses and asserts that Defendant Kmart Corporation has provided relevant responsive information and documents for a reasonable time frame and geographic area.

Kmart asserts that since Plaintiff alleges discrimination occurred between September 2006 and February 2007, it has limited its responses to the period of 2004 through 2007, rather than produce information for Plaintiff's entire 30-year employment period, November 1976 through February 2007. Further, although Plaintiff requested information from the Region in which Plaintiff's store was located, since the Region contained approximately 350 stores, Defendant's responses were limited to information concerning the eleven stores in the same District as Plaintiff's store. Defendants also point out that Plaintiff's Motion to Compel seeks information not previously requested and not responsive to any request.

---

[2] Interrogatories Nos. 1-16, 18-21, 23.

Defendants unequivocally assert that Plaintiff was employed by Kmart Corporation as Plaintiff's only employer from November 1976 to February 2007. Since Plaintiff was not employed by the other entities, and since Plaintiff's claims arise from his employment, the assertion that the Defendants other than Kmart Corporation have no information to produce is reasonable.

Plaintiff did not file a reply brief to contest any of Defendants' assertions. In addition, Plaintiff's brief contains only broad general statements that the information sought is relevant and that he should be provided the information. Plaintiff's brief does not contain a discussion about how the information being sought specifically relates to the case. In other words, Plaintiff's brief does not provide any information from which the Court could reasonably conclude that Defendants' discovery responses show a lack of good faith, are insufficient, or deny Plaintiff information to which he is entitled and which he needs to prove his case.

Conclusion

Plaintiff's Motion to Compel, [Dkt. 33] is DENIED.

SO ORDERED this 3rd day of August, 2009.

FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE