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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Petitioner,
v.
ASG SOLUTIONS CORPORATION,
Respondent.

Case No.: 3:17-cv-01224-L-BGS

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pending before the Court is Respondent ASG Solutions Corporation (“Respondent”) Objections [Doc. 19] to Magistrate Judge Bernard G. Skomal’s Report and Recommendation (“R&R” [Doc. 18]) recommending that this Court grant Petitioner United States of America’s (“Petitioner”) Petition [Doc. 1] to enforce a False Claims Act civil investigative demand. The Court has reviewed *de novo* the Petition, Respondent’s Response [Doc. 10], Petitioner’s Reply [12], Judge Skomal’s R&R, Respondent’s Objections, and Petitioner’s Reply [Doc. 20] to Respondent’s Objections. For the following reasons, the Court **OVERRULES** Respondent’s Objections and **ADOPTS** Judge Skomal’s R&R.

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1 The facts and procedural history of this case were accurately presented in Judge
2 Skomal’s R&R, which the Court need not repeat in full here. By way of background,
3 Petitioner is investigating whether Respondent has violated the False Claims Act by
4 falsely representing that it qualified for participation in the HUBZone program, which
5 reserves some government contracting opportunities for small businesses that meet
6 certain criteria. One criteria of the HUBZone program is that a small business hire a
7 certain percentage of its workforce from HUBZones, which are historically underutilized
8 business zones.

9 In the course of this investigation, Respondent used its subpoena powers under 31
10 U.S.C. §§ 3729–3733 to issue a Civil Investigative Demand (“CID” [Doc 1-2 Ex. 1].) In
11 its CID, Respondent demanded twenty two categories of documents, most of which
12 concern the composition of Respondent’s workforce. (Id.) Respondent has provided
13 Petitioner with a number of documents responsive to the CID, but full compliance has not
14 yet been achieved. Respondent has often gone non-responsive to Petitioner’s repeated
15 requests for certain categories of documents and has refused to issue a Certificate of
16 Compliance as required by both the CID and 31 U.S.C. § 3733(f). Petitioner therefore
17 petitioned this Court for an order compelling Respondent’s compliance with the CID. In
18 his R&R, Judge Skomal recommended that the Court grant Petitioner’s Petition.
19 Respondent timely raised two objections to Judge Skomal’s R&R.

20 ASG’s first objection is that timesheets for employees who did not charge to any
21 HUBZone related contract are not relevant. This objection is unpersuasive because one
22 way a company can achieve HUBZone program eligibility is by drawing at least 35% of
23 its employees from residents of HUBZones. 13 C.F.R. § 126.200 (b)(iv)(3). To
24 determine whether the 35% criterion is met, Petitioner would seem to need evidence of
25 both (1) the number of HUBZone residents employed by a company (the “numerator”)
26 and (2) the total number of persons the company employees (the “denominator”).
27 Timesheets from employees working on non-HUBZone contracts are thus relevant
28 because all such employees factor into the denominator. To the extent employees

1 working on non-HUBZone contracts reside in HUBZones, they would also be relevant to
2 the numerator. The Court therefore **VERRULES** this objection.

3 Respondent's second objection is that production of timecards for employees
4 working on Non-HUBZone contracts would constitute an undue burden. Part of the
5 undue burden argument centers on Respondent's assertion that some of the requested
6 documents might no longer exist. This argument is unpersuasive in light of Respondent's
7 failure to produce a certificate of compliance. If in fact some of the requested documents
8 do not exist, Respondent shall comply with the CID and 31 U.S.C. § 3733(f) by
9 providing a sworn certificate indicating all requested documents have either been
10 provided or do not exist.

11 Nor is the Court persuaded by Respondent's argument that production of the
12 requested documents would constitute an undue burden because compliance *could*
13 require many hours of staff time and effort to search for and collect 10,000 or more pages
14 of documents. (Wiezerba Decl. [Doc. 19-1] ¶ 7.) The only evidence presented in
15 support of this argument is hearsay declaration testimony in which Respondent's counsel
16 says Respondent relayed this information to him. This evidence, which is
17 unaccompanied by any legal citation or argument, is not sufficient to demonstrate that
18 CID compliance would unduly burden Respondent. The Court therefore **VERRULES**
19 this objection.

20 Finally, Respondent requests that, as an alternative to ordering compliance with the
21 CID, the Court stay this proceeding for ninety days to allow the parties to resolve the
22 matter between themselves. The Court denies this request. Petitioner served the CID on
23 August 9, 2017. Since that time, the parties have met and conferred multiple times with
24 the aim of resolving this matter without judicial intervention. These meet and confer
25 efforts appear to have stalled because, according to Petitioner, Respondent is not making
26 a good faith effort to comply with the CID and has continually gone unresponsive to
27 Petitioner's communications. The Court therefore finds a stay unwarranted.

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1 **CONCLUSION & ORDER**

2 For the foregoing reasons, the Court **OVERRULES** Respondent's Objections,
3 **ADOPTS** Judge Skomal's Report and Recommendation, and orders as follows:

- 4 • Petitioner's Petition to enforce the United States Attorney's Office Civil
5 Investigative Demand No. 0457-0716-03 is **GRANTED**. Within thirty days of the
6 entry of this order Respondent shall fully comply with the CID and provide
7 Petitioner with a sworn certificate of compliance.

8 **IT IS SO ORDERED.**

9 Dated: July 18, 2018

10 
11 Hon. M. James Lorenz
12 United States District Judge