

1 WO

2

3

4

5

6

7

8

IN THE UNITED STATES DISTRICT COURT

9

FOR THE DISTRICT OF ARIZONA

10

11

12

13 Equal Employment Opportunity,)
Commission,)

14)
)

15) Petitioner,)

No. CIV 09-0209 PHX RCB

16) vs.)

O R D E R

17) Bashas', Inc.,)

18) Respondent.)

19 _____)

20

21

22

23

24

25

26

27

28

Currently pending before the court is a "Motion to Clarify Order Granting Limited Discovery" (doc. 46) by petitioner, the Equal Employment Opportunity Commission ("EEOC"). The genesis of this motion is E.E.O.C. v. Bashas', Inc., 2009 WL 3241763 (D.Ariz. 2009) ("E.E.O.C. II"), wherein, *inter alia*, the court granted a motion by respondent, Bashas', Inc., for leave to conduct limited discovery. The purpose of that discovery is to determine whether the May 28, 2008, subpoena which the EEOC served upon Bashas' was issued for a legitimate purpose.

1 marks omitted). However, the court did allow Bashas' to "seek. . .
2 any documents relating to the Parra litigation, which may or may
3 not be subject to the Parra court's confidentiality order, provided
4 to the EEOC by the Parra plaintiffs or their counsel." Id.
5 (internal quotation marks and citation omitted) (emphasis added).

6 In moving for clarification, the EEOC asserts that the
7 discovery which Bashas has served upon it "far exceed[s] the
8 parameters" set in E.E.O.C. II. Mot. (doc. 46) at 3:20. The EEOC
9 reads that order as allowing strictly what Bashas' requested, the
10 "two categories of **documents**" described above. Id. at 5:1
11 (emphasis in original). Based upon that reading, the EEOC
12 maintains that requests for admissions and interrogatories are
13 impermissible under E.E.O.C. II. If the court allows those two
14 forms of discovery, the EEOC seeks clarification that it is not
15 required to respond to various of Bashas' discovery requests
16 because they are substantively improper.

17 Bashas' did not respond to the EEOC's assertion that its
18 discovery requests are beyond those which E.E.O.C. II contemplates.
19 Instead, Bashas' broadly counters that because its discovery
20 requests are not "unrelated to the Commissioner's Charge or the
21 Parra litigation[,] the court should allow all of its requests.
22 Resp. (doc. 48) at 1:4-5. Then, to justify "discovery into oral,
23 as well as written, communications," Bashas' notes that since the
24 September 21, 2009, hearing in this matter, through discovery it
25 "has learned that there were communications and information
26 exchanged regarding Parra between the EEOC, and Jocelyn Larkin and
27 Elizabeth Lawrence." Id. at 1:15-17 (citation omitted).

28 Reasoning that Bashas' is now seeking discovery based upon

1 information which it learned after E.E.O.C. II and the September
2 21st hearing, the EEOC views the same as impermissibly expanding
3 the scope of the discovery under that order. Further, the EEOC
4 contends that Bashas' should not be allowed to conduct discovery as
5 to any of the statements made by its counsel at that hearing
6 because the court issued its discovery order after the hearing.
7 Bashas' retorts that "[t]he EEOC should not be allowed to make
8 factual statements in open court and hide from responding to
9 questions regarding their accuracy." Resp. (Doc. 48) at 2:19-20

10 Discussion

11 As more fully explained below, there is no credence to the
12 EEOC's argument that E.E.O.C. II does not allow for interrogatories
13 or requests for admissions. Previously the court granted Bashas'
14 leave to conduct limited discovery to substantiate, if possible,
15 its theory that "the EEOC is not conducting this particular
16 investigation for a legitimate purpose[;]" and hence, "enforcement
17 of this [May 28, 2008] subpoena would amount to an abuse of . . .
18 process." E.E.O.C. II, 2009 WL 3241763, at *10. The EEOC's narrow
19 reading of E.E.O.C. II, restricting Bashas' to discovery of only
20 written documents, would largely undermine the purpose of the
21 discovery allowed therein.

22 Similarly unavailing is the EEOC's contention that Bashas'
23 should not be allowed to conduct discovery stemming from
24 information which it obtained post-E.E.O.C. II. Bashas' should be
25 allowed to pursue additional germane discovery within the court-
26 ordered time frames. Finally, as will be seen, despite the EEOC's
27 protestations, Bashas' is entitled to conduct discovery regarding
28 statements which the EEOC's counsel made during the September 21st

1 hearing.

2 The court is granting Bashas' some latitude as to the type of
3 discovery which it will allow under E.E.O.C. II. At the same time,
4 however, as more fully discussed below, some of the EEOC's
5 substantive challenges to Bashas' discovery requests are
6 meritorious.

7 **I. "Requests for Admissions"**

8 In all, Bashas' makes 33 separate Requests for Admissions.
9 The EEOC argues that E.E.O.C. II does not contemplate any Requests
10 for Admissions whatsoever. Reply (doc. 49) at 4:11. If the court
11 allows these Requests, the EEOC asserts that a number of them are
12 improper because they are not "limited to the topics specified in"
13 E.E.O.C. II, i.e. information which the EEOC provided to third-
14 parties regarding the Commissioner's Charge, and documents
15 regarding the Parra litigation which those plaintiffs or their
16 counsel provided to the EEOC. See Mot. (doc. 46) at 4:11-12.
17 Bashas' counters that its Requests for Admissions fall within the
18 scope of discovery allowed in E.E.O.C. II primarily because they
19 pertain to issues which were the subject of the September 21, 2009
20 hearing.

21 In focusing on the content of Bashas' Requests, seemingly, the
22 parties are overlooking that "requests for admissions are *not*
23 principally discovery devices[.]" Safeco of America v. Rawstron,
24 181 F.R.D. 441, 445 (C.D.Cal. 1998) (citing 8A Charles Alan Wright,
25 Arthur R. Miller & Richard L. Marcus, § 2252, at 524-525) ("Wright
26 & Miller") (emphasis added); see also Ochotornea v. Adams, 2009 WL
27 1953502, at * 5 (E.D.Cal. July 7, 2009) (citations omitted)
28 (Requests for admissions "are not principally discovery devices and

1 should not be used as a substitute for other discovery processes to
2 uncover evidence.") A request for admission is not a discovery
3 tool because it serves a different purpose. Discovery devices are
4 "'designed to elicit information, to obtain discovery of the
5 existence of facts, or [to] obtain production of documents[.]'"
6 See Safeco, 181 F.R.D. at 445 (quoting 7 Moore's Federal Practices
7 § 36.02[2] (3d ed. 1991)). In contrast, the purpose of a request
8 for admission is not to facilitate fact-finding, but to "facilitate
9 proof with respect to issues that cannot be eliminated from the
10 case, and second, to narrow the issues by eliminating those that
11 can be." Conlon v. United States, 474 F.3d 616, 622 (9th Cir. 2007)
12 (citation omitted). Thus, "'[s]trictly speaking Rule 36 is not a
13 discovery procedure at all, since it presupposes that the party
14 proceeding under it knows the facts or has the document and merely
15 wishes its opponent to concede their genuineness.'" Safeco, 181
16 F.R.D. at 445 (quoting Wright & Miller, § 2252, at 524-525).
17 Accordingly, "'[a] party who desires to discover what the facts are
18 should resort to . . . discovery rules rather than [to] Rule 36.'"
19 Id.

20 Here, this court previously allowed Bashas' to "serve written
21 *discovery requests[.]*" E.E.O.C. II, 2009 WL 3241763, at *16
22 (emphasis added). Given that plain language, as the foregoing
23 discussion shows, there is ample authority for precluding Bashas'
24 from using Requests for Admissions as a method of discovery here.
25 The court is reluctant to take that approach, however, because the
26 EEOC did not raise that issue in its clarification motion. Perhaps
27 the EEOC made a tactical decision not to do so on the theory that
28 responding to Bashas' Requests, to the extent that they are not

1 otherwise objectionable, will facilitate an expeditious resolution,
2 which would be consistent with the summary nature of this subpoena
3 enforcement action.

