

Universal Processing LLC v Weile Zhuang

2023 NY Slip Op 33077(U)

September 6, 2023

Supreme Court, New York County

Docket Number: Index No. 650702/2019

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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UNIVERSAL PROCESSING LLC,

Plaintiff,

- v -

WEILE ZHUANG, HUMMINGBIRD MARKETING AGENCY
INC., and ARGUS MERCHANT SERVICES LLC,

Defendants.

-----X

INDEX NO. 650702/2019

MOTION DATE 02/24/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67

were read on defendants' motion TO STRIKE PLAINTIFF'S SECOND SET OF
DISCOVERY DEMANDS.

The background and history of this matter are more fully set forth in this court's prior Decision and Order involving motion sequence number 001 (NYSCEF Doc. No. 35).

On this motion (seq. no. 002), defendants move for an order striking the plaintiff's "Set Two" discovery demands (*see*, NYSCEF Doc. Nos. 47, 48), based primarily on the suggestion that defendants' discovery obligations were satisfied by their responses to plaintiff's "Set One" discovery demands (*see*, defendants' responses to plaintiff's "Set One" document demands [NYSCEF Doc. Nos. 58, 59]). The court firmly disagrees with that suggestion and, therefore, denies the motion per the following memorandum.

Briefly stated: plaintiff in this action sues defendant Zhuang, a former employee of plaintiff, who left plaintiff's employ to join plaintiff's competitor, defendant Argus Merchant Services LLC ("Argus"). The complaint alleges that Zhuang breached her "Memorandum of Employment" with plaintiff by divulging plaintiff's proprietary information to Argus and to defendant Hummingbird Marketing Agency Inc., alleged to be affiliated with Argus (Complaint

¶¶ 141-44). The complaint alleges that the defendants launched a concerted campaign to usurp existing and prospective clients of plaintiff.

The parties exchanged their paper discovery demands pursuant to the court's Preliminary Conference Order of September 17, 2020 (NYSCEF Doc. No. 57). Plaintiff served its responses to defendants' discovery demands, which responses included a document production and privilege log. On September 25, 2020, plaintiff served its discovery demands – “Set One” – on defendants. Defendants, despite seeking and being granted an extension of time, provided next to nothing, and instead served boilerplate objections to all of plaintiff's discovery demands (*see*, NYSCEF Doc. Nos. 58, 59).¹

Plaintiff wrote two meet-and-confer letters and, on January 15, 2021, conducted a telephonic meet-and-confer with defendants' attorney (*see*, NYSCEF Doc. No. 54 ¶¶ 40-41). On January 27, 2021, this court conducted a discovery conference in order to resolve any of defendants' counsel's concerns with “Set One.” Per the instruction of this court at said conference, plaintiff was directed to serve a revised document demand in accommodation to defense counsel's stated concerns (*see*, NYSCEF Doc. No. 54 ¶¶ 53-56). Accordingly, on February 10, 2021, plaintiff's counsel served “Set Two” – the set of discovery demands that is the target of defendants' instant motion for a protective order. Instead of responding to the revised discovery demands in any meaningfully substantive way,² defendants filed this motion to

¹ While it is true that plaintiff's “Set One” discovery demands can be said to be voluminous, coming in at 76 document demands (*see*, NYSCEF Doc. No. 50), defendants' resounding non-response, consisting of nothing but boilerplate objections (NYSCEF Doc. No. 58) and producing, literally, only a one-page document (NYSCEF Doc. No. 59), vastly exceeds, in procedural culpability, any overbreadth underlying plaintiff's concededly voluminous demands. At a bare minimum, defendants could have objected as to time and scope and produced documents commensurate with a more appropriate time and scope. Instead, defendants tendered wholesale objections and produced one piece of paper. Whether viewed cursorily or exhaustively, defendants' response to “Set One” is palpably insufficient.

² *See*, for example, note 1, *supra* (noting the propriety of producing documents commensurate with the producer's good faith view of the relevancy in terms of time and scope, and under preservation of objection as to what, in good faith, is perceived as irrelevant or overbroad).

strike plaintiff's "Set Two" demands. In other words, defendants would prefer to produce nothing in this action.

CPLR 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." "The test is one of usefulness and reason" (*Forman v Henkin*, 30 NY3d 656, 661 [2018]), and the statutory term "necessary" in said context means "'needful' and not indispensable" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 407 [1968]). "New York has long favored open and far-reaching pretrial discovery" (*DiMichel v South Buffalo Ry. Co.*, 80 NY2d 184, 193 [1992], *rearg denied sub nom Poole v Consol. Rail Corp.*, 81 NY2d 835, *cert denied* 510 US 816 [1993]).

For defendants to resist both sets of document demands in blunderbuss fashion, as they have done and, in some measure, in derogation of this court's January 2021 effort to accommodate defendants through revised demands, is unacceptable. Defendants shall be directed hereinbelow to provide meaningful responses by way of production of documents to the extent commensurate with what defendants, in good faith, believe to be within the parameters of relevant time and scope.

Accordingly, it is

ORDERED that the defendants' motion to strike plaintiff's "Set Two" document demands is denied; and it is further

ORDERED that defendants shall, within 30 days of the date of filing hereof, produce documents in response to plaintiff's "Set Two" document demands (NYSCEF Doc. Nos. 47, 48) to the extent commensurate with defendants' good faith view as to relevant time and scope in the event of any good faith objection premised on overbreadth; and it is further

ORDERED that a compliance conference shall be convened Wednesday, October 18, 2023, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York, at which any party may seek permission to apply for any discovery-related relief or sanction.

Louis L. Nock

9/6/2023 DATE		LOUIS L. NOCK, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE