

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<hr/>)
DONALD G. GROSS,)
)
Plaintiff,)
)
v.)
	Case No. 1:07CV00399 (EGS))
AKIN GUMP STRAUSS HAUER & FELD)
LLP,	(ELECTRONICALLY FILED))
)
Defendant.)
)
)
)
<hr/>)

OPPOSITION TO SECOND MOTION TO COMPEL

Defendant Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”), by counsel, hereby opposes Plaintiff Donald G. Gross’s Second Motion to Compel Discovery. Mr. Gross has sued Akin Gump for age discrimination, claiming that his termination after one year of employment was based upon his age. His claim rests entirely upon alleged age-related comments by his older supervisor, Akin Gump partner Sukhan Kim, who had been among those who recommended that the firm hire Mr. Gross to work at the firm in the first place.

The universe of documents in this case is very small--less than two (2) standard litigation boxes. Akin Gump has produced documents “as they are kept in the usual course of business” in full compliance with the federal discovery rules. Mr. Gross contends in his Second Motion to Compel that he is somehow unable to conduct a meaningful review of the two boxes without Akin Gump categorizing each document according to his duplicative and overlapping document

requests. Akin Gump is in no better position than Mr. Gross to conduct that exercise, and it is not required to do so.¹

I. BACKGROUND

The factual background for this case is set forth in Akin Gump's Opposition to Plaintiff's first Motion to Compel, which Akin Gump filed on July 17, 2007, and will not be repeated here, but is incorporated herein.

Akin Gump has produced slightly less than two standard litigation boxes worth of documents in this matter. Moreover, the documents produced by Akin Gump are easily identifiable as his personnel file (AK 000001-000081); Akin Gump's Firm Manual (AK 000082-000163), Akin Gump's Summary of Benefits (Senior Counsel, Counsel, Associates, Senior Attorneys and Staff Attorneys (AK 000164-000172); materials provided to the Equal Employment Opportunity commission (AK 000173-000192); offer letters for other Senior Counsel (AK 000193-000289); Korea Practice Group meeting minutes (AK 003294-003308); labeled charts regarding job and compensation history of various Akin Gump attorneys (produced in an effort to compromise with Mr. Gross's requests that are the subject of his First Motion to Compel) (AK 003309-003311); and Mr. Gross's time records (AK 003312-003333). The remainder of the production is email to, from or copying various Akin Gump personnel identified by Mr. Gross. Akin Gump produced separate electronic files for each of its electronic

¹ Mr. Gross also maintains that he is unable to meaningfully review Akin Gump's document production because it has redacted client identifying information from the production. This is one of the subjects of Mr. Gross's first Motion to Compel Discovery, filed July 3, 2007, and is addressed in Akin Gump's Opposition to that Motion filed July 17, 2007.

documents, including the Korea Practice Group meeting minutes and email, in bates labeled format.²

II. ARGUMENT

A. Defendant's Production Is Only Slightly Larger Than A Breadbox.

Mr. Gross's claim that Akin Gump's refusal to categorize documents has "deprived [him] of a full opportunity to meaningfully review the discovery" is untenable. Akin Gump's production, described above, is both more than manageable in size and transparent. It is hardly the "undifferentiated mass" that Mr. Gross describes in his Motion.

B. Defendant Has Produced Documents As They Are Kept In The Usual Course Of Business.

In addition, Defendant has produced its documents, including emails, "as they are kept in the usual course of business" in full compliance with the federal discovery rules. As this Court has repeatedly held, a party is not required under the federal discovery rules to label its produced documents with the categories set forth in the opposing party's discovery requests if they have produced documents "as they are kept in the usual course of business." In Doe v. District of Columbia, 231 F.R.D. 27, 35-36 (D.D.C. 2005), this Court held:

[D]efendant complains that plaintiff failed to "label any documents provided with the categories set forth in the District's discovery requests," suggesting that such a failure constitutes a breach of the discovery rules. But, as defendant suggests in the preceding sentence, quoting Rule 34, "[a] party who produces documents for inspection shall produce them as they are kept in the usual course of business *or* shall organize and label them to correspond with the categories in the request." As long as plaintiff

² In contrast, Mr. Gross has produced one, unlabeled electronic file, leaving Defendant to guess as to the end and beginning of each produced document.

produced the documents “as they are kept in the usual course of business,” he was in compliance with the discovery rules.

Id. (internal citations omitted).

Similarly, in Washington v. Thurgood Marshall Academy, 232 F.R.D. 6, 10 (D.D.C. 2005), this Court found that:

[W]ith regard to plaintiff’s assertion that defendant should have labeled and identified which documents are responsive to each of plaintiff’s requests, this court finds that defendant was not under an obligation to do so. The Federal Rules of Civil Procedure require that, “[a] party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.” Accordingly, as I have recently explained, defendant is not required to identify to which requests the produced documents are responsive, if defendant produces them as they are kept in the usual course of business. Furthermore, given the breath and duplicative nature of plaintiff’s requests, it would be difficult and not very useful for defendant to identify to which requests each document was responsive.

Id. (internal citations omitted). Here, it would similarly be “difficult and not very useful” for Akin Gump to identify to which of Mr. Gross’s duplicative requests each document was responsive. For example, Mr. Gross has made the following overlapping requests:

Request No. 6: All documents referring or related to the qualifications of Plaintiff Gross.

Request No. 7: All documents referring or related to the job performance of Plaintiff Gross.

Request No. 8: All documents referring or related to the job duties of Plaintiff Gross.

Request No. 15: All documents reflecting or relating to any deficiencies or perceived deficiencies in the work performance of Plaintiff Gross.

Request No. 16: All documents reflecting or relating to the writing abilities of Plaintiff Gross.

Request No. 18: All documents reflecting or relating to the analytical abilities of Plaintiff Gross.

Request No. 20: All documents reflecting or relating to the business development abilities of Plaintiff Gross.

Plaintiff's First Request for Production of Documents, attached hereto as Exhibit A. Numerous emails produced by Akin Gump are responsive to most, if not all of these requests.

There is simply no utility to Akin Gump reviewing each document (especially each email) in its production and identifying to which of Mr. Gross's duplicative requests it is responsive. Not surprisingly, Mr. Gross has not articulated any benefit to this exercise. If Mr. Gross sees some value in sorting the two (2) boxes worth of documents in such a manner, he is free to do so. Akin Gump, however, has complied with its obligations under the federal discovery rules and should not be forced to complete this "not very useful" exercise.

Washington, 232 F.R.D. at 10.

III. CONCLUSION

For the foregoing reasons, Akin Gump respectfully requests that the Court deny Plaintiff's Second Motion to Compel in its entirety.

DATED: July 31, 2007

Respectfully submitted,

/s/
Christine N. Kearns (Bar # 416339)
Karen-Faye McTavish (Bar # 477588)
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
Telephone: (202) 663-8000

Counsel for Defendant