4 Not wanting to second-guess the EEOC's strategy herein, the
5 court will not prohibit these Requests on the basis that they are
6 not discovery devices, although it would be within the court's
7 province to do so. Accordingly, the court will turn to the EEOC's
8 substantive objections to Bashas' Requests for Admissions.

9 The EEOC objects to Bashas' first six Requests as being beyond
10 the scope of discovery permitted under E.E.O.C. II. In those
11 Requests, Bashas' seeks to have the EEOC admit that "the
12 confidentiality provisions of Title VII, including 42 U.S.C.
13 § 2000e-8(e), and the EEOC's Compliance Manual allow the . . . EEOC
14 . . . to share information about the . . . Charge" with a variety of
15 individuals. Mot. (doc. 46), exh. 2 thereto (doc. 46-2) at 2-3.
16 The EEOC similarly objects to those Requests, which "concern[] the
17 contents of [the EEOC's] Compliance Manual." Id. at 4:15-16. The
18 EEOC does not identify the number of those Requests, but the court
19 reads that objection as pertaining to Requests seven and nine. The
20 EEOC points to Bashas' Request regarding Freedom of Information Act
21 ("FOIA") exemptions (# 10) as another example of a Request which
22 goes beyond the scope of E.E.O.C. II's specified topics. Only one
23 of Bashas' 33 Requests is relevant, from the EEOC's standpoint, but
24 the EEOC does not identify that Request by number and the court
25 declines to speculate.

26 Bashas' retorts that slightly more than half of its Requests (1-
27 11 and 17) relate to issues which were the subject of the September
28 21st hearing, such as the EEOC's policy regarding disclosure of

1 confidential information. Likewise Bashas' points out that some of
2 its Requests (12-16) pertain to "whom the EEOC informed when it
3 filed this action[]" - another hearing issue. Resp. (doc. 48) at
4 2:25-26. Bashas' also singles out Request 17 as relating to its
5 statement during that hearing that the EEOC has not found "'cause'
6 to believe" that allegations that Bashas' discriminates against
7 Hispanics are "true."¹ Id. at 2:28-3:2. Finally, as Bashas'
8 depicts them, the other remaining Requests are permissible under
9 E.E.O.C. II because they "directly relate[] to whether the EEOC has
10 had communications with the *Parra* attorneys" and the timing of the
11 EEOC's actions *vis-a-vis* certain developments in the parallel Parra
12 litigation. See id. at 3:2-3.

13 Rule 36(a) sets forth in considerable detail the "[s]cope and
14 [p]rocedure[]" for requests for admission, including the form of
15 answering, objecting and determining the sufficiency of an answer or
16 objection. Fed. R. Civ. P. 36(a). Subsection (5) of that Rule
17 dictates that "[t]he *grounds* for objecting to a request *must* be
18 stated. Fed. R. Civ. P. 36(a)(5) (emphasis added). Consistent with
19 that Rule, at this juncture, the court will only address the EEOC's
20 specific objections to Bashas' Requests, as set forth above.²

21 The EEOC is taking an overly restrictive view of E.E.O.C. II,
22 especially given how the September 21st hearing unfolded. During
23 that hearing, EEOC's counsel made a number of statements which on
24

25 ¹ Bashas' reference to Request 17 appears to be a typographical error in
26 that Request 18, not Request 17, is directed to this issue.

27 ² Although it conceives of several possible bases for objecting to some
28 of Bashas' other Requests, the court declines to engage in such speculation.
Moreover, it would be improper for the court to usurp counsel's responsibilities
in that regard.

1 their face seemed to go to the abuse of process issue. To
2 illustrate, at one point EEOC's counsel sought to clarify the timing
3 of this action juxtaposed to developments in Parra. Bashas'
4 confidentiality concerns also repeatedly arose during that hearing.
5 As the parties are aware, because the EEOC mistakenly believed that
6 no evidence would be presented at that hearing, statements by its
7 counsel took on a significance beyond that which they might
8 otherwise. Thus, the court finds that Requests one through seven,
9 nine and ten fall within the scope of discovery allowed in E.E.O.C.
10 II. Accordingly, the court denies the EEOC's motion to the extent
11 that it is seeking clarification that it is not required to respond
12 to those nine Requests because they are beyond the scope of
13 discovery which E.E.O.C. II anticipates. This ruling does not,
14 however, preclude the parties from exercising their respective
15 rights under Rule 36(a) as they proceed with this Request process.

16 **II. Interrogatories**

17 The EEOC contends that the interrogatories propounded by
18 Bashas' are improper because Bashas' did not seek that form of
19 discovery in E.E.O.C. II. Much like it did with respect to the
20 Requests for Admissions, the EEOC also contends that "many" of
21 Bashas' 24 interrogatories "go far beyond the parameters set forth
22 in" E.E.O.C. II, and should be disallowed on that basis. Mot. (doc.
23 46) at 5:10-11. Bashas' responds that the interrogatories are
24 proper because, in essence, they allow it to develop the factual
25 basis for statements made by the EEOC during the September 21st
26 hearing.

27 There is no express provision in E.E.O.C. II for
28 interrogatories. Nonetheless, in part because the court allowed

1 "written discovery requests," again, despite the EEOC's urging to
2 the contrary, it will not take an unnecessarily restrictive view of
3 the forms of discovery allowed under E.E.O.C. II. Accordingly, the
4 court clarifies that interrogatories are a proper form of discovery
5 under E.E.O.C. II.

6 The EEOC directly challenges eight of Bashas' interrogatories,
7 which the court will address in turn.³ In E.E.O.C. II, the court
8 explicitly "limited" discovery "to the Commissioner's Charge dated
9 May 9, 2007, which is the basis for the EEOC's investigation and the
10 issuance of the [May 28, 2008] subpoena which forms the basis for
11 this enforcement action." E.E.O.C. II, 2009 WL 3241763, at *16.
12 Continuing, this court held that Bashas' "shall *not* be allowed to
13 obtain documents pertaining to *any other charge* currently under
14 investigation by the EEOC." Id. (citation and internal quotation
15 marks omitted) (emphasis added). Despite that unequivocal holding,
16 interrogatory one asks the EEOC to "identify all communications
17 . . . between the EEOC and certain third-parties "relating to the
18 May 9, 2007 Commissioner's Charge . . . *or related underlying*
19 *Charges[.]*" Mot. (doc. 46), exh. 3 thereto (doc. 46-3) at 5
20 (emphasis added). As the EEOC stresses, this aspect of
21 interrogatory one is in direct contravention of E.E.O.C. II.
22 Accordingly, the court grants the EEOC's motion to the extent that
23 it is seeking clarification that interrogatory one shall be limited
24 to the May 9, 2007, Commissioner's Charge.

25
26 ³ Given how the EEOC styles this motion, *i.e.*, to "clarify" [E.E.O.C. II]
27 granting limited discovery[,]" and because it has not yet responded to any of the
28 propounded interrogatories, the court is not viewing the EEOC's challenges to
specific interrogatories as "objections" pursuant to Fed. R. Civ. P. 33(b)(4).
For those same reasons, the court does not deem the EEOC to have waived objections
to the 16 interrogatories which it does not mention in this clarification motion.

1 Interrogatories three, four and five ask the EEOC to
2 “[s]pecifically describe all communications between [it] or its
3 representatives and [named third-parties], regarding this Court’s
4 February 2, 2009 status conference in the *Parra* litigation and/or
5 this subpoena enforcement action, and for each communication provide
6 the date, parties to, type, i.e., written or verbal, location and
7 content of the communication, and identify all documents that relate
8 to or memorialize the communication.” *Id.*, exh. 3 thereto (doc. 46-
9 3) at 6-7. Reiterating its view that only document discovery is
10 permitted under E.E.O.C. II, the EEOC contends that the above-quoted
11 interrogatories are “in seeming defiance of” that order. *Id.* at
12 5:26.

13 As indicated at the outset, interrogatories are a permissible
14 form of discovery under E.E.O.C. II. Moreover, the information
15 sought in interrogatories three through five bears directly on one
16 of the critical issues here - the EEOC’s “outside communications
17 and motives[.]” surrounding this enforcement action. See E.E.O.C.
18 II, 2009 WL 3241763, at *14 (citation omitted). Additionally, to
19 some extent the court agrees with Bashas’ that the EEOC should not
20 be allowed to make statements in open court, and then later decline
21 to respond to interrogatories regarding those statements.
22 Therefore, although interrogatories three through five seek more
23 than documents, they are within the ambit of discovery allowed in
24 E.E.O.C. II.

25 On the other hand, the EEOC’s objection to interrogatory nine
26 is valid. That interrogatory pertains to an administrative subpoena
27 which the EEOC served on Bashas’ in May 2006. As such, it is beyond
28 the temporal scope of permissible discovery under E.E.O.C. II. The

1 EEOC does not mention interrogatory ten in its motion, although it
2 directly relates to the preceding interrogatory. In particular,
3 interrogatory ten asks the EEOC to “[s]pecifically describe why you
4 did not respond to concerns raised by Bashas’ related to the
5 subpoena identified in Interrogatory No. 9 or move to enforce that
6 subpoena or respond to its petition to revoke the subpoena.” Mot.
7 (doc. 46), exh. 3 thereto (doc. 4603) at 9:20-22. Given the
8 clarification that interrogatory nine is not proper under E.E.O.C.
9 II, necessarily, interrogatory ten also is improper under that
10 order.

11 Interrogatories 11 and 12 are, likewise, beyond the temporal
12 scope of discovery allowable under E.E.O.C. II. Interrogatory 11
13 asks the basis for the reopening of the charges underlying Parra,
14 which occurred in September, 2006. E.E.O.C. v. Bashas’, Inc., 2009
15 WL 1783437, at *2 (D.Ariz. June 18, 2009). Interrogatory 12 asks
16 about an issue related to that September, 2006 reopening.
17 Consequently, the court clarifies that the EEOC need not respond to
18 interrogatories 11 and 12.

19 Lastly, the EEOC challenges interrogatory 16, which asks it to
20 “[s]pecifically describe every person you notified of the filing of
21 this action.” Mot. (doc. 46), exh. 3 thereto (doc. 46-3), at 11:21.
22 From the EEOC’s perspective, the requested information does not
23 support Bashas’ abuse of process theory because it is “about events
24 that would have taken place *after* the public filing of this action.”
25 Reply (doc. 49) at 5:3 (emphasis added). Interrogatory 16 does not
26 specify a time frame. Therefore, it can be read as asking for
27 descriptions of those whom the E.E.O.C notified of the filing of
28 this action at any time, including before. If the EEOC notified the

1 Impact Fund, for example, that it planned on filing the present
2 action, in all likelihood that would be relevant to the issues
3 presently before the court. The court finds that interrogatory 16
4 is overbroad as to the time frame.

5 Additionally, that interrogatory is overbroad as to the
6 information which it is seeking. The EEOC is being asked to
7 "describe every person [it] notified of the filing of this action."
8 Mot. (Doc. 46, exh. 3 thereto (doc. 46-3), at 11:21 (emphasis
9 added). The persons and entities which are properly the subject of
10 discovery under E.E.O.C. II, however, are limited to the following:
11 "the EEOC and . . . the named plaintiffs and plaintiffs' counsel in
12 the *Parra* action, including the Impact Fund and Davis, Cowell &
13 Bowe, as well as Jocelyn Larkin, of the Impact Fund, and Elizabeth
14 A. Lawrence, of Davis, Cowell & Bowell [sic] individually [firm]
15 . . . individually, and the UFCW[.]" E.E.O.C. II, 2009 WL 3241763,
16 at *14 (citation and internal quotation marks omitted). [.]"
17 Therefore, because interrogatory 16 is overbroad in terms of time
18 and scope, the court grants this motion to clarify that the EEOC
19 need not respond to that particular interrogatory.

20 The parties did not mention interrogatory 20 by number, but the
21 court is compelled to address that interrogatory given that it
22 directly relates to the Requests for Admissions previously
23 discussed. Interrogatory 20 states, "For any Request for Admission
24 that you have denied, provide the factual basis for your denial, and
25 order your responses by Request number." Mot. (doc. 46), exh. 3
26 thereto (doc. 46-3). That interrogatory is redundant because Rule
27 36(a)(4) details the form and scope of for denying a request for
28 admission. Therefore, the court clarifies that the EEOC need not

1 respond to interrogatory 20.

2 To summarize, insofar as the interrogatories are concerned, the
3 court grants the EEOC's motion to clarify that interrogatory one
4 shall be limited to the May 9, 2007, Commissioner's Charge. The
5 court further grants the EEOC's motion to clarify that it does not
6 have to respond to Interrogatories 9, 10, 11, 12, 16 and 20.

7 **III. Request for Production of Documents**

8 Bashas' also served a Request for the Production of Documents
9 wherein it seeks 15 categories of documents. The EEOC is
10 challenging document requests nine and fourteen in particular. In
11 Request nine Bashas' seeks:

12 Any and all telephone records from 2002-present
13 which contain evidence of telephone calls between
14 you, Davis, Cowell & Bowe (or any agent thereof), the
15 Impact Fund (or any agent thereof), and/or the [UFCW]
(or any agent thereof) related to the Parra litigation or
the Commissioner's Charge.

16 Id., exh. 4 thereto (doc. 46-4) at 7:18-21.

17 Among other things, the EEOC claims that that Request is in
18 "clear disregard" of the "limitations on discovery" set in E.E.O.C.
19 II. Mot. (doc. 46) Id. at 6:20. The court has little difficulty
20 finding that Request nine falls within the first category of
21 documents allowed in E.E.O.C. II, *i.e.*, those "pertaining to any
22 communications, . . . provided between the EEOC" and the third-
23 parties named in that Request (and similarly identified in E.E.O.C.
24 II). See E.E.O.C. II, 2009 WL 3241763, at *16 (citation and
25 internal quotation marks omitted). Nonetheless, Request nine does
26 strike the court, as the EEOC also claims, as somewhat "overbroad
27 and unduly burdensome." See Mot. (doc. 46) at 6:19. Bashas'
28 suggestion that the EEOC can "redact any numbers that are not

1 relevant" is not responsive to the EEOC's ~~legitimate~~ concerns. See
2 Resp. (doc. 48) at 5:21.

3 Some of the EEOC's overbreadth concerns can be addressed,
4 though, by limiting the time frame of this request. Instead of
5 requiring the production of telephone records "from 2002 -
6 present[,]" the court will only require the EEOC to respond to
7 Request nine for the time frame of January 1, 2006 through February
8 2, 2009. See Mot. (doc. 46), exh. 4 thereto (doc. 46-4) at 7:18.
9 To further allay some of the EEOC's overbreadth concerns, the court
10 will confine the telephone records sought in Request nine to those
11 from the EEOC's Phoenix District Office, including its legal
12 department or other legal advisors. The court is aware that the
13 EEOC "admits [that] between 2002 and the present it made telephone
14 calls to the individuals who filed Charges of Discrimination in the
15 Parra litigation and the counsel who represent them." Reply (doc.
16 49) at 6:1-3. From the EEOC's perspective, this admission obviates
17 the need for discovery as to the specified in Request nine. The
18 court disagrees. Accordingly, it denies the EEOC's motion to
19 clarify that it is not required to respond to document Request nine.
20 The EEOC shall be required to respond to Request nine as modified
21 herein.

22 The EEOC also specifically challenges document Request 14,
23 seeking "[a]ny and all EEOC internal *guidance* on confidentiality
24 protections." Id., exh. 4 thereto (doc. 46-4) at 8:24 (emphasis
25 added). The EEOC harkens back to its by now familiar refrain that
26 this Request "goes far beyond the type of . . . information Bashas'
27 represented that it would seek." Id. at 6:26. At this juncture the
28 court agrees, especially because it is not at all clear what is

1 meant by "EEOC internal guidance[.]" See id., exh. 4 thereto (doc.
2 46-4) at 8:24. Thus, the court grants the EEOC's motion to clarify
3 that it is not required to produce documents pursuant to document
4 Request fourteen in its current form.

