

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PB LEGACY, INC. and TB FOODS  
USA, LLC, a Texas Corporation

Plaintiffs,

v.

Case No: 2:17-cv-9-FtM-29CM

AMERICAN MARICULTURE,  
INC., AMERICAN PENAEID, INC.  
and ROBIN PEARL,

Defendants.

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**ORDER**

This matter comes before the Court upon review of Plaintiff TB Foods USA LLC's ("TB Foods") Amended Motion to Compel as to its First Set of Requests for Production Directed to all Defendants and for Sanctions filed on September 26, 2018. Doc. 124. Defendants have not filed a response, and the time for doing so has passed. For the reasons stated below, the motion is denied without prejudice.

Plaintiff PB Legacy, Inc. ("PB Legacy") filed this case on January 9, 2017, and filed an Amended Complaint on January 26, 2017, alleging claims for breach of contract; conversion; defamation; trade secret misappropriation under the Defend Trade Secrets Act, 18 U.S.C. § 1836; trade secret misappropriation under the Florida Trade Secrets Act; unfair competition; violations of the Florida Unfair and Deceptive Trade Practices Act; and unjust enrichment. Doc. 1; Doc. 20 ¶¶ 82-175. The claims relate to Defendants' alleged misappropriation of and defamatory statements about PB Legacy's broodstock shrimp breeding method, called the "all pathogens exposed"

method, which developed disease-resistant strains of shrimp. *See* Doc. 20 ¶¶ 10-80. On May 15, 2017, the Court allowed PB Legacy to add TB Foods as a Plaintiff, as TB Foods had purchased “substantially all of [PB Legacy’s] assets” as of February 17, 2017. Doc. 87; Doc. 86 at 2. On May 24, 2018, the Court entered a Case Management and Scheduling Order setting the discovery deadline for June 28, 2019 and setting the case for a trial term beginning December 2, 2019. Doc. 105 at 1-2.

TB Foods originally filed its Motion to Compel as to its First Set of Requests for Production Directed to All Defendants and for Sanctions on July 17, 2018. Doc. 106. In the motion, TB Foods represented it served its First Set of Requests for Production (“RFP”) on December 20, 2017. *Id.* at 1. The motion noted multiple outstanding issues, including that Defendants’ second production of documents was insufficient; Defendants inappropriately designated certain documents “Attorneys’ Eyes Only;” Defendants inappropriately redacted certain documents; and Defendants failed to provide a privilege log. *Id.* at 2-3. Defendants requested extensions of time to respond to the motion on July 31, 2018, August 3, 2018 and August 14, 2018, explaining that the parties were negotiating in good faith to attempt to resolve the issues raised by the motion. *See* Docs. 112, 114, 116. On September 17, 2018, Defendants’ latest deadline to respond, TB Foods filed a motion requesting time to amend or withdraw its motion to compel based on the parties’ continuing efforts to resolve the issues. *See* Doc. 121.

TB Foods then filed the present motion on September 26, 2018. Doc. 124. TB Foods represents that the parties’ meet-and-confer efforts resolved all but three

issues: (1) Defendants failed to make a supplemental production on or before August 24, 2018, as the parties agreed; (2) Defendants' produced privilege log does not comply with the requirements of Rule 26(b)(5)(A)(ii) of the Federal Rules of Civil Procedure; and (3) TB Foods' request for sanctions "remains unresolved" but "will be withdrawn if the substantive issues, above, are resolved." *Id.* at 1-3. TB Foods represents that the parties are continuing to engage in the meet-and-confer process to resolve the issues without court intervention. *Id.* at 3-4.

On October 1, 2018, the Court entered an Order denying the original motion to compel as moot and directing TB Foods to file a notice with the Court on or before October 5, 2018 to advise the Court whether the amended motion would be withdrawn. Doc. 125. On October 5, 2018, TB Foods filed a notice stating that since the filing of the amended motion Defendants had produced more responsive materials, but the production did not resolve the issues raised by the amended motion. Doc. 127 at 1-2. TB Foods stated that it would "again meet and confer with Defendants as required by Local Rule 3.01(g)" and requested that, "[g]iven the inordinate amount of time that has passed" since TB Foods served its first RFP, the Court "grant leave for TB Food[s] to file its Second Amended Motion to Compel if Defendants have not provide[d]" adequate responsive materials "by a date certain in a short but reasonable time." *Id.* at 2. The Court also notes that the parties have scheduled early mediation for December 7, 2018. Doc. 128. Due to the length of time since TB Foods filed the original motion to compel, the parties' ongoing efforts to resolve the issues raised by the amended motion, and the parties' scheduled

mediation, the Court will deny the amended motion without prejudice and allow TB Foods to file a second amended motion, if necessary, on or before December 14, 2018. The parties are directed to meaningfully confer to attempt to resolve the issues raised by the amended motion to compel.

ACCORDINGLY, it is

**ORDERED:**

Plaintiff TB Foods USA LLC's Amended Motion to Compel as to its First Set of Requests for Production Directed to all Defendants and for Sanctions (Doc. 124) is **DENIED without prejudice**. Plaintiff may file a second amended motion to compel, if necessary, on or before **December 14, 2018**.

**DONE** and **ORDERED** in Fort Myers, Florida on this 22nd day of October, 2018.

  
CAROL MIRANDO  
United States Magistrate Judge

Copies:  
Counsel of record