

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

WILLIAMS,

Plaintiff,

v.

ACXIOM CORPORATION,

Defendants.

Civil Action No.

2:15-CV-08464-ES-SCM

**BENCH OPINION ON DISCOVERY
DISPUTE**

D.E. 21

Friday, March 10, 2017

Steven C. Mannion, United States Magistrate Judge.

Before this Court is Plaintiff's informal discovery motion to compel.¹

I. BACKGROUND AND PROCEDURAL HISTORY

This action concerns age discrimination claims under the New Jersey Law Against Discrimination and wage claims under the New Jersey Wage Payment Law by plaintiff Richard William against his former employer defendant Acxiom Corporation.² Mr. Williams is a citizen of New Jersey and Acxiom is a citizen of Arkansas.³ Mr. Williams worked for Acxiom from August 1999 until his termination in June 2015.⁴

¹ (ECF Docket Entry No. ("D.E.") 21).

² (D.E. 1, Complaint).

³ (D.E. 1, Complaint at ¶¶ 7 - 8).

⁴ (D.E. 1, Complaint at ¶¶ 9 - 10).

In 2014, Mr. Williams and five of his colleagues were recruited by Acxiom to form the Enterprise Data Group Executive (“EDGE”) team.⁵ Ms. Hailey Dillon was assigned to supervise the EDGE team in April 2015 and started scrutinizing Mr. Williams’ performance.⁶

In May 2015, Ms. Dillon introduced two new spreadsheets—“Activity Tracking and Plan-to-Goal, for the EDGE team members to track their involvement and progress on sales opportunities.”⁷ Mr. Williams and two of his colleagues-- Audrey Levitan and Randy Hull (age 52) were unclear about the use of the new spreadsheets.⁸

“On June 15, 2015, Ms. Dillon and Lorna Garner (Human Resources) told Plaintiff Williams that he was being terminated effective immediately for "falsifying financial documents for financial gain", i.e., to collect commissions that he did not deserve and that Defendant Acxiom had a zero-tolerance policy for such conduct.”⁹ Mr. Williams was 58 years old at the time of his termination and the eldest member of his team.¹⁰

Mr. Hull was not terminated for conduct similar to Mr. Williams’ conduct.¹¹

A component of Mr. William’s compensation included “commissions based on business achievements that were closed and recognized.”¹² He “earned \$40,996.17 in commissions based

⁵ (D.E. 1, Complaint at ¶¶ 14, 31).

⁶ (D.E. 1, Complaint at ¶¶ 17-18).

⁷ (D.E. 1, Complaint at ¶ 20).

⁸ (D.E. 1, Complaint at ¶ 31).

⁹ (D.E. 1, Complaint at ¶ 45).

¹⁰ (D.E. 1, Complaint at ¶ 16).

¹¹ (D.E. 1, Complaint at ¶¶ 53-54).

¹² (D.E. 1, Complaint at ¶ 58).

on business he closed for and revenue recognized by Defendant Acxiom. This amount was due and owing to Plaintiff Williams at the time of his termination.”¹³

“Defendant Acxiom refused to pay Plaintiff Williams' the amount owed to him. Rather, they conditioned payment of ... earned commissions on his signing of a General Release of all claims he may have against them. Defendant Acxiom also refused to pay Plaintiff Williams' his 18 accrued, unused paid days off instead likewise conditioning this payment on his signing of a General Release. Plaintiff Williams was owed a total of \$8,134.30 for these accrued paid days off.”¹⁴

II. MAGISTRATE JUDGE AUTHORITY

Magistrate judges are authorized to decide any non-dispositive motion designated by the Court.¹⁵ This District specifies that magistrate judges may determine all non-dispositive pre-trial motions which includes discovery motions.¹⁶ Decisions by magistrate judges must be upheld unless “clearly erroneous or contrary to law.”¹⁷

III. LEGAL STANDARD

The Federal Rules of Civil Procedure must be construed by the Court and the parties to secure “the just, speedy, and inexpensive determination of every action and proceeding.”¹⁸ A

¹³ (D.E. 1, Complaint at ¶ 59).

¹⁴ (D.E. 1, Complaint at ¶ 60 - 61).

¹⁵ 28 U.S.C. § 636(b)(1)(A).

¹⁶ L. Civ. R. 72.1(a)(1); 37.1.

¹⁷ § 636(b)(1)(A).

¹⁸ Fed. R. Civ. P. 1.

Court's pretrial order "controls the course of the action unless the court modifies it."¹⁹ This is because the Court maintains control over the schedule to expedite disposition of the action and to discourage wasteful pretrial activities.²⁰

a. Liberal Standard for Discovery

The Federal Rules "allow broad and liberal discovery."²¹ "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."²² District courts must remain mindful that relevance is a broader inquiry at the discovery stage than at the trial stage.²³ Accordingly, "[f]or good cause, the court may order discovery of any matter relevant to the subject matter involved in the action."²⁴ "Although the scope of discovery under the Federal Rules is broad, this right is not unlimited and may be circumscribed."²⁵ A court may issue a protective order to regulate the terms, conditions, time or place of discovery.²⁶

¹⁹ Fed. R. Civ. P. 16(d).

²⁰ Fed. R. Civ. P. 16(a).

²¹ *Pacitti v. Macy's*, 193 F.3d 766, 777 (3d Cir. 1999).

²² FED. R. CIV. P. 26(b)(1)-(2).

²³ *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 104 (D.N.J. 1990).

²⁴ FED. R. CIV. P. 26(b)(1).

²⁵ *Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999).

²⁶ FED. R. CIV. P. 26(c).

b. Interrogatories

Interrogatories are a discovery device designed “to obtain simple facts...” and “can be a simple mode of obtaining the names and addresses of persons having knowledge of pertinent facts, or of securing information about the existence of documentary evidence[.]”²⁷ The recipient of interrogatories must respond “to the fullest extent possible, stating any objections with specificity.”²⁸ Although “a responding party generally is not required to conduct extensive research to answer an interrogatory, it must make a reasonable effort to respond.”²⁹ A responding party must also supplement its responses if the information sought is later obtained or amend the responses if they require correction.³⁰ A responding party shall use common sense and reason, and hyper-technical, quibbling, or evasive objections will be viewed unfavorably.”³¹

Rule 33(a)(1) provides that “unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).” It must be noted that Rule 26(b)(1) now requires that discovery be “proportional to the needs of the case. . . .”

²⁷ *Erie Ins. Property & Cas. Co. v. Johnson*, 272 F.R.D. 177, 183 (S.D.W.Va. 2010)(quoting Wright, Miller, & Marcus, Federal Practice & Procedure: Civil 3d § 2163).

²⁸ Fed.R.Civ.P. 33(b)(3) and (4).

²⁹ *Lamon*, 2014 WL 309424 (citing *L.H. v. Schwartzenegger*, 2007 WL 2781132 at 2 (E.D.Cal. Sep.21, 2007)).

³⁰ *Id.* (citing F.R.Civ.P. 26(e)).

³¹ *Lamon v. Adams*, 2014 WL 309424 (E.D. Cal. 2014)(citing *Collins v. Wal-Mart Stores, Inc.*, 2008 WL 1924935 at 8 (D.Kan. April 30, 2008)).

Responses to interrogatories are due within “30 days of being served with interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.”³²

Consistent with these rules, the Initial Scheduling Order permitted the parties to serve 25 single question interrogatories.³³ A pretrial order “controls the course of the action unless the court modifies it.”³⁴ A scheduling order may be “modified only for good cause and with the judge’s consent.”³⁵

c. Document Demands

Parties may serve on any other party a demand to produce any designated documents that are in the possession, custody, or control of another party.³⁶ Documents are within the possession, custody, or control of the recipient if “the party has actual possession, custody, or control, or has the legal right to obtain the documents on demand.”³⁷ A responding party must also supplement its responses if the information sought is later obtained or amend the responses if they require correction.³⁸

Rule 34 further requires,

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for

³² Fed.R.Civ.P. 33(a)(2).

³³ (D.E. 48 at ¶ 6).

³⁴ Fed.R.Civ.P. 16(d).

³⁵ Fed.R.Civ.P. 16(b)(4).

³⁶ *Lamon*, 2014 WL 309424 at *4 (citing F.R.Civ.P. 34(a)).

³⁷ *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir.1995).

³⁸ *Lamon*, 2014 WL 309424 at *4 (citing F.R.Civ.P. 26(e)).

objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. .

..

(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.³⁹

Objections to document demands or interrogatories must state with specificity the objection and how it relates to the particular request being opposed, and not merely that it is “overly broad and burdensome” or “oppressive” or “vexatious” or “not reasonably calculated to lead to the discovery of admissible evidence”.⁴⁰

To voice a successful objection to an interrogatory [the objecting party] cannot simply intone this familiar litany. Rather, [it] must show specifically how, despite the broad and liberal construction afforded the federal discovery rules, each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive ... The burden [is upon] the party resisting discovery to clarify and explain its objections and to provide support therefor.⁴¹

Failure to meet this standard may result in waiver of the objection.⁴² Boilerplate discovery responses that obfuscate the truth and do not provide notice to the adversary may warrant sanctions for causing unnecessary delays and increased costs of litigation for the parties and increasing the court’s burden.⁴³

³⁹ *Id.*

⁴⁰ *Harding v. Dana Transp., Inc.*, 914 F. Supp. 1084, 1102 (D.N.J. 1996).

⁴¹ *Id.* at 1102 (citations omitted).

⁴² *Id.* (citations omitted).

⁴³ *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 297-300 (N.D.W.Va. 2004).

IV. DISCUSSION

This discovery dispute concerns interrogatory requests 2, 7, 11, 12, 13, 14, 15, and 16, and document demands 13, 17, 31, 32, 33, 34, 35, and 36 served by plaintiff Richard William upon defendant Acxiom Corporation.

a. Williams' Interrogatory Requests on Acxiom⁴⁴

#2. Ruling: Motion to compel is granted in part and denied in part.

The request is overly broad and contains subparts that are not allowed.

Acxiom's response, however, includes the sort of hyper-technical quibbling and evasive objections that are viewed unfavorably.

Acxiom shall supplement its response to identify Mr. Williams's supervisor or managers from June 2011 to June 2015 and provide their names and mailing addresses.

#7. Ruling: Motion to compel is denied. Interrogatories are a discovery device designed "to obtain simple facts..." The information provided is sufficient. Mr. Williams can probe further and challenge the veracity of the information provided in his 30(b)(6) deposition.

#11. Ruling: Motion to compel is denied. The request contains subparts that are not allowed, seeks information not relevant and not proportional to the needs of this case.

#12 - 16. Ruling: Same as #11.

b. Williams' Document Requests on Acxiom⁴⁵

#13. Ruling: Motion to compel is granted in part and denied in part.

Acxiom shall produce responsive discovery regarding age discrimination/harassment claims by sales employees against Ms. Dillon from June 2010 through June 2016.

⁴⁴ (D.E. #####, Ex C).

⁴⁵ (D.E. #####, Ex C).

With regard to other employees in the U.S., Acxiom shall produce responsive discovery regarding age discrimination/harassment claims sales by employees from June 2012 to June 2016.

#17. Ruling: Motion to compel is granted in part. Acxiom shall must amend its response to include anti-discrimination or harassment training conducted or provided for its U.S. based sales employees and managers from June 2012 to June 2015.

Note: All counsel are required to be familiar with their obligations under Federal Rule of Civil Procedure 1 which requires that the rules be construed by the Court and the parties to secure “the just, speedy, and inexpensive determination of every action and proceeding.”⁴⁶ Throughout defense counsel’s objections they have cited various temporal limits they believe should be imposed upon Mr. William’s requests, however, they have failed to include the information that would be responsive within their proposed time limits and therefore likely prolonged this discovery dispute.

#31. Ruling: Motion to compel is granted in part. Acxiom shall must amend its response to provide all documents pertaining to the EDGE team from April 1, 2015 through December 31, 2015 and documents pertaining to commissions paid to the members of the EDGE team during the same period.

#32. Ruling: Motion to compel is granted in part and denied in part. Acxiom shall must amend its response to provide the requested documents pertaining to the EDGE team from 2014 through December 31, 2015. The motion is denied as to draft documents that were no implemented.

#33. Ruling: Motion to compel is denied because it appears that Acxiom has produced the responsive documents. However, Plaintiff’s counsel may probe the issue further in deposition.

#34. Ruling: Motion to compel is denied because it appears that Acxiom has produced the responsive documents. However, Plaintiff’s counsel may probe the issue further in deposition.

⁴⁶ Fed. R. Civ. P. 1.

#35. Ruling: Motion to compel is denied because it appears that Acxiom has produced the responsive documents. However, Plaintiff's counsel may probe the issue further in deposition.

#36. Ruling: Moot. Counsel shall meet and confer over the next 21 days and satisfy their obligations to develop an ESI protocol.

V. **CONCLUSION**

Acxiom has 21 days to comply with this ruling.

Mr. Williams counsel shall prepare an order that memorializes the Court's ruling and circulate it under the five-day rule.



A handwritten signature in black ink that reads "Steve C. Mannion".

Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

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Original: Clerk of the Court
Hon. Choose an item.
cc: All parties
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