

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

**TAMIKA BIZZELL,** )  
Plaintiff )  
 )  
v. )  
 )  
**SPRINT/UNITED MANAGEMENT,** )  
**CO.,** )  
Defendant )

Case No. 1:12cv00075  
**MEMORANDUM ORDER**

This matter is before the undersigned on the Plaintiff’s Motion To Compel Discovery, (Docket Item No. 16) (“Motion”). Neither party has requested to present oral argument on the Motion, and the Motion is ripe for decision.

In the Motion, plaintiff seeks to have the court overrule the defendant’s objections and compel the defendant to provide a full and complete answer to her Interrogatory No. 9. This interrogatory stated:

List all complaints against any employee who allegedly used profanity on the job, from 2008-present, and for each complaint, state whether the Defendant ever investigated, terminated, or disciplined the employee, and for each instance, identify the employee, the date, the circumstances surrounding the discipline or complaint, and the outcome.

The defendant objected to the interrogatory on grounds that it was overly broad and unduly burdensome. Despite its objection, the defendant provided the names of five employees, including the plaintiff, who were terminated between January 1, 2011, and December 31, 2011, for misconduct related to the use of profanity. The Motion seeks to compel the defendant to produce all the information requested in the interrogatory with respect to the four employees other than the plaintiff who it listed as being terminated in 2011 for the use of profanity.

The defendant argues that the court should not compel it to more fully answer this interrogatory because the plaintiff waited until after the discovery cutoff deadline passed to move to compel. More specifically, the defendant argues that it served its discovery responses, including its objection to Interrogatory No. 9, on October 7, 2013, more than two months prior to the December 20, 2013, discovery cutoff. It further claims that it heard nothing from plaintiff's counsel with regard to any deficiency in its response until a January 21, 2014, email requesting supplementation with regard to the employees listed in the defendant's response. Plaintiff's counsel filed the Motion on January 22, 2014, approximately six weeks before the March 10-14, 2014, trial date.

Defendant argues that ordering it to provide a more complete response at this time would, in effect, reopen discovery in this matter and amend the court's Scheduling Order. The defendant argues that, at this stage, the plaintiff should have to show "good cause" pursuant to Federal Rules of Civil Procedure Rule 16(b)(4) to modify the court's Scheduling Order. *See* FED. R. CIV. P. 16(b)(4).

The defendant's argument, however, must be balanced against the fact that the burden falls on the party resisting discovery to show that the objections made should be upheld. *See Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 297 (E.D. Pa. 1980). This is especially true when, as here, a party objects to an interrogatory on the ground that it is overly broad and to answer it would be unduly burdensome. *See Roesberg*, 85 F.R.D. at 297. In such cases, the objecting party typically must demonstrate the undue burden by affidavit or other evidence. *See Roesberg*, 85 F.R.D. at 297. The defendant has produced no such evidence to support its objection in this case.

While plaintiff's counsel has provided the court with no justification for why she waited until a month after the close of discovery to file the Motion, she has stated in the Plaintiff's Response In Opposition To Defendant's Motion For Summary Judgment that the information requested by this interrogatory is necessary to respond to the defendant's pending motion for summary judgment. *See* FED. R. CIV. P. 56(d). If that is true, denial of the Motion may result in summary judgment being entered against the plaintiff, not because the facts are opposed to her claims, but simply because she could not fully gather the facts to support her claims. "[T]rial is not a sporting event, and discovery is founded upon the policy that the search for truth should be aided." *Tiedman v. Am. Pigment Corp.*, 253 F.2d 803, 808 (4<sup>th</sup> Cir. 1958).

For all these reasons, the Motion is **GRANTED**, and the defendant is **ORDERED** to provide the information requested in Interrogatory No. 9 as to the four employees, other than the plaintiff, that it identified as being terminated in 2011 for the use of profanity to plaintiff's counsel by no later than February 25, 2014.

ENTERED: February 18, 2014.

/s/ *Pamela Meade Sargent*

UNITED STATES MAGISTRATE JUDGE