

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTHONY PETRO,
for himself and others similarly situated,

Plaintiff,

:

Case No. 3:09-cv-037

-vs-

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

LIGHTING SERVICE, INC., et al.,

Defendants.

DECISION AND ORDER

This case came on for hearing by telephone at 11:00 A.M. on Friday, June 26, 2009¹. James Langendorf participated on behalf of Plaintiff and James Roosa participated on behalf of Defendants.

The hearing was directed to Plaintiff's oral motion concerning the sufficiency of Defendants' responses to discovery requests. In order to evaluate those properly, the parties were asked to provide the Court with electronic copies and have done so.

Interrogatory

Plaintiff propounded an interrogatory to Defendants which reads as follows:

Provide the following information for every current and former employee employed by Lighting Services, Inc., and its predecessors, if any and/or Ryan Allerman or Kurt Allerman at any time since February 2, 2006 through the present date that performed the duties

¹Because of a malfunction in the recording system, the Court was unable to record the proceedings.

of “installation technician” as described in the attached job description (Exhibit 1). Please provide the requested information for all such persons, regardless of their actual job title so long as that person primarily performed the duties set out in the attached job description at the direction or for the benefit of the identified Defendants at any time during the identified period. For both current and former employees, provide the most current information available to you.

- A. Name.
- B. Address.
- C. Telephone number.
- D. Employment status (current versus former)
- E. Dates of employment.
- F. Position (s.) held.
- G. Regular rate of pay

Defendants responded to the Interrogatory as follows:

Defendants hereby elect to respond to the above Interrogatory by relying on Federal Rule 33 (d), since the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing business records of Lighting Services Inc., since the burden of the writing or ascertaining the answer to this Interrogatory will be substantially the same for either party. Plaintiff may review such records and make such copies summaries or compilations as it deems necessary during normal business hours at the headquarters of Lighting Services, Inc., located at 9001 Dutton Dr., Twinsburg, OH 44087.

The Court finds that Defendants response does not comply with Fed. R. Civ. P. 33(d). A party relying on that Rule must “specify the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could. . .” Defendants have not specified which records must be reviewed at all. Accordingly, Defendants are ORDERED to answer the Interrogatory in full not later than July 15, 2009.

Plaintiff also propounded a twenty-paragraph Document Request, specifying that the documents requested be produced at Plaintiff’s counsel’s office in Middletown, Ohio, by the thirtieth day after service of the Request or, in lieu thereof, that Defendants could produce photocopies or

electronic copies in .pdf format. The Request concluded “IF PHOTOCOPIES OR ELECTRONIC COPIES ARE PRODUCED, THEN THE COST OF CREATING SUCH COPIES IS TO BE BORNE BY THE PRODUCING PARTY.” (emphasis sic). Defendants response was

Defendants hereby elect to respond to Plaintiff’s First Request for Production by relying upon Federal Rule 34(b)(2)(E) to produce documents as they are kept in the usual course of business. Such documents may be inspected and copied during normal business hours, at the headquarters of Lighting Services, Inc., located at 9001 Dutton Dr., Twinsburg, Ohio 44087.

For his insistence that the documents be produced at his offices, Plaintiff’s counsel purports to rely on Fed. R. Civ. P. 34(b): “Requested documents are to be produced for the requesting party at the requesting party’s reasonable location. See rule 34(b).” Email from Langendorf to Roosa, June 23, 2009, at 6:05 p.m. However, that is not exactly what Rule 34(b) says. While it requires a requesting party to specify a reasonable location for inspection (Rule 34(b)(1)(b)), it does not require a responding party to produce the documents at whatever location the requestor specifies. Although the Rule does not expressly say so, it implicitly permits a responding party to object to the location at which a requestor seeks to have the documents produced, and Defendant has implicitly done so by offering to produce them where they are.

The Court finds that the Defendant’s response that it will produce the documents in the manner in which and at the place where they are kept in the ordinary course of its business is a valid response. See Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d at § 2213. Defendant must provide enough guidance (by way of indexing or file labeling) to permit Plaintiff to find the documents requested among the business records it is producing. That is, it cannot, for example, point to a large file room with many file cabinets and say to Plaintiff, “The documents you seek are in here somewhere.” But there is as yet no claim by Plaintiff that anything of this sort has been done. The specific question before the Court is whether it is reasonable to make the documents

available where they are, and the Court holds that it is. Plaintiff's oral motion to compel production of the documents in Middletown, Ohio, is denied.

June 29, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge