IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs. CIVIL NO. 01-732 WJ/RLP

STERLING BROTHERS
CONSTRUCTION, INC.,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL

THIS MATTER having come before the court on Defendant's Motion to Compel **(Docket No. 32)**, the court having read the motion, the memoranda in support of and opposition to the motion and otherwise being fully advised**,** finds that the motion is well taken and will **granted.**

Defendant's Motion to Compel is made pursuant to Fed.R.Civ.P. 37 and is directed specifically to Defendant's Request for Production of Documents Nos. 10 and 11. Defendant focuses on the production of tax returns for the years 1998, 1999 and 2000 in Request for Production No. 10. Plaintiff has already produced income tax returns for the years 1998 and 2000. Therefore, the motion is directed to secure the 1999 tax returns.

In Request for Production No. 11, Defendant seeks an educational and employment records release directed at educational institutions attended by Plaintiff as well as Plaintiff's former employers.

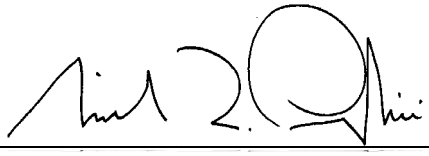
Rule 26(b) requires disclosure of information that is "reasonably calculated to lead

to the discovery of admissible evidence." Evidence does not need to be admissible to be relevant and thus discoverable. *Seattle Times Co. v. Rhinehart,* 467 U.S. 20 (1984). The plaintiff's 1999 tax return clearly falls within the parameters of evidence that is discoverable under Rule 26 given the fact that Plaintiff was employed by Defendant during that year and, therefore, disclosure of this tax return may lead to admissible evidence regarding damages and other sources of income or even other employers of Plaintiff. Clearly, disclosure of employment records of Plaintiff may lead to evidence relating to other claims of sexual harassment or may lead to evidence pertaining to the subjective proclivities of Plaintiff in the employment context. Therefore, both the tax returns and the employment records release clearly fall within the parameters of Rule 26.

A successful party to a motion to compel is entitled to recover expenses including a reasonable attorney fee from the losing party. See *Equal Employment Opportunity Comm'n v. Klockner H & K Machines, Inc.,* 168 F.R.D. 233, 236 (E.D. Wis. 1996). The award of expenses and fees by the court is mandatory unless the losing party demonstrates that its conduct was "substantially justified" or if other circumstances render an award of expenses "unjust". See *Rickels v. City of South Bend, Ind.,* 33 F.3d 785 (7th Cir. 1994). The position of the plaintiff was not substantially justified. Disclosure of financial information as well as employment information in an employment discrimination case is routine. Therefore, the court awards Defendant $250.00 in attorney's fees as a sanction pursuant to Rule 37(a). Should either party request a hearing on the reasonableness of this attorney fee award, a request for a hearing should be made in writing no later than **February 28, 2002.** A hearing on the attorney fee request will be set

thereafter by telephone and will only address the reasonableness of the attorney fee award. If there is no request for a hearing on the reasonableness of the attorney fee award by February 28, 2002, Plaintiff shall pay to Defendant the attorney's fees in the amount of $250.00 no later than **March 8, 2002.**

IT IS SO ORDERED.



RICHARD L. PUGLISI
United States Magistrate Judge