

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PROFESSIONAL SYSTEMS CORP.	:	
d/b/a PSC INFO GROUP,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. 05-2689
v.	:	
	:	
OPEX POSTAL TECHNOLOGIES,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, S. J.

August 24, 2006

Presently before the Court is Plaintiff's Motion to Sanction Defendant and Compel Compliance with F.R.C.P. 26 (Docket No. 13) and Defendant's Response thereto (Docket No. 14). For the reasons stated below, Plaintiff's Motion is denied.

In December 2003, Defendant OPEX Postal Technologies ("OPEX"), through its sales agent Bill Boyce ("Boyce"), entered into an agreement with Plaintiff Professional Systems Corporation ("PSC") to sell PSC two high speed letter sorter machines.¹ Subsequently, PSC filed a Complaint for fraud and equitable rescission when the machines did not meet the capabilities that were allegedly represented to PSC. PSC now moves to compel OPEX to

1. The facts of the underlying suit have been fully set forth in this Court's Order of March 8, 2006.

produce specific documents that PSC argues OPEX did not disclose as required by Federal Rule of Civil Procedure 26(a).²

Under Rule 26, a party has a duty to disclose, inter alia:

- (A) the name and, if known, the address and telephone of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.
- (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

Fed. R. Civ. P. 26(a). The goal of the initial disclosure requirement under Rule 26(a) is to “accelerate the exchange of basic information about the case at an early stage of discovery.”

United States v. Merck-Medco Managed Care, 223 F.R.D. 330, 335 (E.D. Pa. 2004) (internal citation omitted). As OPEX notes, the initial disclosure under Rule 26(a) is just the starting point of discovery. (Def.’s Resp. at 3.)

2. As stated in PSC’s proposed order, PSC requests:

[C]ommission statements and related documents from Boyce; sales meetings, agendas and related documents from 2002 through 2005; annual performance reviews and Boyce’s employment file and related documents; copies of all sales and implementation materials given to PSC including inter-machine communication and capacity and FSRs [field service reports]; the Sales and Employee handbook referenced by Boyce; and all internal testing regarding networking of machines together and related documents prior to the PSC sale, including documents related to the beta test site per Boyce.

In its Motion, PSC also argues that OPEX should have identified David Stevens as an individual likely to have discoverable information. (Pl.’s Mot. at 3.)

Here, in its initial disclosure, OPEX included the names and information of five individuals likely to have discoverable information. With respect to its obligation to disclose relevant documents in its possession, OPEX incorporated by reference 3,772 documents it supplied to PSC in response to PSC's Request for Production of Documents. The Court finds that such disclosures satisfy OPEX's requirements under Rule 26(a).³ Since the Court is denying Plaintiff's Motion to Compel, sanctioning OPEX is inappropriate. Nonetheless, the Court will address each of the specific categories of information which PSC requests.

With respect to OPEX's duty to disclose David Stevens as an individual likely to have discoverable information, OPEX argues that under Rule 26(a), it is required only to identify individuals it will use to support its own claims and defenses and that it does not intend to use Mr. Stevens. (Def.'s Resp. at 3.) The Court agrees. The Court also notes that PSC will have an opportunity to gain any relevant information from Mr. Stevens via a scheduled deposition.

Additionally, from OPEX's August 1, 2006 letter to PSC, it appears OPEX already provided PSC with many of the documents it seeks to compel. These documents include the following: all statements for commission earned by Boyce pursuant to the machines at issue as well as statements for commissions earned by Boyce relating to previous sales; sales and implementation materials for the machines at issue including the inter-machine communication and capacity; Boyce's annual performance reviews; and internal tests regarding the networking of the machines at issue before and after the sale to PSC.⁴

3. Although the Court finds that OPEX satisfied its responsibilities under Rule 26(a) at this time, the Court reminds OPEX that it is under a duty to supplement or correct such disclosures under Rule 26(e). Fed. R. Civ. P. 26(e).

4. OPEX also offered field service reports ("FSRs") to PSC provided that PSC executed a Non-Disclosure Agreement to protect confidential information of other OPEX customers. PSC did not respond to this offer.

With respect to any remaining documents which PSC seeks to compel, such as the sales and employee handbook referenced by Boyce in his deposition, PSC itself notes that the parties have not yet completed discovery. (Pl.'s Mot. at 7.) Since the parties are still engaged in discovery, PSC has the opportunity to formally request any information it seeks through additional, well-tailored interrogatories or requests for production of documents. If OPEX then objects to such information, the Court invites PSC to file a motion to compel setting forth the specific reasons why such information is relevant to its case.

For the reasons set forth above, Plaintiff's Motion is denied. An order follows.

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OPEX POSTAL TECHNOLOGIES,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 24th day of August 2006, upon consideration of Plaintiff's Motion to Sanction Defendant and Compel Compliance with F.R.C.P. 26 (Docket No. 13) and Defendant's Response thereto (Docket No. 14), it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.
RONALD L. BUCKWALTER, S.J.