

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

RICKY B. PERRITT, Individually; §
THE CUPCAKERY, LLC, a Texas Limited §
Liability Company; BUSTER BAKING, §
LLC, a Texas Limited Liability Company; §
THE WOODLANDS BAKING, LLC, §
a Texas Limited Liability Company; §
CUSTOM VERSION CORPORATION, §
a Texas Corporation §

Plaintiffs, §

Civil Action No. 4:11-CV-23

v. §

PAMELA F. JENKINS, Individually; and §
THE CUPCAKERY LLC, a Nevada §
Limited Liability Company §

Defendants. §

OPPOSED MOTION FOR PROTECTIVE ORDER

Plaintiffs RICKY B. PERRITT, Individually, THE CUPCAKERY, LLC, a Texas Limited Liability Company, BUSTER BAKING, LLC, a Texas Limited Liability Company, THE WOODLANDS BAKING, LLC, a Texas Limited Liability Company, and CUSTOM VERSION CORPORATION, a Texas Corporation, by and through their attorneys, hereby file this Opposed Motion for Protective Order pursuant to Federal Rule of Civil Procedure 26 (c) in order to protect Plaintiffs from undue burden and expense.

On May 20, 2011 the Court entered the Scheduling/Docket Control Order (Docket No. 67) in this case which provides that:

Without waiting for a request, the parties must exchange a copy – or a description by category and location – of all documents, electronically stored information,

and tangible things that the disclosing party has in its possession, custody or control and that is relevant to the claim or defense of any party. **Because documents relevant to any claim or defense are to be produced, requests for production are unnecessary.** However, should a party believe that certain relevant documents have not been produced, that party may request said documents by letter. The Court will entertain a motion to compel documents without the necessity of a movant propounding formal requests for production.

(Docket No. 67, p 2, ¶ 1) (emphasis added).

Completely ignoring the procedure set forth in the Court's Scheduling/Docket Control Order, on or about July 6, 2011 Defendants served on Plaintiffs 77 requests for production. Many, if not most, request documents which Plaintiffs have already produced to Defendants including documents attached to Plaintiffs' Amended Complaint and/or other pleadings in this case. Considering the Court's order, it is a waste of time and resources to force Plaintiffs to draft and serve written objections and responses to Defendants' 77 requests for production. Such would undermine the cost saving intent behind the Court's discovery order. Additionally, the parties have agreed to extend all remaining deadlines contained in the Scheduling/Docket Control Order by ten weeks so that the parties can attempt to settle the case before incurring significant costs associated with preparing for trial by participating in Court-ordered mediation on or before November 14, 2011. (Docket No. 100). Defendants have recognized the cost saving nature of putting off significant tasks until after the parties give mediation a chance.

Regardless, pursuant to the Court's Scheduling Order, if Defendants think Plaintiffs have failed to provide certain documents or other tangible things to Defendants the proper procedure was to meet and confer and/or point out by letter about which documents were missing and

request that they be tendered. A motion to compel could then be filed if Plaintiff withheld discoverable documents. This has been the established procedure in the Eastern District of Texas for decades save and except in one or two courts. Here, the Scheduling Order is clear. Plaintiffs should not be forced to incur the attorney fees necessary to make objections to 77 unnecessary requests for production and/or address the production of documents that have already been provided to Defendants. Alternatively, said expenses should be postponed until after the parties have attempted to resolve this matter at mediation.

This request is not made for the purpose of delay, but in furtherance of the cost reduction policies of the Eastern District of Texas. In support of this averment, Plaintiffs note that they timely served (several days in advance of the deadline) responses to the multiple Requests for Admissions that were also served upon Plaintiffs by Defendants.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request an Order from the Court that (1) Plaintiffs are not required to serve written objections and responses to Defendants' unnecessary requests for production and (2) Plaintiffs shall supplement their discovery and/or disclosures within fourteen (14) days after any unsuccessful mediation in this matter. Alternatively, if the Court denies the relief sought herein, Plaintiffs request to be allowed to serve objections and responses to the Requests for Production within 14 days after any unsuccessful mediation in this case. Plaintiffs pray for any further, other or additional relief to which they may be entitled.

Respectfully submitted,

SIEBMAN, BURG, PHILLIPS & SMITH, LLP

/s/ Stephanie R. Barnes

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on this 4th day of August, 2011, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ Stephanie R. Barnes

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs has complied with the meet and confer requirement in Local Rule CV-7(h). I certify that on August 3, 2011 Counsel for Plaintiffs, Stephanie Barnes, attempted to contact Counsel for Defendants, Jodie Slater, by calling Ms. Slater's office number twice and leaving a message and calling her cell phone number once and leaving a message generally requesting to discuss the subject matter of the relief set forth herein. On the same day Counsel for Plaintiffs sent Counsel for Defendants an email asking if Defendants would agree to a two week extension of the deadline to respond to Defendants' requests for production. Not having heard back from Ms. Slater, on August 4, 2011, counsel for Plaintiffs, Stephanie Barnes, attempted to contact Counsel for Defendants, Jodie Slater, by telephone twice calling Ms. Slater's office phone once and Ms. Slater's cell phone once leaving voice messages. Ms. Slater has not returned any of Plaintiffs' counsel's phone calls or responded to Plaintiffs' counsel's email. Considering that the current deadline for Plaintiffs to serve responses to Defendants' requests for production is August 8, 2011, Plaintiffs file this Motion for Protective Order as an opposed motion, thereby leaving the issue for the Court to resolve. In the event that Defendants'

counsel contacts Plaintiffs' counsel in the future regarding this matter Plaintiffs' counsel will immediately notify the Court if there is an agreement.

/s/ Stephanie R. Barnes