

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUCILLE ORILLANEDA, :

Plaintiff, :

-against- :

THE FRENCH CULINARY INSTITUTE :
also known as "Bear Cove, LLC" :

Defendant. :

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07 Civ. 3206 (RJH) (HBP)

MEMORANDUM
OPINION AND ORDER

PITMAN, United States Magistrate Judge:

I. Introduction

By notice of motion dated February 12, 2011 (Docket Item 41), defendant moves for the entry of a protective order relieving it from any obligation to respond to plaintiff's Third Request for Production of Documents ("Pl.'s Third Request"), and directing that discovery be deemed completed.

For the reasons set forth below, defendants' motion is granted in part and denied in part.

II. Facts

A. Facts Alleged
in the Complaint

This is an employment discrimination action brought under the Pregnancy Discrimination Act, the Family Medical Leave Act and parallel state and local laws. Plaintiff alleges that she began working for defendant as a temporary employee in 1999, reconciling bank accounts and managing accounts receivable (Complaint, dated Apr. 19, 2007 (Docket Item 1), ("Compl.") ¶¶ 1-2, 15). In January 2000, plaintiff accepted a position with defendant as an account manager "on a consultation basis" and was hired as a full-time employee in June 2001 (Compl. ¶¶ 16, 18). Plaintiff is a certified public accountant and was appointed to be defendant's controller in July 2002 (Compl. ¶ 21). In the fall of 2004, plaintiff underwent in vitro fertilization ("IVF") procedures in an effort to conceive; plaintiff informed her supervisor that she was undergoing this procedure and was absent from work for five days in order to do so (Compl. ¶ 23). Plaintiff did not conceive at that time (Compl. ¶ 24).

Plaintiff claims that after her first IVF cycle, several of her subordinates began to make comments about her efforts to conceive which plaintiff found upsetting (Compl.

¶ 28). In June 2005, plaintiff told her superiors that she would need to take another week off to undergo a second round of IVF treatment (Compl. ¶ 31). After plaintiff's first week off, she informed her superiors that she would need to be absent for a second week as a result of complications that arose during the IVF treatment (Compl. ¶¶ 34-35).

Plaintiff's second IVF cycle was successful, and plaintiff returned to work on July 18, 2005 (Compl. ¶¶ 37-38). Upon her return, however, plaintiff was fired (Compl. ¶¶ 38-39). Her supervisor, Gary Apito, was initially reluctant to provide plaintiff with a reason for her termination (Compl. ¶ 39). When pressed, however, he claimed that plaintiff was fired because she did not get along with her fellow managers, was disliked by the staff and that management no longer had confidence in plaintiff's work (Compl. ¶ 40). Plaintiff alleges that defendant's human resources manager subsequently told her that she should not feel badly about getting fired because she had successfully conceived and had gotten what she wanted (Compl. ¶ 46). Plaintiff was subsequently replaced by an individual who was not pregnant (Compl. ¶ 49).

Defendant denies all the material allegations of the complaint except plaintiff's employment with defendant and her termination in 2005.

B. Defendant's
Assertion of Facts
Concerning Discovery

Plaintiff served her first two sets of discovery requests on July 19, 2007 and December 3, 2010 (Defendant's Memorandum of Law in Support, dated Feb. 14, 2011 (Docket Item 42), ("Def.'s Mem. in Supp.") at 2, citing Plaintiff's First Request for Production of Documents, Defendant's Response thereto, Plaintiff's Second Request for Production of Documents and Defendant's Response thereto ("Def.'s Second Response"), attached to Declaration of Celena Mayo, dated Feb. 14, 2011 (Docket Item 68), ("Mayo Decl.") as Exs. D, E, F, G respectively). Defendant asserts that it responded to these requests and notified plaintiff on July 25, 2008 that it possessed electronic repositories which it had not searched (Def.'s Mem. in Supp. at 3, citing Conference Transcript, dated Sept. 11, 2008 and attached to Mayo Decl. as Ex. K). Following a subsequent conference during which this issue was discussed, defendant "conducted extensive efforts to locate all relevant ESI within its possession, custody or control[,]" a process it claims was "well documented" by Phil Engert, Vice President of Information Technology at the French Culinary Institute (Def.'s Mem. in Supp.

at 3, citing Declaration of Phil Engert, dated Oct. 18, 2010 and attached to Mayo Decl. as Ex. M ("Engert Decl.")).

Defendant claims that it has produced 5,085 pages of discovery in response to plaintiff's first two sets of requests, including ESI materials from defendant's "live network" that were dated prior to July 17, 2007, and ESI from a backup tape which captured information on defendant's computer systems at the time of plaintiff's termination in 2005 (Def.'s Mem. in Supp. at 3, citing Defendant's Response to Plaintiff's First Request, attached to Mayo Decl. as Ex. E; Def.'s Second Response; Letter of Celena Mayo to the Honorable Henry Pitman, dated Jan. 20, 2011 and attached to Mayo Decl. as Ex. O). After the 2005 tape was restored, defendant reviewed the "Email boxes and documents" of the individuals identified in my May 28, 2010 Order, as well as their "present network email boxes and documents" and email archives. Defendant conducted these searches using the "search terms and timelines directed by the Court" (Def.'s Mem. in Supp. at 4). Defendant also claims it has produced a copy of every email and the attachments thereto from plaintiff's "network Outlook folder" and copies of Outlook calendars for custodians "identified as relevant to Plaintiff's underlying allegations" (Def.'s Mem. in Supp. at 3-4, citing Def.'s Second Response;

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