

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

PROYECTA CORP., SA :
 :
 v. : C.A. No. 15-278ML
 :
 GREAT NORTHERN :
 PRODUCTS, LTD. :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendant’s Motion to Compel. (Document No. 17). Plaintiff objects. (Document No. 20). A hearing was held on August 15, 2016. For the following reasons, Defendant’s Motion to Compel is GRANTED in part and otherwise DENIED WITHOUT PREJUDICE.

A. Request No. 9: Defendant requested production of all oral statements, recordings, or the like made and/or given by any person concerning the allegations made in the Complaint and Counterclaim. Plaintiff objects to “the production of recordings,” for itself and for its officers and agents, based on the Fifth Amendment of the United States Constitution. Defendant accurately points out that it is well established that (1) a corporation such as Plaintiff does not enjoy the privilege against self-incrimination guaranteed by the Fifth Amendment; and (2) a custodian of corporate records may not use the Fifth Amendment to block production of such records. See Amato v. United States, 450 F.3d 46, 49 (1st Cir. 2006). Plaintiff does not, and cannot credibly given the well-established law in this area, press the Fifth Amendment argument in its opposition. Rather, it suggests an alternative approach by which the Court removes any possibility of prejudice to Defendant by ordering that Plaintiff (and its counsel) “refrain from using the recording or recordings

in any way to prepare for trial.” (Document No. 20 at p. 4). While this would avoid resolution of the constitutional question, there really is no constitutional question present since Plaintiff and its custodians lack standing to use the Fifth Amendment to block production of any recordings. In addition, the suggestion is antithetical to the purposes of discovery and the best evidence rule. Accordingly, the Court must order production of any responsive recording(s).

Plaintiff also requests that, if the Court ordered production, it be given a second opportunity to object to production on other grounds. However, Plaintiff did not articulate any potential grounds¹ and, pursuant to Local Rule CV 34(c), any grounds not stated in an objection are deemed waived. Thus, the request to interpose “new” objections is rejected. Accordingly, Defendant’s Motion to Compel is GRANTED as to Request No. 9, and Plaintiff is ORDERED to produce copies of any responsive recording(s) within twenty-one days.

B. Request Nos. 20-22 and Interrogatory Nos. 13-15. These discovery requests seek detailed information regarding the nature of Plaintiff’s business, its relationship with other customers, and the production or acquisition cost to Plaintiff of the product at issue in this litigation. Plaintiff objects on grounds of lack of relevance and that the burden of production of such information is not proportional to the needs of the case.

The parties to this case have very divergent views as to the nature and scope of their commercial relationship. In addition, their relationship does not appear to be clearly defined in any

¹ Since Request No. 9 only seeks production of any recordings concerning the allegations made in the Complaint and Counterclaim, there would appear to be no potential argument regarding lack of relevance. In addition, Plaintiff does not suggest any burden in copying any recordings or the potential applicability of the attorney-client privilege.

master purchase or other agreement. Rather, the parties appear to rely primarily on conversations, emails, purchase orders and course of dealing.

Since the relevance and proportionality of this requested information depends on the nature of the parties' commercial relationship, the contents of any recordings produced pursuant to this Order may shed some light on the subject. Accordingly, Defendant's Motion to Compel as to these discovery requests is DENIED WITHOUT PREJUDICE to renewal after any such recordings are produced and reviewed.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Compel (Document No. 17) is GRANTED in part as to Request No. 9 and otherwise DENIED WITHOUT PREJUDICE.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 15 , 2016