

Front, Inc. v Khalil

2015 NY Slip Op 32082(U)

March 24, 2015

Supreme Court, New York County

Docket Number: 111597/11

Judge: Donna M. Mills

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3/31/15
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

FRONT, INC.,

RECEIVED
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NYS SUPREME COURT - CIVIL

INDEX No. 111597/11

Plaintiff,

MOTION DATE _____

-v-

MOTION SEQ. No. 07

PHILIP KHALIL, et al.,

Defendants.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1-3

Answering Affidavits- Exhibits _____

4,5

Replying Affidavits _____

FILED

CROSS-MOTION: YES NO

MAR 31 2015

Upon the foregoing papers, it is ordered that this motion is:

**NEW YORK
COUNTY CLERK'S OFFICE**

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 3-24-15

DM
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

DONNA M. MILLS, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 58

-----X

FRONT, INC.,

Plaintiff,

-against-

Index No. 111597/11
INTERIM ORDER

PHILIP KHALIL, JAMES O'CALLAGHAN, and
ECKERSLEY O'CALLAGHAN STRUCTURAL DESIGN,

Defendants.

-----X

PHILIP KHALIL,

Third-Party Plaintiff,

FILED

-against-

MAR 3 1 2015

JEFFREY A. KIMMEL and MEISTER SEELIG &
FEIN LLP,

**NEW YORK
COUNTY CLERK'S OFFICE**

Third-Party Defendants.

-----X

DONNA MILLS, J.:

Defendants Philip Khalil (Khalil), James O'Callahan (O'Callahan) and Eckersley O'Callaghan Structural Steel (EOC) (collectively, the U.K. defendants), move, pursuant to CPLR 3126, for an order striking plaintiff's complaint or, alternatively, precluding plaintiff Front, Inc. (Front) from introducing, at trial, any evidence that relates to the interrogatories that Front has allegedly failed to answer. Front cross-moves, pursuant to CPLR 3124, for: a) an order compelling defendant Khalil to immediately respond to and produce all documents responsive to requests 1-30 of plaintiff's first request for production of documents, dated September 13, 2013, to

Khalil; and compelling defendants EOC and O'Callaghan to immediately produce all documents responsive to requests 1-22 of plaintiff's first request for the production of documents, dated September 13, 2013, to defendants EOC and O'Callaghan; b) compelling defendants to appear for depositions; (c) striking defendants' answer and counterclaims, pursuant to CPLR 3126, should they fail to produce the documents or appear for depositions in the time period ordered by the court; and (d) awarding Front sanctions including attorneys' fees and costs for having to bring its cross motion.

This case arises from Khalil's employment by Front as a director, from June 2003 to March 2011. In March 2011, Khalil resigned from Front in order to work full time for the U.K. defendants. The complaint alleges that three days after Khalil tendered his written resignation, a Front network engineer noticed an external hard drive storage device connected to Khalil's computer, onto which Khalil was downloading the contents of his computer, including Front's trade secrets, and confidential and proprietary information. According to Front, the downloaded material included, among other things, the file directory of every project on which Front had worked, including hundreds of thousands of documents. Front's architectural plans, engineering reports and building security design criteria were also allegedly downloaded by Khalil. The complaint further

alleges that, while employed at Front, Khalil moonlighted for the U.K. defendants and provided them with Front's documents in violation of Front's policy prohibiting moonlighting. Additional details regarding the employment arrangement and allegations regarding Khalil's violations of Front's policies are set forth in this court's decision dated May 23, 2012, and the parties' familiarity with that decision is assumed.

On or about September 16, 2013, plaintiff sent document demands to Khalil and to the U.K. defendants. On or about December 4, 2013 Khalil and the U.K. defendants each responded to the respective document demands, setting forth legal objections to each and every demand.

On September 26, 2013, defendants sent their first set of interrogatories, dated September 16, 2013, to Front, consisting of 46 separate questions. On or about October 11, 2013, Front responded to defendants' interrogatories, providing answers to some of the interrogatories and objections to others.

On February 28, 2014, in a So Ordered stipulation, the parties agreed as follows:

"Plaintiff shall produce an exact copy of Khalil's external hard drive in native format on or before 30 days.

Defendants shall provide a list of outstanding interrogatories to be answered by Plaintiff within 7 days;

Plaintiff shall answer such interrogatories and provide requested documents within 30 days thereafter, subject to objections.

Defendant shall provide all documents responsive to

plaintiff's demands within 30 days hereof, subject to objections."

DEFENDANTS' MOTION TO STRIKE OR PRECLUDE

In accordance with the So Ordered stipulation, on March 7, 2014 counsel for defendants sent a letter to counsel for plaintiff requesting responses to 32 of the original 46 interrogatories.

On or about September 22, 2014, Front served its supplemental responses to defendants' interrogatories, providing some additional information and objections.

Defendants now move, pursuant to CPLR 3126, to strike Front's complaint or alternatively to preclude Front from introducing any evidence at trial that relates to 20 interrogatories to which Front has objected in its supplemental response.

Although it is possible to obtain relief, pursuant to CPLR 3126, prior to moving to compel pursuant to CPLR 3124, the party seeking such relief has the burden of establishing a refusal to obey an order for disclosure or a willful failure to disclose information. *Sage Realty Corp. v Proskauer Rose LLP*, 275 AD2d 11, 18 (1st Dept 2000). Defendants focus on both the passage of time between their March 7, 2013 letter to Front seeking additional answers to the interrogatories and Front's supplemental response and to what they term the conclusory nature of Front's responses. Although it is true, that Front did

not comply with the timetable approved by the court, it is apparent that prior to Front's supplemental responses to the interrogatories, there were some discussions and correspondence between counsel for the parties relating to Front's efforts to gather documents and respond to the interrogatories, and at no time during that passage of time did defendants seek an order pursuant to CPLR 3124 to compel Front's response. Thus Front's lateness in responding does not by itself constitute a willful failure to disclose that would justify an order to strike or preclude.

As far as defendants' complaints regarding the nature of Front's responses, the court notes that the So Ordered stipulation provides that the parties may make legal objections to the respective interrogatories and document demands, and that both parties availed themselves of that provision, in addition to providing substantive answers and/or documents. Moreover, the court concludes that both sides have provided their share of conclusory objections in their responses. Thus, relief pursuant to CPLR 3126 is not justified. In an effort to avoid unnecessary additional motion practice, however, defendants' motion will be treated as one to compel, pursuant to CPLR 3124.

In reviewing Front's objections to the individual interrogatories (and Khalil and EOC's objections to individual document requests discussed *infra*), the court notes that

references are made by the parties to materials which have not been made available to the court, including the flash drive produced by plaintiff to defendants, which presumably contains a copy of Khalil's external hard drive, the approximately 1840 pages of documents produced by Khalil and/or EOC in response to Front's request, and "Defendants' Discovery and Inspection Requests." To the extent that the parties rely on those materials, the determination of this motion and cross motion is held in abeyance until the materials are made available to the court.

Front's responses to the interrogatories which are specified in defendants' motion are considered below.

"Interrogatory No. 5: Identify each and every agreement, including but not limited to shareholder's agreements and/or operating agreements, entered into by and among shareholder, owner, officer, director, partner and/or employee of Front, and if oral: (a) identify each party and specific person on behalf of each party to such agreement; (b) set forth the date, time, place, and manner (e.g., in person, by telephone, etc.) of creation of such agreement; and (c) the terms of such agreement. If in writing, attach a true copy of each such agreement to the answers to these interrogatories."

In its letter of March 7, 2014 defendants contend that "[i]n particular we are interested in copies of all employment agreements with Front personnel." Letter from Neil G. Marantz to David E. Ross, dated March 7, 2014 (March 7 letter) at 1.

In response, Front objects to the interrogatory as, among other things, seeking documents and/or information that is

neither relevant nor reasonably calculated to lead to discovery of admissible evidence. In addition, Front provided Khalil's employment agreements dated April 10, 2009 and July 21, 2010, and identifies those documents with their Bates numbers. Front further "refers Defendants to the employment agreements between Front and other staff members which have been produced" (plaintiff's supplemental responses at 7), however plaintiff fails to identify those documents by name or with Bates numbers. To the extent that defendants seek each and every agreement among the specified classes not limited to employment agreements, the interrogatory is impermissibly broad.

Even to the extent that Interrogatory 5 seeks only employment agreements of Front's personnel, that interrogatory is overbroad and improper. Where defendants' interrogatories were so overbroad as to be palpably improper, it is proper for the court to vacate rather than to prune them. *Lerner v 300 W. 17th St. Hous. Dev. Fund Corp.*, 232 AD2d 249, 250 (1st Dept 1996). Interrogatory No. 5 is, therefore, vacated.

The court notes, however, that should defendants choose to appropriately narrow the interrogatory, to the extent that Front has already provided documents to defendants which are responsive to the narrowed request, those documents must be identified by employee and date and Bates numbers.

"Interrogatory No. 7: Identify any and all time sheets concerning all other Front shareholders, owners,

officers, directors, partners and employees, at all times since Khalil first became employed by plaintiff, and attach true copies to the answers to these interrogatories."

Front objects to the request as seeking documents and/or information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

The court agrees that this interrogatory is impermissibly overbroad and it is vacated.

"Interrogatory 8: Identify every project for which Khalil performed work during the time he was employed by Front, as to each, state the number of hours, hourly rates and the amounts billed by Front for Khalil and all other Front shareholders, owners, officers, directors, partners and employees. Attach true copies of all invoices generated by Front for all such projects to the answers to these interrogatories."

Front objects to the request as seeking documents and/or information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence and also contends that the interrogatory is duplicative of defendants' discovery and inspection request no. 4, and contends that it refers to documents that it has produced as Bates numbers 0356493-356839.

To the extent that defendants seek information and documents relating to all other Front shareholders, owners, officers, directors, partners and employees, the interrogatory is impermissibly overbroad and it is vacated. To the extent that the interrogatory seeks information and documents relating solely to Khalil's work, because this court has not been provided either

defendants' discovery and inspection requests or copies of the documents that have been provided to defendants by Front, any ruling as to the adequacy of the response is held in abeyance. To the extent that defendants seek to have Front restate all of the information contained in documents that have been provided to it, however, defendants' request is denied as unduly burdensome. Front is directed, however, to identify by name, the projects on which Khalil performed work which are included among the approximately 400 pages of documents.

"Interrogatory 11: Identify any and all emails and other correspondence between plaintiff and Khalil and attach true copies to the answers to these interrogatories."

Front objects to the request as, among other things, overbroad, vague, unduly burdensome and as seeking documents and/or information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence, and also contends that the interrogatory is duplicative of defendants' discovery and inspection request no. 8. In addition, Front refers to "tens of thousands of documents produced by Front." Plaintiff's supplemental responses at 11.

This interrogatory is improperly overbroad and could well encompass emails that have no bearing on the issues in this litigation and it is vacated. Again, however, should defendants choose to narrow their request to documents which relate to the issues in this litigation, to the extent that Front relies on its

response to defendants' discovery and inspection requests, the court's ruling with respect to the adequacy of the response is held in abeyance, and whether Front, in fact, adequately responded to that request. Furthermore, the court notes that Front's response merely referring generally to tens of thousands of documents produced by it will be considered inadequate.

"Interrogatory 12: Identify any and all emails that mention Khalil and/or were sent to or from Khalil by Front shareholders, owners, officers, directors, partners and/or its management, and attach true copies to the answers to these interrogatories."

Front's objections are similar to those with respect to Interrogatory 11, though contending that the interrogatory seeks information beyond the time period relevant to the litigation and that the request is duplicative of defendants' discovery and inspection request no. 9.

The court concludes that this interrogatory is improperly overbroad, and could encompass emails that have no bearing on the issues in this litigation and it is vacated. As with interrogatory no. 11, should the defendants narrow their interrogatory, the court holds in abeyance any determination of the duplicative nature of the request and whether Front adequately responded to it, but notes that Front's general reference to thousands of documents that it previously produced will be considered insufficiently specific.

"Interrogatory 14: Identify all electronic data on Khalil's external hard drive at the time his employment

was terminated by Front, and attach true copies to these interrogatories."

Front objects for basically the same reasons as its previous objections, including its contention that the request is duplicative of Defendants' Discovery and Inspection Request No. 8.

As part of the So Ordered Stipulation, plaintiff was required to provide defendants with an exact copy of the external hard drive in native format. The positions of plaintiff and defendants conflict regarding whether the copy of the hard drive provided by plaintiff is entirely in readable form. The court holds in abeyance any determination of those conflicting positions, but to the extent that defendant seeks a recitation of the contents of the external hard drive which is now in its possession and copies of documents in that hard drive, its request is denied. See *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U), *11, 2010 NY Misc LEXIS 2278, *16 (Sup Ct, NY County 2010), citing *Apple Bank for Sav. v Noah's Route 110, Inc.*, 210 AD2d 277 (2d Dept 1994) and *Cornex, Inc. v Carisbrook Indus., Inc.*, 161 AD2d 376 (1st Dept 1990) ("[g]enerally a party should not be directed to produce documents that are already in the possession of the demanding party").

"Interrogatory No. 15: Identify all emails and other documents recovered by Alex Yau from Front's computer system and/or Front's Exchange server backups and/or

the hard drive of Front's server subsequent to Khalil's resignation from Front, as referenced in Mr. Yau's April 3, 2013 affidavit, and attach true copies of same to the answers to these interrogatories."

Front repeats its general objections and contends that the request is duplicative of Defendants' Discovery and Inspection Request No. 11. Again, the court holds in abeyance any determination of that contention.

To the extent that defendants seek copies of emails contained on the external hard drive, a copy of which is now in defendants' possession, defendants are not entitled to additional copies or a listing of those documents. To the extent that defendants seek a list of emails recovered by Alex Yau directly from Front's computer system, or from Front's exchange server backup, that were not contained on the external hard drive, Front is directed to provide such a list along with copies of those emails, if they have not already been produced. Front's general response that such documents are contained among the tens of thousands of documents previously produced is inadequate.

"Interrogatory No. 16: Identify all emails and other documents recovered by any other person from Front's computer system and/or Front's Exchange server backups and/or the hard drive of Front's server subsequent to Khalil's resignation from Front, and (a) identify such person(s) and (b) attach true copies of same to the answers to these interrogatories."

In addition to repeating its general objections and referring to the information contained in the copy of the external hard drive, Front states that "certain documents were

recovered by Alex Yau, Elaine Yau and Marc Simmons.”

As with Interrogatory 16, to the extent that defendants seek copies of emails contained on the external hard drive, a copy of which is now in defendants’ possession, defendants are not entitled to additional copies or a listing of those documents. To the extent that defendants seek a list of emails recovered by either Elaine Yau or Marc Simmons, as opposed to Alex Yau, directly from Front’s computer system, or from Front’s exchange server backup, that were not contained on the external hard drive, Front is directed to provide such a list along with copies of those emails, if they have not already been produced. Front’s general response that such documents are contained among the tens of thousands of documents previously produced is inadequate.

“Interrogatory No. 17: Identify the ‘information that appeared personal to Khalil’ from Khalil’s external hard drive, as described by Alex Yau in his April 3, 2013 affidavit, which Yau allegedly transferred to another external hard drive, and attach a true copy of same to the answers to these interrogatories.”

In addition to its general objections, plaintiff contends that the interrogatory is duplicative of Defendants’ Discovery and Inspection Request No. 12 and also refers to the information contained in the hard drive and Mr. Yau’s prior affidavit.

In his prior affidavit, Mr. Yau stated, under oath, that he had transferred the information that he characterized as “Khalil’s information” onto a separate hard drive and gave that to Khalil. The documents that comprise that information are,

therefore, in Khalil's possession, and Front is not required to provide them again or list them for defendants. See *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U) at *11, 2010 NY Misc LEXIS 2278 at *16.

"Interrogatory 19: Identify any marketing and/or promotional materials sent by or on behalf of Front at all times since Khalil first became employed by plaintiff, and attach true copies of same to the answers to these interrogatories."

In addition to its general objections, Front asserts that Interrogatory 19 is duplicative of Defendants' Discovery and Inspection Request No. 13.

Interrogatory 19 is vacated as impermissibly overbroad in that it may well reach materials unrelated to projects and issues on which Khalil had no involvement and are unrelated to this litigation. Should defendants choose to narrow the interrogatory, the question of whether the interrogatory is duplicative and an assessment of Front's response thereto, as relevant, is held in abeyance.

"Interrogatory 27: Set forth the calculation of over '4,000 hours in side projects and invoiced at least a half a million dollars' and as alleged in paragraph '47' of the Verified Complaint, and attach to the answers to these interrogatories true copies of any and all documents relied upon by Plaintiff for this allegation."

Front objects to Interrogatory as overbroad, that it seeks documents in Defendants' custody or control, that it is duplicative of Defendants' Discovery and Inspection Request No.

19, and states that it has already produced the requested documents, including \$498,325 worth of invoices Mr. Khalil sent to the U.K. defendants and others.

While the court does not find this interrogatory 27 to be overbroad, it holds in abeyance any determination of whether it is duplicative of Defendants' Discovery and Inspection Request No. 19, and any assessment of Front's response thereto.

"Interrogatory 28: Describe the work allegedly performed by Khalil 'on the side' and set forth how plaintiff is aware that it was 'the type of work in which Front was engaged and which Front was capable of performing' as alleged in paragraph '48' of the Verified Complaint."

Front objects on the basis that the interrogatory is overbroad, seeks documents and information in defendants' custody or control and that it is duplicative of Defendants' Discovery and Inspection Request No. 18. Front also states that "if Mr. Khalil could do the work then the work could be done by Plaintiff."

The court holds in abeyance any determination of whether it is duplicative of Defendants' discovery and inspection request No. 18, and any assessment of Front's response thereto.

"Interrogatory No. 30: Identify all work Khalil 'illegally diverted ... away from Front and to himself' as alleged in paragraph '53' of the Verified Complaint and state in each instance (a) how Front was to have gotten the work, (b) the actions of Khalil that prevented Front from getting the work, (c) describe the work and the value thereof, and (d) attach to the answers to these interrogatories true copies of any and all documents relied upon by Plaintiff that support

this allegation.”

In addition to its general objections, Front objects to Interrogatory No. 30 on the basis that it is duplicative of the preceding interrogatories.

Front is directed to state which of the preceding interrogatories Interrogatory No. 30 is duplicative of, and how it has responded to those interrogatories.

“Interrogatory No. 35: Identify the ‘confidential structural engineering information’ as alleged in paragraph ‘71’ of the Verified Complaint and attach true copies thereof to the answers to these interrogatories.”

In addition to its general objections, Front objects that interrogatory No. 35 seeks documents and/or information that is inappropriately in defendants’ custody or control and has not been turned over to plaintiff and contends that it is duplicative of one or more of Defendants’ Discovery and Inspection Requests and preceding interrogatories including interrogatories 23-24, and prelitigation correspondence produced by Front in this action.

In the answers to interrogatories 23-24 Front identified the projects with respect to which it alleges Khalil provided its protected information. Front is directed to identify which of those listed projects involved provision of “confidential structural engineering information.” To the extent Front is relying on the answer to other unspecified interrogatories or

discovery and inspection requests, the court's ruling is held in abeyance.

"Interrogatory No. 36: Identify the 'custom details of the proposed tower' as alleged in paragraph '72' of the Verified Complaint and attach true copies thereof to the answers to these interrogatories."

In addition to its general objections, Front contends that defendants are in possession of the documents which it is seeking and that the response is duplicative of responses to defendants' document requests and to preceding interrogatory responses including response 24 previously produced by Front.

The court holds in abeyance any determination as to whether the interrogatory is duplicative of any of defendants' document requests and particularly discovery and inspection request 16 (referred to in response No. 24) and any response by Front thereto. With respect to Front's response to Interrogatory 24, although that response includes reference to the Frank Gehry tower in Brooklyn, it does not discuss the custom details. Nonetheless, Front has stated in its response that defendants are in possession of the documents and information relating to the custom details of the proposed Gehry tower, which defendants have not denied. Defendants are not entitled to the production of documents which are already in their possession. *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U) at *11, 2010 NY Misc LEXIS 2278 at *16.

"Interrogatory No. 37: Identify each and every one of

the specialty glass details and technical details send [sic] by Khalil to Mr. O'Callaghan as alleged in paragraph '73' of the Verified Complaint and attach true copies thereof to the answers to these interrogatories."

Front's response to this Interrogatory is similar to that of response 36, except to the extent that it also references its response to Interrogatory 23. In response 23, Front discusses limited-access U.S. government-issued software for security glass. Again, Front states that defendants are seeking information and documents within their own control. Defendants have not denied this assertion by Front. Defendants are not entitled to copies of documents which are already in their possession. *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U) at *11, 2010 NY Misc LEXIS 2278 *16.

"Interrogatory No. 39: Identify each and every instance where business was illegally diverted away from Front to Eckersley O'Callaghan as alleged in paragraph '82' of the Verified Complaint, and (a) in each instance set forth Front's interest in such business, precisely how and when it was diverted away from Front, and the value of the business so diverted, and (b) attach to the answers to these interrogatories true copies of any and all documents relied upon by Plaintiff that support this allegation."

Front responds with its general response that the information and documents are in defendants' possession and generally states that the interrogatory is duplicative of defendants' document requests and preceding interrogatories.

The court holds in abeyance any determination of whether the

interrogatory is duplicative of any of defendants' document requests, however Front must specify which interrogatory or interrogatories Interrogatory No. 39 is duplicative of. To the extent that the documents that defendants seek are already in their possession, defendants are not entitled to have them produced by plaintiff. *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U) at *11, 2010 NY Misc LEXIS 2278 at *16.

"Interrogatory No. 40: Identify each and every instance where, when and how 'confidential and proprietary information' was stolen from Front for Eckersley O'Callaghan's benefit as alleged in paragraph '82' of the Verified Complaint, and in each instance describe how such item is 'confidential and proprietary.'"

In addition to its general responses, Front responds that Interrogatory No. 40 is duplicative of defendants' document requests and preceding interrogatories. The court holds in abeyance its assessment of whether the Interrogatory is in fact duplicative of document requests and Front's response thereto, but directs Front to specify which of the preceding interrogatories this interrogatory is duplicative of.

"Interrogatory No. 42: Identify each and every confidentiality agreement signed by Front employees, as alleged in paragraph '85' of the Verified Complaint, and attach true copies of same to the answers to these interrogatories."

Front contends that Interrogatory 42 is duplicative of one or more of defendants' document requests and preceding interrogatories.

Interrogatory No. 42 is impermissibly overbroad. Should defendants chose to narrow it, the court holds in abeyance its assessment of whether the Interrogatory is in fact duplicative of document requests and Front's response thereto, but directs Front to specify which of the preceding interrogatories this interrogatory is duplicative of.

"Interrogatory No. 46: Identify each and every customer diverted away from Front, as alleged in paragraph '134' of the Verified Complaint and in each case describe how such customer was diverted, identify the dollar amount of business each customer had with Front and the dates thereof, and the amount of business diverted and the and the dates thereof and identify any documents evidencing the foregoing and annex true copies thereof to the answers to these interrogatories."

For some reason, Front has failed to mention Interrogatory 46 in its Supplemental Responses. Front is directed to respond to Interrogatory 46.

PLAINTIFF'S CROSS MOTION TO COMPEL

At some time after the So Ordered stipulation governing discovery, and before September 8, 2014, Khalil and the UK defendants apparently produced approximately 1840 pages of documents to Front. Neither plaintiff nor defendants are clear as to what those documents are or to what particular document demands they were responsive. Without that information, this court is not in a position to determine which, if any, of the demands remain unfulfilled. Until that information is provided to the court, Front's motion to compel is held in abeyance,

except to the extent set forth below.

With respect to Front's complaint that documents that were produced to defendants by Front have not been "produced back" to Front, as previously noted, "[g]enerally a party should not be directed to produce documents that are already in the possession of the demanding party." *City of New York v 330 Continental LLC*, 2010 WL 2572598, 2010 NY Slip Op 31532(U) at *11, 2010 NY Misc LEXIS 2278 at *16. Thus, to the extent that Front is seeking to require Khalil and EOC to "produce back" documents which Front produced to them, its cross motion is denied. Of course, this does not preclude Front from questioning defendants about those documents in deposition. Furthermore, since it is unclear to the court, which of the document requests relate to documents that Front has produced to defendants, and thus, are obviously in Front's possession, until Front specifies what documents it seeks that are not already in its own possession, its cross motion is held in abeyance.

With respect to Front's request #24 to Khalil for "all ... federal, state, local, and foreign tax returns for the years in which you were employed by Front," "tax returns are generally not discoverable in the absence of a strong showing that the information is indispensable to the claim and cannot be obtained from other sources." *Latture v Smith*, 304 AD2d 534, 536 (2d Dept 2003). Front has the burden of showing that the information it

seeks is relevant to its claims against Khalil and that it can not obtain the information from other sources. *Kerman v Martin Friedman, C.P.A., P.C.*, 21 AD3d 997, 998 (2d Dept 2005). Front has merely made the conclusory statement that "it is hard to fathom from what other sources Plaintiff could obtain this information." Memorandum of law in opposition at 20. Khalil's tax returns are likely to contain personal information that has no relationship to the issues in this law suit. Front's conclusory statement is, therefore, insufficient to justify the sweeping request it has made. Front may seek the production from EOC of 1099 forms or comparable United Kingdom forms relating to any compensation paid to Khalil and may seek from Khalil 1099 forms received from any other company for which he worked during the period of his employment by Front. *International Oil Field Servs. Corp. v Fadeyi*, 19 Misc 3d 1114(A), 2008 NY Slip Op 50685(U), *4 (Sup Ct, Nassau County 2008).

The foregoing decision constitutes the decision and interim order of the court.

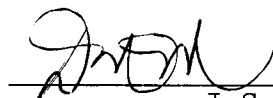
Dated:

3-24-15

FILED

MAR 31 2015

ENTER: **NEW YORK**
COUNTY CLERK'S OFFICE



J.S.C.

DONNA M. MILLS, J.S.C.