

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

RENAE BAROS,

Plaintiff,

v.

MICHAEL CHERTOFF, SECRETARY
DEPARTMENT OF HOMELAND SECURITY,

Defendant.

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NO. EP-05-CA-336-H

ORDER REGARDING MOTION FOR PROTECTIVE ORDER

This is a civil action for damages and other relief under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq., and 42 U.S.C. § 1981. Plaintiff Renae Baros, previously an employee of the Customs Service, and now of its successor agency, the Department of Homeland Security, alleges in her amended complaint that she has been the victim of employment discrimination, hostile work environment, and retaliation. With discovery now in progress, the Defendant has filed a motion for a protective order with respect to certain discovery requests on the part of the Plaintiff, and the Plaintiff has filed her response to the motion. In connection with his motion for a protective order, the Defendant has produced voluminous documents for *in camera* inspection by the Court. After reviewing the motion for a protective order, the *in camera* materials, and Plaintiff's

response, the Court finds that the Defendant's motion should be granted in part and denied in part.

Counsel for the Plaintiff has served counsel for the Defendant with a set of requests for admissions and a set of requests for production of documents. The motion for a protective order is directed at Request for Admissions Number 26 and Requests for Production of Documents Numbers 1, 7, and 17. Aside and apart from these vehicles for obtaining "written discovery," the Defendant seeks protection with respect to certain oral deposition testimony. Specifically, the Defendant objects to a particular line of questions addressed to a witness named Brock Nicholson and further objects to producing for deposition another witness named Curtis Compton. The Defendant insists that the discovery items being sought are not sufficiently related to the claims being asserted by the Plaintiff to be relevant, or are protected by privilege, or both.

Request for Admission Number 26 and Request for Production Number 7 are closely related. The Defendant objects to both. In her request for admission, the Plaintiff asks the Defendant to admit that Patricia Kramer, a former supervisor, was allowed to retire in lieu of termination for cause. The related request for production asks the Defendant to produce a letter purportedly

authored by Jesus Torres proposing the removal of Kramer. The Defendant objects on relevance grounds, and also contends vociferously that personnel matters like this are privileged. As it happens, the Court is unable to rule on the motion for protective order at this time because these materials, if they exist, have not been produced by Defendant for in camera inspection.

Plaintiff's Requests for Production Numbers 1 and 17 are also related. Request for Production Number 1 calls upon the Defendant to produce for inspection "all records of any type pertaining to any misconduct inquiries or investigations.... for all persons, including former ASACs Kramer and Pledger..." This request is obviously overbroad, and the Defendant's objection to it is well taken. Request for Production Number 17, however, is much more specific. It alleges that a particular investigation was conducted in 2002 by one Steven W. Cooper, and it requests the Defendant to produce his final report. There is a written report of the results of that investigation (labeled "Administrative Inquiry Report"), and Defendant has produced it for in camera inspection. That report consists of 43 pages of very tiny print, and the Court has reviewed each and every page. The report contains no mention of "Rena Baros." However, it does mention

"Rena Andrews," who on information and belief, may be the same person as Rena Baros. Assuming that to be true, the Plaintiff is entitled to those pages of the report which refer to her complaint or complaints. Those pages appear to be the following: 4; 10; 14; 18; 19; 23; 29; 40; and 41. With respect to those pages, the Defendant's motion for a protective order will be denied.

Finally, the Plaintiff asserts the right to address a series of questions to Agent Nicholson concerning Agent Curtis Compton and further to take the oral deposition of Compton. The Defendant objects on grounds of relevance and privilege and has furnished the Court for *in camera* inspection a voluminous set of reports. Having thoroughly reviewed those reports *in camera*, the Court is satisfied that the trials and tribulations of Agent Compton do not touch the Plaintiff's claims in this case top, bottom, or sideways. With respect to the Plaintiff's claims of failure to promote, it is undisputed that Compton was not her supervisor, and that he did not make those employment decisions. If the Plaintiff is contending that the testimony of Compton would be relevant to her claim of retaliation, the Court finds that it would not. The elements of a claim of retaliation are (1) that the Plaintiff suffered an adverse employment action; (2) as a result of engaging in protected activity; and (3) that the adverse employment action was motivated by the fact that she engaged in the protected

activity. In the instant case, Baros claims that she suffered an adverse employment action (a ten day suspension) because she complained about employment discrimination and sexual harassment. However, it was not Agent Compton who decided on the disciplinary action in question. If the Plaintiff is attempting to introduce Compton's own disciplinary history, it is too dissimilar to that of the Plaintiff to have any probative value in this case.

The Plaintiff makes one final argument with respect to the proposed testimony of Compton. The Plaintiff's theory goes like this: (1) Patricia Kramer was prejudiced against Mexican-American and/or female employees; (2) Agent Compton attended management meetings with Kramer and may additionally have had a "special working relationship" with her; (3) Compton may have overheard Kramer making derogatory comment about Hispanics, women, or employees who file EEO complaints. The traditional term for this type of proposed discovery is "fishing expedition."

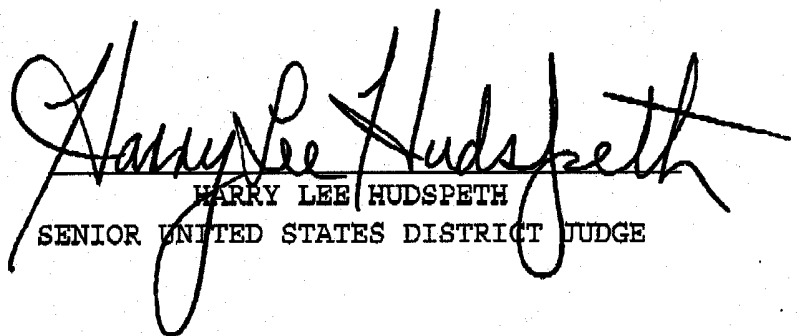
With respect to the proposed deposition testimony of Nicholson and Compton, the Court finds that neither is calculated to lead to admissible evidence. Therefore, the motion for a protective order should be granted.

It is therefore ORDERED that the Plaintiff's motion for a protective order with respect to the Plaintiff's Request for Production Number 1 and the proposed deposition testimony of Nicholson and Compton be, and it is hereby, GRANTED.

It is further ORDERED that with respect to the Plaintiff's Request for Production Number 17 the Defendant's motion for protective order be, and it is hereby, GRANTED IN PART. The Defendant is required to produce for inspection those portions of the Cooper report which refer to Andrews/Baros.

It is further ORDERED that any ruling on the motion for a protective order with respect to Request for Admission Number 26 and Request for Production Number 7 be, and it is hereby, STAYED pending receipt by the Court of *in camera* materials relating to those requests.

SIGNED AND ENTERED this 15th day of August, 2007.


HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE