

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02961-REB-MJW

JOHN JONES,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

**ORDER ON
PLAINTIFF'S MOTION TO COMPEL
(Docket No. 28)**

MICHAEL J. WATANABE
United States Magistrate Judge

This matter is before the court on Plaintiff's Motion to Compel (docket no. 28). The court has reviewed the subject motion (docket no. 28), the response (docket no. 34) and the reply (docket no. 38). In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court finds:

1. That I have jurisdiction over the subject matter and over the parties to this lawsuit;
2. That venue is proper in the state and District of Colorado;

3. That each party has been given a fair and adequate opportunity to be heard;
4. That in the subject motion (docket no. 28), Plaintiff seeks an Order from this court compelling Defendant to respond to Plaintiff's Interrogatories Nos. 3, 6, and 15 and to produce documents in response to Plaintiff's Request for Production Nos. 7 and 8;
5. That Defendant argues that the subject motion (docket no. 28) should be denied as untimely and because the requests are not relevant, not likely to lead to the discovery of admissible evidence, and are unduly burdensome;
6. That Plaintiff asserts the following claims for relief: (a) racial discrimination pursuant to Title VII; (b) racial discrimination pursuant to 42 U.S.C. § 1981; (c) failure to reasonably accommodate Plaintiff's perceived disability in violation of the ADA Amendments Act of 2008; and, (d) retaliation in violation of the FMLA. See Amended Complaint (docket no. 9);
7. That Defendant filed its Motion for Summary Judgment (docket no. 20) with the court on November 6, 2012. Plaintiff's Response (docket no. 33) was filed with the court on December 14, 2012. Defendant's Reply (docket no. 37) was filed with the court on January 4, 2013. This motion is ripe for ruling and pending before Judge Blackburn;
8. That on November 6, 2012, Plaintiff filed a Motion for Leave to

Amend the Complaint (docket no. 21) and such motion was denied on November 29, 2012. See docket no. 30;

9. That the subject motion (docket no. 28) was filed with the court on November 29, 2012, some 98 days after the discovery cut-off date. The discovery cut-off date was August 23, 2012. The proposed final pretrial order is to be filed with the court by January 15, 2013. See docket no. 12. The Final Pretrial Conference is set for January 17, 2013. The Trial Preparation Conference is set on February 8, 2013, and the Jury Trial is set to begin on February 25, 2013; and
10. That the subject motion (docket no. 28) is untimely and Plaintiff has failed to show any justification or compelling reason for delay in filing of the subject motion. Centennial Archaeology, Inc. AECOM, Inc., 688 F.3d 673, 682 (10th Cir. 2012); Spacecon Specialty Contractors, LLC v. Bensigner, No. 09-cv-02080-REB-KLM, 2011 WL 782677 (D. Colo. Mar. 1, 2011); Norton v. City of Marietta, 432 F. 3d 1145, 1156 (10th Cir. 2005); Butler v. Benson, 193 F.R.D. 664, 666 (D. Colo. 2000) (“ A party cannot ignore available discovery remedies for months and then, on the eve of trial, move the court for an order compelling production.”). Accordingly, the subject motion (docket no. 28) should be denied.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law this court ORDERS:

1. That Plaintiff's Motion to Compel (docket no. 28) is DENIED;
2. That each party shall pay their own attorney fees and costs for this motion.

Done this 9th day of January 2013.

BY THE COURT

s/Michael J. Watanabe
MICHAEL J. WATANABE
U.S. MAGISTRATE JUDGE