

GRANTED WITH MODIFICATIONS



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

OSI RESTAURANT PARTNERS,)
LLC, a Delaware limited liability)
company,)

Plaintiff and)
Counterclaim-Defendant,)

v.)

UNITED OHANA, LLC, a Texas)
limited liability company, OS)
PACIFIC, LLC, a Florida limited)
liability company,)

Defendants and)
Counterclaim-Plaintiffs.)

C.A. No. 12353-CB

[PROPOSED] ORDER REGARDING MOTIONS TO COMPEL

WHEREAS, on November 7, 2016, OSI Restaurant Partners, LLC (“OSI”) filed a motion to compel United Ohana, LLC and OS Pacific, LLC (collectively, “Defendants”) to, among other things, supplement responses to certain interrogatories regarding Defendants’ alleged damages (“Plaintiff’s Motion to Compel”) (Dkt. 27);

WHEREAS, on November 23, 2016, Defendants filed a motion to compel OSI (“Defendants’ Motion to Compel”) to, among other things, (i) supplement OSI’s response to Interrogatory No. 15 of Defendants’ First Set of Interrogatories and (ii) conduct an attorney-level responsiveness review of documents to be produced by OSI that were selected using search terms provided by Defendants on November 15,

2016, and as those terms were modified during subsequent meet and confers between the parties;

WHEREAS, on December 22, 2016, Defendants filed a reply in further support of Defendants' Motion to Compel (Dkt. 36) further seeking to compel OSI to comply with the terms of the Stipulation and Order Governing the Production and Exchange of Confidential Information (Dkt. 31) (the "Confidentiality Order");

WHEREAS, on January 5, 2017, the Court heard oral argument on the parties' motions to compel and OSI's motion to dismiss Defendants' counterclaims IV and V;

WHEREAS, during oral argument on the parties' motions to compel and OSI's motion to dismiss, the Court ordered (i) that the current trial scheduling order be lifted, (ii) Defendants to supplement their response to Interrogatory No. 9 of OSI's Second Set of Interrogatories, (iii) OSI to supplement its response to Interrogatory No. 15 of Defendants' First Set of Interrogatories, (iv) the parties to meet and confer in an attempt to resolve remaining disputes relating to OSI's document production and to inform the Court of the results of the meet and confer, and (v) the parties to file supplemental briefing on the elements of a claim for negligent misrepresentation;

WHEREAS, on January 6 and 9, 2017, the parties met and conferred in an attempt to resolve remaining disputes relating to OSI's document production and to discuss an appropriate schedule for moving forward;

WHEREAS, on January 9, 2017, the parties jointly filed with the Court a letter (Dkt. 39) summarizing the results of their meet and confer identifying the areas of agreement and remaining areas of disagreement; and

WHEREAS, on January 12, 2017, the Court issued a telephonic ruling on remaining open issues with respect to Defendants' Motion to Compel;

IT IS HEREBY ORDERED, this ___ day of _____, 2017 that:

1. All deadlines in the Order Governing Case Schedule (Dkt. 21) are lifted;

2. For 30 days from the date of this Order, the parties shall not file any motions or schedule any depositions (the "Stay");

3. Fifteen days after the expiration of the Stay, the parties shall file simultaneous supplemental submissions regarding the elements of a claim for negligent misrepresentation not to exceed twelve (12) pages;

4. Plaintiff's Motion to Compel is GRANTED IN PART. Within fifteen days after the expiration of the Stay, Defendants shall supplement their response to Interrogatory No. 9 of OSI's Second Set of Interrogatories to provide Defendants'

rationale for agreeing to pay \$10,000,000, subject to certain adjustments, to purchase OS Pacific;

5. Defendants' Motion to Compel is GRANTED WITH MODIFICATIONS. Within fifteen days after the expiration of the Stay, OSI shall (i) supplement its response to Interrogatory No. 15 of Defendants' First Set of Interrogatories with respect to the specific provisions of the Purchase Agreement referenced in paragraphs 26–28 of Defendants' counterclaims and (ii) supplement its document production in accordance with the following procedure:

- a. OSI shall identify documents responsive to Defendants' document requests by applying predictive coding technology to all documents that have not previously undergone a document-by-document attorney-level review for their responsiveness and that have been produced to Defendants as of January 9, 2017;
- b. The parties shall work together -- and with their agreed-upon vendor, Parcels, Inc. -- to formulate the procedure to identify documents responsive to Defendants' document requests using the predictive coding process;
- c. Upon completion of the predictive coding process, OSI shall make a new production to Defendants, with new Bates numbers,

that will include documents deemed responsive by the predictive coding software;

d. [Plaintiff]: Any designation of a document produced after January 9, 2017, as Confidential shall be done in good faith in accordance with the Confidentiality Order, but in the interest of proportionality OSI shall not be required to perform a document by document attorney review of each individual document.

[Defendants]: Any designation of a document produced after January 9, 2017, as Confidential shall be done in in accordance with the Confidentiality Order.

6. All expenses associated with the predictive coding process shall be borne by OSI. Attorneys' fees incurred by Defendants' counsel in connection with the predictive coding process shall be borne by Defendants;

7. [Plaintiff]: OSI shall pay Defendants' reasonable expenses incurred in bringing Defendants' Motion to Compel to the extent it relates Defendants' motion to compel OSI to perform a supplemental review of its document production, including Defendants' attorneys' fees. Within ten days of the entry of this Order, Defendants' counsel shall submit a Court of Chancery Rule 88 affidavit and proposed order setting forth such fees and expenses. Any objection OSI has to the

amount sought or the proposed order shall be filed with this Court within ten days thereafter, and Defendants' response filed ten days thereafter.

[Defendants]: OSI shall pay Defendants' reasonable expenses incurred in bringing Defendants' Motion to Compel, including Defendants' attorneys' fees. Within ten days of the entry of this Order, Defendants' counsel shall submit a Court of Chancery Rule 88 affidavit and proposed order setting forth such fees and expenses. Any objection OSI has to the amount sought or the proposed order shall be filed with this Court within ten days thereafter, and Defendants' response filed ten days thereafter.

Chancellor Andre G. Bouchard

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Andre G Bouchard

File & Serve

Transaction ID: 60097365

Current Date: Jan 27, 2017

Case Number: 12353-CB

Case Name: STAYED - CONF ORD - OSI Restaurant Partners, LLC v. United Ohana, LLC, et al.

Court Authorizer

Comments:

Plaintiff's version of paragraph 5(d) is entered with the qualification that plaintiff's counsel shall conduct a high-level scan of the documents generated from the predicative coding process to identify documents that obviously do not warrant confidential treatment in order to ensure that they are not designated as such.

Defendants' version of paragraph 7 is entered.

/s/ **Judge Bouchard, Andre G**