SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

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LYDALL, INC.,

Plaintiff,

- v -

HONEYWELL INTERNATIONAL INC.,

Defendant.

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INDEX NO. 656935/2021

MOTION DATE 05/29/2024, 07/18/2024, 06/28/2024

MOTION SEQ. NO. 010 012 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 227, 229, 230

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 315, 316, 317, 318, 319, 320, 321, 322

were read on this motion to/for PRECLUDE.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 262, 263, 264, 265, 266, 267, 268, 269, 270, 311, 312, 313, 314, 326, 327, 328, 329, 330, 331, 332

were read on this motion to/for MISCELLANEOUS.

I. INTRODUCTION

The plaintiff, Lydall, Inc., commenced this action against the defendant, Honeywell International, Inc., on December 10, 2021. Lydall alleges that Honeywell breached the Master Supply Agreement (the "MSA"), entered into between the parties on May 1, 2020, wherein Honeywell agreed to purchase meltblown filtration media (the "Product") manufactured by Lydall. Lydall alleges that the MSA was a "take or pay" agreement, whereby Honeywell was obligated to take delivery of the Product from Lydall or pay a specified amount if Honeywell refused to take the Product. Lydall also alleges that the MSA required Honeywell to purchase a minimum volume of the Product. Under its remaining cause of action for breach of the MSA, Lydall seeks $16,873,425 in damages for unplaced or cancelled purchases of the Product as required by the MSA.

The parties have since filed these instant discovery motions. First, Lydall moves, pursuant to CPLR 2304, to quash a subpoena served by Honeywell on Sara Greenstein, Lydall's former CEO and for other relief. (MOT SEQ 010). Next, Honeywell moves, pursuant to CPLR 3216, to strike portions of an expert report served by Lydall and to preclude Lydall from relying on these portions at trial or summary judgment (MOT SEQ 012). Finally, Lydall moves, pursuant to CPLR 3124, to compel Honeywell to produce its third-party meltblown filtration media supply agreements with other vendors. (MOT SEQ 013). Lydall's motions, MOT SEQ 010 and MOT SEQ 013, are granted to the extent provided herein, and Honeywell's MOT SEQ 012 is denied in its entirety.

II. DISCUSSION

A. MOT SEQ 010: Lydall's Motion to Quash

On March 19, 2024, Honeywell served a subpoena on non-party Sara Greenstein, Lydall's former CEO, seeking to depose her. Honeywell argues that her deposition is necessary to establish if she was responsible for negotiating the "take or pay" provision in the MSA. However, Lydall's submissions in support of its motion to shows that this subpoena was untimely served. Lydall submits emails between the parties' counsel, showing that Honeywell's counsel understood that fact witnesses would also include the parties' former employees when setting up discovery deadlines. On February 20, 2024, the court so-ordered a discovery stipulation between the parties, setting the deadline for "fact witness depositions" by March 20, 2024. Thus, depositions of former employees of Lydall such as Greenstein, were to be completed by March 20, 2024.

CPLR 2004 allows courts to extend time fixed by an order for "good cause shown". See Grant v City of New York, 17 AD3d 215 (1st Dept. 2005); see also Rule 48 of the Court's Part 61 Rules. Honeywell fails to show good cause or any reasonable excuse in serving a subpoena one day prior to the deadline for fact witness depositions. It is undisputed that Honeywell knew that Greenstein was a potential witness with knowledge of the information material and necessary to the alleged "take or pay" provision for *almost two years prior* to serving the subpoena, as Lydall listed Greenstein as such a witness in its response to Honeywell's First Set of Interrogatories on July 22, 2022. Furthermore, Greenstein signed the subject MSA to this action in April 2020, showing that Lydall was aware of Greenstein's significance to the negotiation of the MSA for years prior to serving this subpoena.

The court rejects Honeywell's argument that Greenstein's testimony is needed to obtain factual information relevant to this litigation. Honeywell argues that at their respective depositions, Lydall witnesses Aaron Frost, Paul Marold, Greg Parlee, and William Piotrowski, all denied responsibility for negotiating the "take or pay" provision of the MSA. However, Honeywell does not point to any deposition testimony specifically naming Greenstein as an official with knowledge of the "take or pay" provision. Furthermore, Honeywell failed to question any of these Lydall witnesses about Greenstein's role in negotiating the "take or pay" provision. The court rejects Honeywell's request to take a fact witness deposition after the court ordered deadline of March 20, 2024, due entirely to Honeywell's lack of due diligence in seeking to depose Greenstein for almost two and a half years. Nor may a subpoena be used as a tool of harassment or for a proverbial "fishing expedition to ascertain the existence of evidence." Reuters Ltd. v Dow Jones Telerate, Inc., 231 AD2d 337, 342 (1st Dept. 1997); see Law Firm of Ravi Batra, P.C. v Rabinowich, 77 AD3d 532 (1st Dept. 2010). This standard requires that the MOT SEQ 010 be granted to the extent it seeks to quash the subpoena.

Any further relief in the form of a protective order pursuant to CPLR 3103 sought by Lydall is denied. Lydall does not identify any other current effort by Honeywell seeking the same discovery sought in the subpoena, a protective order is unnecessary. Such relief is also moot, as Lydall filed a Note of Issue on August 2, 2024, attesting that discovery is complete. The court also denies Lydall's request for attorney's fees in filing this motion as without basis.

B. MOT SEQ 012: Honeywell's Motion to Preclude

CPLR 3126 authorizes the court to sanction a party who "refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed" and that a failure to comply with discovery, particularly after a court order has been issued, may constitute the "dilatory and obstructive, and thus contumacious, conduct warranting the striking of [a pleading]." Kutner v Feiden, Dweck & Sladkus, 223 AD2d 488, 489 (1st Dept. 1998); see CDR Creances S.A. v Cohen, 104 AD3d 17 (1st Dept. 2012); Reidel v Ryder TRS, Inc., 13 AD3d 170 (1st Dept. 2004). The party seeking this relief must also establish that they were prejudiced by the opposing party's failure to comply. Scherrer v Time Equities, Inc., 27 AD3d 208, 209 (1st Dept. 2006). The court may infer willfulness from repeated failures to comply with court orders or discovery demands without a reasonable excuse. See LaSalle Talman Bank, F.S.B. v Weisblum & Felice, 99 AD3d 543 (1st Dept. 2012); Perez v City of New York, 95

AD3d 675 (1st Dept. 2012); Figiel v Met Food, 48 AD3d 330 (1st Dept. 2008); Ciao Europa, Inc. v Silver Autumn Hotel Corp., Ltd., 270 AD2d 2 (1st Dept. 2000).

Here, Honeywell seeks an order to preclude Lydall's use of, and to strike portions of, Lydall's expert report prepared by Brian Bergmark, that cite ten documents that Lydall allegedly produced late in discovery which go into very specific detail of Lydall's lost profits. Honeywell's submissions, including an attorney affirmation from Sarah Decker and communications between the parties' counsel, show that Honeywell served its First Demand for Production of Documents on June 22, 2022, seeking all documents establishing Lydall's alleged damages of $16,873,425, as alleged in the complaint. Lydall's complaint alleges that the MSA provides a "take or pay" provision, meaning that Honeywell was obligated to take delivery of the Product from Lydall or pay a specified amount if Honeywell refused to take the Product. Thus, Lydall calculates its damages based on Honeywell's unfulfilled purchase obligations.

However, Honeywell made a supplemental demand for documents on February 5, 2024, seeking much more specific information from Lydall, including "the most detailed product-level profit and loss statements, general ledgers… down to the bottom line, each and every fixed and variable actual cost incurred by Lydall in manufacturing the Products". After months of back and forth between the parties, including Lydall objecting to these demands based on relevance, Lydall produced nine documents responsive to this demand on April 12, 2024, and one additional document on April 23, 2024. These productions were one month after the deadline for fact witness depositions on March 20, 2024 had expired. Lydall then served the Bergmark expert report on April 26, 2024, which cites to these ten supplemental documents throughout. Honeywell argues that these ten documents, and portions of Bergmark's report that cite to these documents, should be stricken and that Lydall should be precluded from using them because Honeywell never had the chance to use these documents in depositions of fact witnesses, as they were produced after the fact witness deadline.

The court rejects Honeywell's arguments. First, Honeywell itself demanded that Lydall produce these documents. Lydall at first objected to their relevance, as its damages calculations are based on Honeywell's alleged unfulfilled purchase obligations, and not the specific lost profits calculations that Honeywell demanded, and Lydall ultimately produced. While Honeywell argues that the MSA did not include a "take or pay" provision, that is not an issue to be determined at this juncture. Furthermore, Honeywell fails to show, or even mention, any

prejudice suffered by this late-produced discovery. Honeywell themselves only demanded production of these documents nearly two years after their initial demands. Furthermore, while the deadline for fact witnesses depositions had passed, the court's February 20, 2024 so-ordered discovery stipulation set Honeywell's deadline to conduct expert depositions on July 16, 2024. Thus, Honeywell had almost three months to depose Bergmark, or any other Lydall expert, on this expert report and the ten documents cited therein. Accordingly, Honeywell's motion is denied in its entirety.

C. MOT SEQ 013: Lydall's Motion to Compel

Disclosure in New York civil actions is guided by the principle of "full disclosure of all matter material and necessary in the prosecution or defense of an action." CPLR 3101(a). The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." See Kapon v Koch, 23 NY3d 32, 38 (2014). "A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is 'material and necessary'—i.e., relevant". Forman v Henkin, 30 NY3d 656, 661 (2018). However, the need for discovery must be weighed against any special burden to be borne by the party opposing discovery. Id. at 662. Demands for disclosure must be "relevant, describe documents with 'reasonable particularity,' not impose an undue burden and not represent a 'fishing expedition.'" Konrad v 136 E 64th St. Corp., 209 AD2d 228, 228 (1st Dept. 1994) (citations omitted); CPLR 3120.

Here, Lydall seeks to compel Honeywell to produce Honeywell's third-party meltblown supply agreements with other vendors. Lydall's submissions establish the relevance of these documents, as the complaint alleges that the parties disagreed over whether a minimum volume requirement should be included in the MSA during negotiations. The complaint also alleges that Honeywell represented that it normally did not include such a provision in their contracts with other vendors. Furthermore, in deciding Honeywell's motion to dismiss (MOT SEQ 001), the court (Ostrager, J. [Ret.]), found that the MSA, read as a whole, is ambiguous as to whether it required Honeywell to purchase a minimum volume of the Product. Thus, contracts with third party vendors similar to the subject MSA,are relevant in determining a key issue in this case as to whether the MSA required Honeywell to purchase a minimum volume of product.

On February 18, 2022, Lydall served its initial Request for Production. Requests Number 28 and 29 sought Honeywell's third-party contracts for meltblown filtration media from 2020 to 2026. Honeywell refused to produce these contracts, stating that they were irrelevant to this action. However, Honeywell themselves introduced Lydall's third party contracts as exhibits when taking the depositions of several Lydall witnesses, including Greg Parlee, Bill Piotrowski, and Paul Marold, and asked these witnesses about how these third-party contracts were negotiated and the terms therein. Thus, Honeywell made third-party contracts a relevant issue themselves through their actions during discovery.

In opposition, Honeywell submits am affirmation of Tomas Rozvadsky, a senior strategic sourcing manager at the company, who states that Honeywell does not have any contracts with third party vendors. Rozvadsky further states that Honeywell only has purchase orders issued to these vendors and draft agreements. Honeywell also argues that purchase orders are not contracts, and thus, are not subject to this motion. First, the court rejects this argument, as breach of contract cases can include the breach of purchase orders. See generally McDonald v 450 W. Side Partners, LLC, 32 AD3d 741 (1st Dept. 2006), City of New York v Seabury Const. Corp., 4 AD3d 124 (1st Dept. 2004). Second, Rozvadsky's claim that Honeywell has no third-party contracts with other vendors is contradicted by documents Honeywell itself produced during discovery, and which Lydall submits in support of its motion. These documents include a "purchasing agreement" between Honeywell and nonparties Dongying Joto Filtration Technology Co., Ltd. and Zhaoqing Joro Nonwoven Co., Ltd., dated March 12, 2021, whereby Honeywell agreed to purchase meltblown filtration media from these nonparties. Honeywell also produced during discovery an excel sheet of various suppliers, including Lydall and Zhaoqing, showing Honeywell could have potentially contracted with various suppliers, or has sent purchase orders to these suppliers.

The court notes that Lydall's initial Request for Production numbers 28 and 29 sought these contracts from 2020 to 2026. Meanwhile, Lydall's motion papers requests these documents to be produced from 2020 to 2021, or from 2020 to the present. To prevent a "fishing expedition" of Honeywell's third-party contracts, the court grants Lydall's motion to the extent of permitting post-note discovery, such that Honeywell is directed to produce any third-party contracts or purchase orders related to purchasing meltblown filtration media, including drafts thereof, entered into from 2020 to 2021, within 30 days of this order. If such documents are not

within Honeywell's possession, custody, or control, Honeywell is directed to provide a Jackson affidavit to that effect. See Jackson v City of New York, 185 AD2d 768 (1st Dept. 1992).

Any relief not expressly granted herein is denied.

III. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff's motion to quash the subpoena served on non-party Sara Greenstein and for other relief (MOT SEQ 010), is granted to the extent that the subpoena is quashed and Sara Greenstein need not appear for a deposition, and the motion is otherwise denied, and it is further,

ORDERED that the defendant's motion to strike portions of an expert report and preclude the plaintiff from relying on portions of this expert report (MOT SEQ 012) is denied in its entirety, and it is further,

ORDERED that the plaintiff's motion to compel discovery (MOT SEQ 013) is granted to the extent that the defendant is directed to produce, within 30 days of the date of this order any third-party contracts or purchase orders related to purchasing meltblown, including drafts thereof, entered into from 2020 to 2021 and the motion is otherwise denied, and it is further,

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the Court.

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10/8/2024
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:		**CASE DISPOSED**			[X]	**NON-FINAL DISPOSITION**	
		GRANTED	[ ]	**DENIED**	[X]	**GRANTED IN PART**	[ ] **OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**