5 **IV. Third-party Subpoenas**

6 The EEOC also notes that Bashas' has served "subpoenas on
7 the Impact Fund, Davis, Cowell & Bowe, Jocelyn Larkin, Elizabeth A.
8 Lawrence, the UFCW Local 99, and the UFCW [International]." Mot.
9 (doc. 46) at 6:27-7:1 (footnote omitted). Echoing its argument as
10 to Bashas' other discovery requests, the EEOC asserts that "[m]any
11 of the documents subpoenaed go far beyond the limits set by the
12 court" in E.E.O.C. II. Id. at 7:1-2. The EEOC is not moving to
13 quash or to seek a protective order as to any of those third-party
14 subpoenas, however. Perhaps because of that Bashas' simply points
15 to its ongoing efforts "to work with those [third-parties] to get
16 the [subpoenaed] information needed as quickly and efficiently as
17 possible." Resp. (doc. 48) at 6:2-3. Bashas' further notes that it
18 has withdrawn the subpoena which it served upon the UFCW
19 International. Id. at 6:8-9.

20 As to the five subpoenas which Bashas' has not withdrawn,
21 there is no basis for taking any action at this time. None of those
22 third-parties are moving to quash or to seek protective orders.
23 Although it is not a party to any of those subpoenas, the EEOC could
24 seek such relief claiming that the information sought is privileged
25 or that it subjects the EEOC to an undue burden. See In re Remec,
26 Inc. Sec. Litig., 2008 WL 2282647, at *1 (S.D.Cal. May 30, 2008)
27 (footnote and citations omitted) ("A party can move for a protective
28 order in regard to a subpoena issued to a non-party if it believes

1 its own interests are jeopardized by discovery sought from a third
2 party and has standing under Rule 26(c) to seek a protective order
3 regarding subpoenas issued to non-parties which seek irrelevant
4 information."); see also In re Ashworth, Inc. Sec. Litig., 2002 WL
5 33009225, at *2 (S.D.Cal. May 10, 2002) (party has standing under
6 Rule 45 to challenge subpoena served on third-party based upon
7 privacy interest in confidentiality of business records). The fact
8 remains, however, that the EEOC has not done that. Thus, because
9 the EEOC is not seeking any specific relief as to any of the
10 outstanding third-party subpoenas, the court will not take any
11 action now as to those subpoenas.

12 **Conclusion**

13 For the reasons set forth above, the court hereby GRANTS in
14 part and DENIES in part, as follows, the "Motion to Clarify Order
15 Granting Limited Discovery" (doc. 46) by petitioner, the Equal
16 Employment Opportunity Commission:

17 (1) that Motion is GRANTED to the extent that the EEOC is not
18 required to respond to Bashas' Interrogatory No. 1 regarding
19 "related underlying Charges, if any[;]"

20 (2) that Motion is GRANTED to the extent that the EEOC is not
21 required to respond to Interrogatories Nos. 9-12; 16; and 20;

22 (3) that Motion also is GRANTED to the extent that the EEOC is
23 not required to respond to Bashas' Requests for Production of
24 Documents No. 9 in its current form; the EEOC is required, however,
25 to respond to that Request as modified herein, *i.e.*, for the time
26 frame of January 1, 2006 through February 2, 2009, and for the
27 telephone records described therein for the EEOC's Phoenix District
28 Office, including its legal department or other legal advisors;

1 (4) that Motion also is GRANTED to the extent that the EEOC is
2 not required to produce documents pursuant to Request for Production
3 of Documents No. 14 in its current form;

4 (5) GRANTS the EEOC's request to extend its time to respond to
5 Bashas' discovery requests until two (2) weeks from the date of
6 entry of this order; and

7 (6) in all other respects the EEOC's Motion to Clarify (doc.
8 46) is DENIED.

9 DATED this 23rd day of December, 2009.

10

11

12

13

14

15

16

17

18

19

20 Copies to counsel of record

21

22

23


24

25

26

27

28


Robert C. Broomfield
Senior United States District Judge