

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PLAINTIFF

v.

Case No. 2:11-CV-02184

BIG LOTS STORES, INC.

DEFENDANT

**MEMORANDUM OPINION AND ORDER**

Currently before the Court are Plaintiff's Motion to Compel Discovery (Doc. 21) and Brief in Support (Doc. 22), as well as Defendant's Response (Doc. 25).

On August 9, 2012, Plaintiff filed a Motion to Compel, in which Plaintiff contended that Defendant failed to produce documents in response to 23 of Plaintiff's Requests for Production. In Plaintiff's Brief in Support of its Motion to Compel, Plaintiff reproduced, verbatim, both its requests for production that were in contention and Defendant's written objections in response. In all instances, Defendant's refusal to produce documents was premised on its demand that a confidentiality order be in place prior to any production. Specifically, Defendant averred in its responses to Plaintiff's document requests that it would, in fact, produce the documents Plaintiff requested, after entry of an appropriate confidentiality order.<sup>1</sup>

The Court entered a Final Confidentiality Order in this case on August 23, 2012. Plaintiff did not withdraw its Motion to Compel after entry of the Court's Confidentiality Order. On August 27, 2012, Defendant filed a Response to the Motion to Compel, indicating that Defendant had

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<sup>1</sup> The following statement appears at the end of each of Defendant's objections to Plaintiff's document requests: "Subject to and without waiving its objections, and after entry of an appropriate confidentiality or protective order to be negotiated by the parties, Defendant will produce non-privileged documents responsive [to this request]." (Doc. 22, pp. 3-21).

recently produced documents responsive to Plaintiff's outstanding requests, but after conferring with Plaintiff's counsel, Plaintiff refused to withdraw its pending Motion to Compel. *See* Doc. 25-1, p. 5.

The Court cannot discern whether some or all of the discovery disputes detailed in Plaintiff's Motion to Compel are now moot following the entry of the Court's Confidentiality Order. Certainly, the Court has reason to believe that the original dispute that was brought in Plaintiff's Motion to Compel may no longer exist, as Defendant attests that it produced to Plaintiff at least some of the documents that are responsive to the requests cited by Plaintiff in Plaintiff's Motion to Compel. Accordingly, Plaintiff's Motion to Compel (Doc. 21) is **DENIED AS MOOT**. If after Defendant has been given a reasonable amount of time to produce documents following entry of the Court's Confidentiality Order, and Plaintiff still finds that responsive documents have not been properly produced, Plaintiff is instructed to confer again with Defendant in good faith, as per the requirements of Local Rule 7.2(g) for the U.S. District Court of the Western District of Arkansas, to resolve this dispute without Court intervention. At that point, if the parties are unable to resolve the dispute themselves, they may bring the appropriate motion before the Court.

**IT IS SO ORDERED** this 30th day of August, 2012.

*P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE