

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

United States of America,	:	
	:	
Plaintiff	:	Civil Action 2:11-cv--130
	:	
v.	:	Judge Sargus
	:	
Thirty-six (36) 300CC on road scooters, Model WF300-SP, (D One), <i>et al.</i> ,	:	Magistrate Judge Abel
	:	
Defendants	:	
	:	

**Discovery Dispute Conference Order**

On August 21, 2013, counsel for the parties participated in a telephone discovery dispute conference with the Magistrate Judge. During the conference, the following rulings were made.

Defendants' second requests for production of documents. The rolling production responsive to these requests does not identify the document request(s) the documents are responsive to. Plaintiff's counsel said that the production consisted of 800-900 photographs taken by EPA, Customs, or DOT during various entries of the gasoline engine powered vehicles. The remainder are emails between employees of those agencies. Defendants' counsel said it would be helpful if plaintiff's counsel identified the document requests for which documents were produced.

It is ORDERED that as to defendants' second requests for production of documents, plaintiff identify the document requests for which responsive documents were produced. Plaintiff need not make a document-by-document response. As to each document request

for which no documents were produced or as to which plaintiff withheld some or all documents based on an objection, plaintiff shall state either that they possess no documents responsive to that request or state the objection(s) that are the basis for withholding documents from production.

Privilege log. Defendant complains that plaintiff's privilege log is too general, making it difficult to determine the privilege asserted. It is ORDERED that within 28 days of the date of this order plaintiff provide defendant with affidavits setting out the factual basis for the claims of privilege.

Relevance of document requests. Plaintiff maintains that Judge Sargus's September 27, 2012 Opinion & Order (doc. 29) ruled on defendants' due process claims and held that the sole remaining issue is whether the goods sought to be imported were in compliance with the Clean Air Act and/or other laws regarding goods that can be imported into the United States. Plaintiff argues that some of the document requests in both defendants' second and third requests for production of documents are fishing expeditions and do not seek information relevant to the remaining claims and defenses of the parties. Defendants argue that issues remain regarding denial of due process, impeachment of witnesses, whether seizure of the goods was the appropriate sanction, and whether the governmental actors acted in conformity with the governing guidelines, regulations and laws.

It is ORDERED that, if they have not already, counsel should exchange emails fleshing out these arguments by specifically identifying the issues remaining for decision by reference to the portions of Judge Sargus's decision they rely on and explaining why the individual requests for production do or do not seek information relevant to the those issues.

If the dispute cannot be resolved informally, counsel should email me their exchange of emails and plaintiff's responses to the second and third set of document requests and schedule a telephone discovery dispute conference with me.

Defendants seek additional interrogatories and requests for production of documents. Without obtaining leave of court, defendants served 40 interrogatories and 40 requests for admissions. Without waiving their objection to the number, plaintiff answered them. Now, with an October 15, 2013 discovery deadline looming, defendants seek leave to serve additional interrogatories and requests for production.

Rule 33(a), Fed. R. Civ. P. limits a party to 25 interrogatories:

- (1) **Number.** Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2).

Rule 26(b)(2)(A) permits courts to alter the limits on the number of interrogatories. Rule 26(b)(2)(B) provides specific limits on of electronically stored information. Rule 26(b)(2) (C) permits a court to limit the frequency or expense of discovery if it determines that the discovery (1) is unreasonably cumulative or duplicative or can be obtained more conveniently, less burdensomely or less expensively; (2) the party seeking the discovery had ample opportunity to obtain it earlier; or (3) "the burden or expense of the proposed discovery outweighs its likely benefit . . . ."

Rule 36, Fed. R. Civ. P., does not limit the number of requests for admissions. S.D. Ohio Civ. Rule 36.1 limits a party to not more than 40 requests for admissions, including all subparts.

Defendants have failed to demonstrate the need for additional interrogatories and requests for admission at this late stage of discovery.

Experts. Neither side designated experts by the March 31, 2013 deadline established by the October 22, 2012 Scheduling Order. (Doc. 34, PageID 296.) However, the parties were engaged in settlement discussions and were not conducting discovery during the first quarter of 2013. Consequently, I would not have expected them to have incurred the expense of consulting with experts during that time frame.

It is ORDERED that defendants' experts make their Rule 26(a)(2) disclosures on or before **September 20, 2013**. Defendants experts must sit for deposition on or before **October 11, 2013**. Plaintiff's experts must make their Rule 26(a)(2) disclosures on or before **October 18, 2013**. They must sit for deposition no later than **November 8, 2013**. Given the tight schedule, I urge counsel to obtain available deposition dates from their experts early on, consult with opposing counsel, and agree to deposition dates well before the deadlines for the Rule 26(a)(2) disclosures. Ideally, plaintiff's expert would sit for deposition around October 25.

s/Mark R. Abel  
United States Magistrate Judge