

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**TENNECO AUTOMOTIVE
CO., INC.,**

Plaintiff,

CIVIL ACTION NO. 08-CV-10467-DT

VS.

DISTRICT JUDGE GEORGE CARAM STEEH

**KINGDOM AUTO PARTS,
et al.,**

Defendants.

MAGISTRATE JUDGE MONA K. MAJZOUB

OPINION AND ORDER GRANTING IN PART DEFENDANTS' MOTION TO COMPEL

This matter comes before the Court on Defendants' Motion to Compel Discovery of Plaintiff on Defendants' First Set of Rule 34 Requests filed on October 3, 2008. (Docket no. 77). Plaintiff has responded. (Docket no. 89). Defendants have filed a Reply brief. (Docket no. 90). The parties also filed a Joint Statement of Unresolved Issues on October 31, 2008. (Docket no. 94). This motion has been referred to the undersigned for decision. (Docket no. 60). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). Defendants' motion is now ready for ruling.

Defendants seek an order compelling Plaintiff to permit them to inspect and designate for copying documents and electronically stored information responsive to Defendants' First Set of Rule 34 Requests. (Docket no. 94 at 4-5). Defendants also ask for the Court to order Plaintiff to make a privilege log for any documents withheld on the basis of privilege. (*Id.*). Finally, Defendants seek an award of their reasonable expenses in making this motion. (*Id.*).

Plaintiff does not dispute Defendants' assertion that they served their First Set of Rule 34 Requests on July 28, 2008. (Docket no. 94 at 4). Plaintiff responded on September 2, 2008. In response, Plaintiff made general objections and, for most of the requests, stated that it would

produce responsive documents at a future date. The parties disagree on whether responsive documents have been produced. Plaintiff contends that all responsive documents have been produced or are being compiled for production. (Docket no. 94 at 6). Plaintiff also contends that no privileged documents are being withheld. It states that it has produced the documents but redacted the privileged information. (*Id.*).

Defendants request that Plaintiff be directed to produce a privilege log. They argue that it is impossible to believe that there are no such documents. (*Id.* at 4). In addition, Defendants agree that some documents have been produced by Plaintiff but argue that these documents were either not responsive to this discovery request because they were produced even before the request was served or that the documents produced were already possessed by them. (*Id.*).

Plaintiff in its Response spends very little time attempting to demonstrate that it has properly responded to Defendants' First Set of Requests. Most of Plaintiff's Response brief addresses alleged discovery failures of Defendants. (Docket no. 89 at 3-4). Plaintiff's production of some documents on June 27, 2008, before the Requests were served, could not have been in response to Defendants' Requests. Plaintiff contends that it produced responsive documents also on July 1 and October 1, 2008. However, Plaintiff fails to show that these documents constitute all of the responsive documents in its possession, custody or control, and apparently do not constitute all responsive documents because Plaintiff's position in the Joint Statement is that all responsive documents have either been produced or are being compiled for production. The period for timely responding to Defendants' First Set of Rule 34 Requests has long passed. Plaintiff will be ordered to complete its production in response to this set of discovery by a date certain.

With respect to privileged documents, Plaintiff argues that they have all been produced. Defendants speculate but fail to show that there are any privileged documents being withheld by Plaintiff. There is therefore no need for Plaintiff to produce a privilege log.

IT IS THEREFORE ORDERED that Defendants' Motion to Compel (docket no. 77) is **GRANTED** to the extent that on or before January 5, 2009 Plaintiff must fully and completely respond to Defendants' First Set of Rule 34 Requests, and is otherwise **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: December 18, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: December 18, 2008

s/ Lisa C. Bartlett
Courtroom Deputy