

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. CIV-15-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY SYSTEM
OF OKLAHOMA,

Defendants.

**MOTION FOR EXTENSION OF DEADLINE TO
CATEGORIZE ELECTRONICALLY STORED INFORMATION**

Defendants, Southeastern Oklahoma State University, (“SEOSU”), and the Regional University System of Oklahoma (“RUSO”), pursuant to LCvR7.1(k) respectfully request this Court grant a fourteen (14) day extension of Defendants’ deadline to assert privilege claims on electronically stored information (“ESI”) selected by Plaintiff for use in this litigation. Such an extension will allow Defendants the necessary time to review the thousands of pages-worth of e-mails (and related attachments) identified by Plaintiff pursuant to the Court’s Order [Doc. 66], and to assert the appropriate privileges. In support of this request, Defendants state:

1. Pursuant to the Court’s June 15, 2016 Order regarding the production of ESI [Doc. 66], Plaintiff notified Defendants on July 29, 2016 that it seeks to use 2,139 files

containing e-mails (and related attachments), and produced those files to Defendants electronically, in 2,139 separate files, constituting 779 megabytes of data.

2. Defendants' current deadline to identify the selected documents over which Defendants assert any privilege is Friday, August 12, 2016.

3. Defendants have been diligently reviewing the electronically produced documents since their production, but have also had to spend a great deal of time addressing multiple discovery matters, including meetings with witnesses in advance of depositions demanded by Plaintiffs, (during the week of August 1), multiple discovery calls with opposing counsel, (including one such call that lasted for nearly three hours by itself), and three full days of depositions required by Plaintiffs, (during the week of August 8).

4. Defendants' review of documents has revealed a significant number of e-mails that are privileged. Although the privileged status of many emails is clearly obvious, Plaintiff has ignored the obvious and instead, requested use of these emails in this litigation. While Defendants acknowledge the Court's recent ruling [Doc. 96], on waiver of certain privileges relating to Dr. Tudor's tenure process and subsequent grievance processes, (pre-EEOC charge), Defendants would assert the ongoing privilege that arose later, after Dr. Tudor's charge with the EEOC, and Defendants' shift to a posture of actual litigation (as oppose to an internal grievance process).

5. The Purpose of the ESI Order was "to shift the burdens of review while assuring that no waiver of privilege or confidentiality occurs"... [Doc 66]. Defendants believe that although the Court did not recite a specific relevancy requirement in the Order, it was presumed by all parties and the Court that Plaintiff would only identify documents that were reasonably

related to this litigation, *i.e.*, admissible or likely to lead to the discovery of admissible evidence. However, a survey of Plaintiff's proposed production does not indicate such restraint was exercised by Plaintiff. Multiple documents have no relation (or an extremely attenuated relation) to this litigation. Their expansive production has resulted in an overly broad, excessive, somewhat irrelevant batch of 2,139 message files. Each message file may have only one e-mail, but in many instances it includes multiple messages, as well as the related attachments. While the Court might allow a broad ranging reach of Discovery, the problem created by Plaintiff's selections is that it means wading through many email messages which (although irrelevant) would certainly not be privileged. That consumes valuable time and human resources to get at the emails over which privileges could be asserted.

6. Neither RUSO, SESOSU, nor the OAG has the E-discovery software utilized by Plaintiff. That software allows the reviewers to apply multiple and successive filters in order to easily isolate (1) documents already produced in this litigation, (2) documents between specific users (such as attorneys) by name which are likely to be protected by the attorney-client and/or work product privilege, and (3) documents containing specific search terms. Therefore, on Monday, August 8, 2016, counsel for Defendants asked Plaintiff's counsel to apply the various filters available to Plaintiff, via its e-discovery review platform, to remove all duplicate files (*i.e.* files that have previously been produced in this litigation or constitute multiple within Plaintiff's selections), because it was Defendants' understanding, based upon calls with the parties' IT personnel, that part of USA's IT review process was to include this de-duplication process. Defendants also requested Plaintiff to separate all files of emails from the mailboxes of (1) RUSO General Counsel Charlie Babb, and (2) all Oklahoma Assistant Attorneys

General, to allow Defendants to expedite their review for potentially privileged files. The request was not made as a blanket assertion of privilege, but as an attempt to narrow the total field of messages which should be withheld as privileged.

7. Late on Wednesday evening (August 10, 2016), Plaintiff agreed (via email to the undersigned) to apply the requested filters for attorney-related emails, (including email messages to/from Charles Babb, as well as email messages to/from attorneys in the Oklahoma Attorney General's Office), but indicated that such filtering could likely not be done before Friday, August 12, 2016 at the earliest (the current deadline).

8. Despite Plaintiff's agreement in principle to narrow the search results with the Defendants' requested filtering, Plaintiff does object to the requested extension of time.

9. This extension is requested in good faith, is not made for the purposes of delay, and no other deadlines shall be affected if this motion is granted.

RELIEF REQUESTED

Defendants ask that the current deadline of "[n]o later than fourteen days" set forth in paragraph 3 of the Court's Order of June 15, 2016 [Doc. 66], be extended by fourteen (14) days, from August 12, 2016, to August 26, 2016, within which time Defendants shall identify in writing to the Plaintiff any of the selected documents over which Defendants assert a claim of privilege.

CONCLUSION

Defendants respectfully request the Court grant the requested fourteen (14) day extension, until August 26, 2016, to allow for Plaintiff's additional filtering of the email message files via Plaintiff's e-discovery software platform, and to allow Defendants sufficient

time to adequately review and assert appropriate privileges as to the 2,139 files of electronically stored information selected by Plaintiff for use in this litigation.

Respectfully submitted,

/s/ Jeb E. Joseph

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2016, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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