

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

WAYNE BEGIN :
 :
 v. : C.A. No. 15-048L
 :
 THE LAWN BEAUTICIANS, :
 INC., et al. :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants’ Motion for Protective Order filed pursuant to Rule 26(c), Fed. R. Civ. P. (Document No. 5). Plaintiff filed a timely opposition. (Document No. 7).

Plaintiff commenced this pro se action against his former employers and their purported owners and officers on February 12, 2015. He asserts that he was formerly employed by Defendants as a bookkeeper. Plaintiff asserts seven claims in his Complaint including a claim of failure to pay overtime in violation of the Fair Labor Standards Act (“FLSA”),¹ two “intentional tort” claims, a fraud claim, claims of unjust enrichment and quantum meruit, and, finally, a civil “RICO” claim. (Document No. 1). Plaintiff’s Complaint is accompanied by a 152-paragraph sworn Affidavit which, upon preliminary review, appears to contain a number of extraneous facts not particularly relevant to Plaintiff’s overtime and termination claims.

Discussion

Defendants seek a protective order precluding Plaintiff from taking six noticed depositions on the grounds that the deponents do not possess relevant information, and the depositions have been

¹ Plaintiff pleads his FLSA claim as a collective action on behalf of himself and all individuals similarly situated. He proposes a “collective class” of all persons who worked as an hourly employee and performed “corporate activities.” (Document No. 1 at ¶ 188). Plaintiff was paid \$22.00 per hour and calculates his unpaid overtime pay claim as “approximately \$1,000.00.”

noticed by Plaintiff to subject Defendants to undue burden and unnecessary defense expenses. Alternatively, Defendants ask that the depositions be deferred until there is a ruling on their Motion to Dismiss.² The deponents in issue include an independent contractor who performs lawn spraying for Defendant The Lawn Beauticians, Defendants' professional accountant, one of Defendants' customers and Defendants' banker. Plaintiff also noticed records depositions for the Rhode Island Department of Labor and Training and ADP Payroll Services.

Defendants have shown good cause to at least defer these depositions until after a ruling on their pending dispositive motion. While four individual and two records depositions would not ordinarily be deemed unduly burdensome, Plaintiff has not made a convincing showing at this juncture that these depositions are necessary and would lead to relevant evidence. For instance, as to the two records depositions, Plaintiff contends that the documents in issue would support his Rhode Island RICO claim. He asserts that the documents would show that Defendants paid their migrant yard workers in an unlawful manner which "is the root of [his] RI RICO claim." (Document No. 7 at p. 4). However, Plaintiff's Rhode Island RICO claim (Count VII) is about Plaintiff and not about migrant workers. In Count VII, Plaintiff alleges that "rights to property were taken from him" and that "[s]uch larceny by false pretense constitutes racketeering activities." (Document No. 1, ¶¶ 240 and 241). He also claims that the alleged RICO enterprise acted "in concert to target and defraud Plaintiff for their own financial benefit." *Id.* at ¶ 242. There is a disconnect between the RICO allegations made by Plaintiff in Count VII and his description of those allegations in opposing the requested protective order.

² Subsequent to filing the instant Motion, Defendants moved for judgment on the pleadings as to all of Plaintiff's claims on May 6, 2015. (Document No. 8).

Plaintiff also seeks to depose certain “third party outside professionals” including Defendants’ “longstanding banker.” (Document No. 7 at p. 4). Plaintiff argues that these professionals “would in all likelihood also have been made aware of the under-the-table activities.” Id. He provides no factual support for this supposition and has not shown that such evidence could not be obtained from other sources that are more convenient, less burdensome or less expensive. See Rule 26(b)(2)(i), Fed. R. Civ. P.

Conclusion

For the foregoing reasons, Defendants’ Motion for Protective Order (Document No. 5) is GRANTED. Plaintiff may move for leave of Court to renote these depositions after the Court rules on Defendants’ pending Motion for Judgment on the Pleadings and upon a particularized showing by Plaintiff as to the information sought and the relevancy after the Court’s ruling on the legal viability of Plaintiff’s claims.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
May 19, 2015