

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

ACME IRON & METAL COMPANY, §
a d/b/a of TXALLOY, INC., and §
MAYFIELD PAPER COMPANY, §
INC., on their own behalf and on §
behalf of those similarly situated, §

Plaintiffs, §

v. §

REPUBLIC WASTE SERVICES OF §
TEXAS, LTD., sometimes d/b/a §
TRASHAWAY SERVICES and §
DUNCAN DISPOSAL, §

Defendant. §

CIVIL ACTION NO.:
6:14-CV-00045-C

DEFENDANT'S ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST INTERROGATORIES

TO: Plaintiffs, Acme Iron & Metal Company and Mayfield Paper Company, Inc., by and through their attorneys of record, James A. Hemphill and David A. King, Graves Dougherty Hearon & Moody, P.C., 401 Congress Avenue, Suite 2200, Austin, Texas 78701.

Defendant Republic Waste Services of Texas, Ltd. ("Republic") hereby serves its Answers and Objections to Plaintiffs' First Interrogatories. Republic reserves the right to amend or supplement these responses pursuant to the Federal Rules of Civil Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 29th day of December, 2014, this document was served via electronic mail upon:

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GENERAL OBJECTIONS & OBJECTIONS TO INSTRUCTIONS

1. Republic objects to each interrogatory to the extent it calls for information not reasonably calculated to lead to the discovery of admissible evidence as to Plaintiffs' individual claims asserted in Plaintiffs' Complaint or Republic's defenses, in contravention of Federal Rule of Civil Procedure 26(b)(1). Republic submits these Answers and Objections without conceding the relevance or materiality of the subject matter of any answer, document, or Interrogatory.
2. Republic objects to each interrogatory to the extent it calls for the production of documents or information that is private, confidential, proprietary, or similarly protected material. Subject to that objection, Republic will produce appropriate documents subject to the parties' agreement to be bound by the terms of a protective order entered in this action with approval of the Court. Nonetheless, Republic reserves all rights to withhold confidential and proprietary information.
3. Republic objects to each interrogatory to the extent it calls for production of documents or information for which Republic owes a third party an obligation of confidentiality or privacy.
4. Republic objects to each interrogatory to the extent it assumes disputed facts or legal conclusions in the terms of the interrogatory or any applicable definitions. Any response or objection, including any discoverable information or documents produced by Republic, is without prejudice to this objection.
5. Republic objects to each of these interrogatories on the grounds that they seek information beyond the permissible scope of discovery in the current procedural posture of this case. Specifically, discovery should be limited at this time to matters relevant to a motion for class certification or to Plaintiffs' individual claims. *See* Fed. R. Civ. P. 23(c)(1) advisory committee's note; *see also Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir. 1982) (affirming the district court's denial of discovery beyond class certification issues); *Hamilton v. First Am. Title Ins. Co.*, Civil Action No. 3:07-CV-1442-G, 2010 WL 791421, at *1 (N.D. Tex. Mar. 8, 2010) (addressing discovery dispute after court's scheduling order "limiting the scope of discovery 'to class certification issues' pending a ruling on class certification"); *In re Merscorp Inc.*, No. C-07-25, 2008 WL 347682, at *1 (S.D. Tex. Feb. 6, 2008) (denying requested discovery, in part, because the requests "are not narrowly tailed and go well beyond the realm of discovery on class certification").

6. Republic objects to each request on the grounds that they impose an undue burden on Republic, having been served (following months of Plaintiffs' inaction) so as to require Republic to answer during a period that includes nearly a week of holidays. Subject to the foregoing, Republic will confer with Plaintiffs regarding a mutually agreeable schedule for the identification of appropriate document, if any.
7. Republic objects to Instruction Nos. 1, 3, and 5 to the extent they call for information protected by the attorney-client privilege, attorney work-product or similar privileges recognized by law.
8. Republic objects to Instruction No. 2 because it is overly broad, unduly burdensome, and calls for documents and information beyond the statutes of limitations applicable to Plaintiffs' claims and also is therefore not reasonably calculated to lead to the discovery of admissible evidence.
9. Republic objects to Instruction No. 3 to the extent it enlarges Republic's obligations under Fed. R. Civ. P. 33. Subject to the foregoing objection, Republic will confer with Plaintiffs regarding an acceptable protocol for producing electronically stored information pursuant to the Federal Rules of Civil Procedure.

ANSWERS TO INTERROGATORIES

Interrogatory No. 1:

Please describe briefly the general methodology used by Republic in conducting the "review of billing data" referred to in the September 26, 2014 letter from Don W. Griffis to Ms. Lysia H. Bowling, City Attorney, City of San Angelo, a copy of which is attached hereto as Exhibit A, including without limitation the general methodology for determining who was eligible for a refund, how the amount of refund was calculated, the role of the "leading international accounting firm" referenced in the letter, and any provisions for distribution of the refund.

Answer:

Republic objects to this Interrogatory as vague and ambiguous such that Republic cannot reasonably ascertain the requested information sought by the interrogatory to "describe briefly" the "general methodology" of how the refund was calculated, the "general methodology for determining who was eligible for a refund,"

and “any provisions for distribution of the refund.” Because of that vagueness and ambiguity Republic construes the interrogatory such that the below answer identifies all information sought therein. Further, Republic objects to this interrogatory on the grounds it seeks information not reasonably calculated to lead to the discovery of admissible evidence as to Plaintiffs’ individual claims. Republic also objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, attorney work-product doctrine, and other privileges provided by Texas law and the Federal Rules of Civil Procedure.

Subject to and without waiving its General and Specific Objections, Republic answers as follows: Republic gathered billing data comprising line-item charges on individual invoices for commercial and industrial customer accounts located in the City of San Angelo and shared that data with accountants from Grant Thornton L.L.P., who assisted with calculating total refund amounts for individual accounts. Refunds were calculated for each account by adding from records for each invoice associated with the respective account (1) all environmental recovery fees (ERF) charged to the account for each service type and container size; (2) all fuel recovery fees charged to the account (FRF), above the amounts expressly provided by city ordinance, for each service type and container size; and (3) all applicable franchise fee and sales tax amounts correlated to the refunded ERF or FRF amounts. Republic has calculated the refund using billing data going back to August 1, 2004, which includes the full ten-year term of Republic’s prior contract with the City. Refunds to customers also include interest at the rate of 3.5%. Most refunds have

been or will be distributed in the form of individual checks for each account receiving a refund.

Interrogatory No. 2:

Please describe briefly how the refund from Republic to Acme evidenced in the October 27, 2014 letter to “Valued Customer” from Ray Grothaus (a copy of which is attached hereto as Exhibit B hereto) was calculated, including without limitation identification of documents used in the calculation and documents generated in calculating the amount of refund.

Answer:

Republic objects to this Interrogatory as vague and ambiguous such that Republic cannot reasonably ascertain the requested information sought by the interrogatory to “describe briefly” Plaintiff’s refund calculation. Republic also objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege, attorney work-product doctrine, and other privileges provided by Texas law and the Federal Rules of Civil Procedure. Further, Republic objects to this interrogatory on the grounds that it calls for the identification of documents in Plaintiff’s possession, custody, control, or are publicly available and is therefore unduly burdensome.

Subject to and without waiving its General Objections and Specific Objections, Republic answers as follows: Acme’s refund was calculated by adding from records for each individual invoice going back to August 1, 2004: (1) all environmental recovery fees (ERF) charged to the account for each service type and container size; (2) all fuel recovery fees charged to the account (FRF), above the amounts expressly provided by city ordinance, for each service type and container size; and (3) all applicable franchise fee and sales tax amounts correlated to the

