STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR. and
THE FILTER DEPOT, LLC,

Plaintiffs,

vs. Case No. 2014-3568-CB

MARCIA SHOHAM, JONATHAN
SHOHAM and MIDWEST AIR
FILTER, INC.,

Defendants.
_____/

OPINION AND ORDER

Defendants have filed a motion to strike expert opinion and/or to allow amended witness list and/or to extend discovery. Plaintiffs have filed a response to the motion and request that the motion be denied.

I. Factual and Procedural History

On March 3, 2015, the Court entered its discovery and case evaluation order in this matter ("Scheduling Order"). The Scheduling Order provides, *inter alia*, that "all discovery, including depositions, interrogatories, medical examinations, etc., shall be initiated by June 15, 2015 unless extended by order of the Court." On or about June 24, 2015, Defendants sent Plaintiffs additional discovery requests. Plaintiffs have refused to answer the requests on the basis that the requests were untimely, are overly broad, and are irrelevant.

On August 31, 2015, Defendants filed their instant motion to, *inter alia*, extend discovery for the limited purpose of requiring Plaintiffs to answer a portion of their tardy

discovery requests. On September 3, 2015, Plaintiffs filed a response to the motion and requested that the motion be denied. On September 8, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343-346; 497 NW2d 585 (1993); MCR 2.302(B)(1). Although broad discovery is encouraged, a party opposing discovery must not be subject to "excessive, abusive, irrelevant or unduly burdensome discovery requests." *Hamed v Wayne County*, 271 Mich App 106, 110; 719 NW2d 612 (2006) (internal citation omitted). As such, a court may issue "any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." MCR 2.302(C). Furthermore, discovery should not be extended merely to allow a "fishing expedition." *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004).

III. Arguments and Analysis

At the September 8, 2015 hearing Defendants refined their request to extend to discovery. Specifically, Defendants requested that discovery be extended to require Plaintiffs to do the following:

(1) Produce the portion of all of Plaintiff Edward Castle, Jr.'s ("Plaintiff Castle") tax returns since 2012 showing income Plaintiff Castle received from sources other than Defendant Midwest Air Filter, Inc. ("MAF");

(2) Identify and produce, to the extent possible, any communications Plaintiff Castle has made with any of MAF's customers since he was terminated;

(3) Produce any data Plaintiff Castle possesses that is MAF's property; and

(4) Identify any communications Plaintiff Castle has had with his son Dave Castle regarding MAF's customers, and to produce such communications to the extent records of such communications exists.

With respect to the request for the portion(s) of Plaintiff Castle's tax returns since 2012 showing any income he has received from sources other than MAF, the Court is convinced that Defendants' motion should be granted, in part, and denied in part. Defendants seek the requested information in connection with Plaintiff Castle's allegation that he has been financially damaged by his termination. With respect to the portion of Defendants' request seeking portions of tax returns for tax years before Plaintiff Castle's employment was terminated, the Court is convinced that such a request is irrelevant and overly broad as only the sources of income since Plaintiff Castle's termination are relevant to the question of the extent to which Plaintiff Castle's income has been negatively impacted by his termination. With respect to the tax years since Plaintiff Castle's termination, the Court finds Defendants' request reasonable, narrowly tailored and relevant. Consequently, the Court will grant Defendants' motion related to their request for the portion(s) of Plaintiff Castle's tax returns for the years since his termination showing any income he has received from sources other than MAF.

With regards to Defendants' second request, the Court is satisfied that Defendants' request is relevant and not overly broad. Specifically, Defendants' request is relevant to the question of how, if at all, Plaintiff Castle's actions have negatively impacted the value of MAF. If Plaintiff Castle has communicated with MAF's customer since his termination in a manner would cause those customers to leave MAF, MAF's value could be diminished by the loss of those customers, thereby lowering the value of

a potential buyout of Plaintiff Castle's interest in MAF. Accordingly, the Court is convinced that Defendants' motion should be granted to the extent that it seek an extension of discovery to require Plaintiffs to identify and produce, to the extent possible, any communications Plaintiff Castle has made with any of MAF's customers since he was terminated.

Defendants' third request seeks the return of any data Plaintiff Castle possesses that he obtained while employed with MAF. However, Defendants failed to identify any basis for a good faith belief that Plaintiff Castle possesses such information, and have failed to demonstrate that MAF is entitled to have such data delivered to it. Consequently, Defendants' request to extend discovery to require Plaintiff Castle to respond to its third request must be denied.

Finally, the Court is convinced that Defendants request that Plaintiff Castle identify any communications he has had with his son Dave Castle regarding MAF's customers, and to produce such communications to the extent records of such communications exists is a relevant inquiry given that any efforts made by Plaintiff Castle to assist his son in getting business from MAF's current and former customers is germane with respect to MAF's value, which for the reasons discussed above, could affect the value of a potential buyout of Plaintiff Castle's interest in MAF.

IV. Conclusion

For the reasons discussed above, Defendants' motion to extend discovery is GRANTED, IN PART, and DENIED, IN PART. Specifically, Plaintiffs shall, within 21 days of the date of this Opinion and Order: (1) Produce the portion of all of Plaintiff Castle tax returns since his termination from MAF showing income Plaintiff Castle

Castle received from sources other than MAF; (2) Identify and produce, to the extent possible, any communications Plaintiff Castle has made with any of MAF's customers since he was terminated; and (3) Identify any communications Plaintiff Castle has had with his son Dave Castle regarding MAF's customers, and to produce such communications to the extent records of such communications exists. The remainder of Defendants' request to extend discovery is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JAN 21 2016

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge