

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

CAIR-FOUNDATION, INC., *et al.*,

Plaintiffs,

v.

Case No. 4:25-cv-516-MW-MJF

RONALD DESANTIS, in his official
capacity as Governor of the State of
Florida,

Defendant.

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ORDER

This matter is before this court on Defendant Ronald DeSantis's ("DeSantis") motion to compel supplemental responses to requests for production ("RFPs") and associated document production from both Plaintiff CAIR-Foundation, Inc. and Plaintiff CAIR-Florida, Inc. (collectively, "CAIR"). Doc. 91. Both Plaintiffs filed a consolidated response in opposition. Doc. 92. For the reasons set forth below, this court must defer ruling on the motion to compel while the parties address issues related to electronically stored information ("ESI") discovery and discovery regarding documents that contain any language other than English.

DISCUSSION

DeSantis moves to compel supplemental responses and production regarding RFPs 3–9, 11–13, 15–18, 20–25, and 27–48. Doc. 91. Generally, CAIR objects on grounds of relevance, proportionality, vagueness, ESI accessibility, and harassment, and makes privilege claims under the First Amendment. Doc. 91-2. This court has reviewed the discovery requests and responses at issue, the parties’ briefs including CAIR’s affidavits,¹ the parties’ pleadings, and the available discovery record. This court normally would adjudicate a motion to compel based on the record prepared by the parties. This case warrants a different approach, however.

This court is obligated “to secure the just, speedy, and inexpensive” resolution of the discovery issues at hand. Fed. R. Civ. P. 1. To that end, “on its own, the court *must* limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that the discovery sought . . . can be obtained from some other source that is more convenient, less burdensome, or less expensive[, or] the proposed

¹ Declaration of Elizabeth C. Lockwood (Doc. 92-1); Declaration of Thania Diaz Clevenger (Doc. 92-14); Declaration of Wilfredo Ruiz (Doc. 92-15).

discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(i, ii) (emphasis added). Rule 26(b)(1) requires discovery to be “proportional to the needs of the case, considering the importance of the issues at stake in the action, . . . the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

Because of significant issues related to ESI discovery and documents that contain languages other than English that the parties failed to address in their Rule 26(f) report, this court is unable to adjudicate the instant motion to compel while simultaneously meeting this court’s obligations under Rules 1 and 26(b)(2)(C).

A. The Apparent Deficiencies of the Rule 26(f) Report

During their Rule 26(f) conference, the parties were required to “discuss any issues about preserving discoverable information; and develop a proposed discovery plan.” Fed. R. Civ. P. 26(f)(2). The discovery plan must state the parties’ views and proposals on “the subjects on which discovery may be needed . . . [and] what changes should be made in the limitations on discovery imposed under these rules or by local rule,

and what other limitations should be imposed.” Fed. R. Civ. P. 26(f)(3)(B), (E). Also, it must state, “any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.” Fed. R. Civ. P. 26(f)(3)(C). The advisory committee notes to Rule 26(f) state the following about ESI specifically:

Rule 26(f) is amended to direct the parties to discuss discovery of electronically stored information during their discovery-planning conference. The rule focuses on “issues relating to disclosure of discovery of electronically stored information[.]”

When a case involves discovery of electronically stored information, the issues to be addressed during the Rule 26(f) conference depend on the nature and extent of the contemplated discovery and of the parties’ information systems. It may be important for the parties to discuss those systems, and accordingly ***important for counsel to become familiar with those systems before the conference***. With that information, the parties can develop a discovery plan that takes into account the capabilities of their computer systems. In appropriate cases identification of, and early discovery from, individuals with special knowledge of a party’s computer systems may be helpful.

The particular issues regarding electronically stored information that deserve attention during the discovery planning stage depend on the specifics of the given case. For example, the parties may specify the topics for such discovery and the time period for which discovery will be sought. They may identify the various sources of such information within a party’s control that should be searched for electronically stored information. ***They may discuss whether the***

information is reasonably accessible to the party that has it, including the burden or cost of retrieving and reviewing the information.

Fed. R. Civ. P. 26(f) advisory committee's notes to 2006 amendment (emphasis added).

Regarding the scope of discovery, the parties' joint Rule 26(f) report provides the following:

Discovery may be needed on these subjects:

Plaintiffs' position: Plaintiffs anticipate seeking discovery on the purported bases for designating CAIR as a terrorist organization, the purported governmental interests served by the Executive Order, the criteria used to designate entities as terrorist organizations, the identities and involvement of people in drafting, issuing, and enforcing the Executive Order, the motivations for issuing the Executive Order, the notice and opportunities provided to CAIR to contest the Executive Order, the enforcement of the Executive Order, communications and actions relating to interpretation or enforcement of the Executive Order, among other issues related to the issuance, legal basis, and implementation of the Executive Order.

Defendant's position: Defendant anticipates seeking discovery regarding the Plaintiffs' allegations in the operative complaint that were not admitted, regarding the defenses raised by Defendants (sic), and regarding Plaintiffs' connection to, and involvement with, terrorism and material support of terrorism. Defendants (sic) also expect to seek discovery regarding similar litigation involving Plaintiffs, including, but not limited to, a current lawsuit in Texas.

Doc. 49 at 2–3 ¶ 3(a) (emphasis in original). Further, the Rule 26(f) report states that the parties discussed the following:

The parties’ respective discovery requirements in this case, and if the parties deem this initial scheduling order to be inadequate, they shall develop an alternate proposal which specifically addresses the timing and form of discovery, whether discovery should be conducted in phases or limited in any respect, and what, if any, changes should be made in the discovery procedures and time deadlines set out in this initial scheduling order, or in the applicable rules. See ¶ 3 above [referring to the parties’ discovery plan].

Id. at 6–7 ¶ 5(v) (emphasis in original).

Whether any party will likely request or produce information from electronic or computer-based media. The parties will likely request or produce information from electronic or computer-based media. Disclosure or production will be limited to data reasonably available to the parties in the ordinary course of business. ESI should be produced in the form in which it is ordinarily maintained or in a reasonably usable form. ESI will be produced by email or a file sharing service, but if neither is feasible, then by a data storage device, such as a CD, DVD, USB drive, or external hard drive The parties do not, at this time, anticipate other problems that may arise in connection with ESI discovery.

Id. at 7 ¶ 5(vi) (emphasis in original).

Any other matters which the parties deem appropriate with regard to specific aspects or the uniqueness of this case, and including any applicable subject within Rule 16(c). There are no other matters with regard to specific aspects or the uniqueness of this case, including any

applicable subject within Rule 16(c), that the parties deem appropriate for the Court to address at this time.

Id. at 8 ¶ 5(vii) (emphasis in original).

The representation in paragraph 5(vii) of the report—that there are no issues for “any applicable subject within Rule 16(c)” —implicitly includes the subject of “orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37,” and the subject of “facilitating in other ways the just, speedy, and inexpensive disposition of the action.” Fed. R. Civ. P. 16(c)(2)(F), (G). This includes the subject of “the parties’ resources” to conduct discovery and “the burden or expense of the proposed discovery[.]” Fed. R. Civ. P. 26(b)(1). This further includes the subject of the “discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.” Fed. R. Civ. P. 26(b)(2)(B).

But CAIR’s response to Defendant’s motion to compel indicates otherwise. It includes three affidavits that discuss the immensity of CAIR’s ESI discovery issues, *which the parties should have discussed during the Rule 26(f) conference*. The Rule 26(f) report makes no mention of any such discussions.

B. Substantial ESI Discovery Issues Remain Outstanding

1. *Untimely Complaints About ESI Discovery*

CAIR asserts that it faces at least the following challenges with respect to ESI discovery:

CAIR has used dozens of current and legacy communications and document management platforms, including physical mail and fax, email, various text and other messaging platforms, event management software, various fundraising and donor related software, file sharing applications, and a number of social media platforms, among others. There may be additional communications and document storage platforms from prior years that current staff are not aware of[.]

Doc. 92-14 at 2–3 ¶ 3.

No single current personnel or account management system contains a complete roster of all potentially relevant custodians covering [the] entire period. Reconstructing that roster would require manual review and comparison of legacy personnel, payroll, account, and archived records maintained across multiple systems.

Id. at 3 ¶ 4.

CAIR's email archive contains 1,975 active, inactive, and shared mailboxes. Based on estimates provided by our IT provider, I estimate that the average size of each mailbox is 50,000 items, though a large mailbox can include as many as 100,000 items Even using the average size of these mailboxes, CAIR's total email archive could include nearly 100 million emails.

Id. at 3 ¶ 5.²

CAIR's current centralized email archive begins in approximately 2005. Records from earlier periods, to the extent they exist, are not maintained in a single centralized and uniformly searchable repository.

Id. at 3–4 ¶ 6.

Based on the volume of documents CAIR would need to search for and review to identify documents potentially responsive to Defendant's request, CAIR would be required to expend significant internal resources and costs to comply. Because of the broad scope of the requests that are the subject of Defendant's motion, it is difficult to quantify those costs without incurring additional costs to confirm the volume of documents that need to be collected and reviewed.

Id. at 4 ¶ 9.

The declaration of Elizabeth C. Lockwood, CAIR's counsel in this proceeding, states the following regarding discovery search efforts to date:

Thus far, we have only collected and processed documents dated January 1, 2019 to present. But even across that timeframe, Defendant's search terms are likely to generate expansive hits. For example, RFP 32 seeks a large number of documents concerning Israel, and a search for the word

² CAIR did not provide an affidavit from its "IT provider," which is a customary declaration to provide in an ESI discovery dispute given that nobody is better suited to testify on the state of an information technology system than such a provider that has thoroughly reviewed the systems at issue.

“Israel” across seven custodians over just a seven-year period generated nearly 280,000 hits.

Doc. 92-1 at 4 ¶ 8.

Discovery has been open for *nearly eight months*. Despite substantial outstanding issues regarding ESI discovery, the parties never mentioned these issues in their Rule 26(f) report (Doc. 49), *seven* joints status reports (Docs. 42, 53, 54, 61, 67, 93, and 96), the discovery responses at issue (Doc. 91-2), and the parties’ correspondence leading to the instant motion to compel (Docs. 91-3, 91-4, and 98-1). Instead, these concerns are mentioned, *only now for the first time*, in three affidavits attached to CAIR’s response brief, essentially as an afterthought. Furthermore, as noted above, CAIR does not provide an affidavit from anybody who actually works in the information technology industry. This is a substantial problem. As one court has noted, the parties should enter “into an ESI protocol before beginning discovery, not in the middle of it” *LKQ Corp. v. Kia Motors Am., Inc.*, 345 F.R.D. 152, 157 (N.D. Ill. 2023).

2. *The Parties Must Confer on ESI Discovery*

Despite the age of this case, the parties must meet for an ESI conference and confer regarding on the creation of a formal ESI order, or

the adoption of informal ESI protocols, that will govern discovery for the remaining life of this case. At the ESI conference, the parties must use the ESI checklist created by the Southern District of Florida, a copy of which is attached to this order. For a thorough discussion of ESI discovery obligations in general, this court advises counsel to review *DR Distributors, LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 923–49 (N.D. Ill. 2021) (section C titled “The E-Discovery Process: Same As It Ever Was”).

C. Substantial Issues Regarding Documents that Contain a Language Other than English

In addition to the ESI discovery concerns mentioned *supra*, the declaration of Thania Diaz Clevenger mentions in passing an entirely separate discovery issue: “[s]ome of the potentially responsive documents are in Arabic and other non-English languages, which would make searching and reviewing them more challenging.” Doc. 92-14 at 4 ¶ 8. CAIR’s affidavits fail to provide an estimate of the number of documents that this issue concerns.

When a party asserts that compliance with a discovery request would be unduly burdensome, that party should provide “the district court an estimate of the number of documents that it would be required

to provide,” “the number of hours of work by lawyers and paralegals required, and the expense.” *Heraeus Kulzer, GmbH v. Biomet, Inc.*, 633 F.3d 591, 598 (7th Cir. 2011). The parties must confer on this issue as well.

CONCLUSION

“[D]istrict courts are not required to hold a litigant’s hand and guide him through the basics of discovery.” *Consumer Fin. Protect. Bureau v. Check & Credit Recovery, LLC*, 69 F.4th 1321, 1330 n.15 (11th Cir. 2023). Rather, the discovery process should be “cooperative and largely unsupervised by the district court.” *Sali v. Corona Reg. Med. Ctr.*, 884 F.3d 1218, 1219 (9th Cir. 2018). That has not happened in this case. Accordingly, for the reasons set forth above, it is **ORDERED**:

1. Defendant DeSantis’s motion to compel, Doc. 91, is **DEFERRED** pending conferral by the parties as ordered below.

2. On or before **October 2, 2026**, the parties must hold an ESI discovery conference to discuss the topics listed in the attached ESI checklist that the parties believe would facilitate ESI discovery.

3. Within **SEVEN** days of the ESI discovery conference, the parties must file a joint notice reporting on the conference as follows:

- a. the date that the conference occurred;
- b. the attorneys in attendance;
- c. a list of the topics from the ESI checklist that were discussed;
- d. whether each party has identified ESI liaisons to each other (in-house or retained) who are and will be well-informed about the relevant ESI sources;
- e. whether the parties want to govern ESI discovery by way of an informal ESI protocol or through an ESI order jointly proposed by the parties;
- f. when the parties expect to have such protocol or joint proposed order drafted; and
- g. whether further conference is required.

4. On or before **October 2, 2026**, the parties must hold a discovery conference regarding documents that contain any language other than English. At that conference, CAIR must provide an estimate of the number or percentage of documents in its possession, custody, or control that contain a language other than English, and must identify the relevant languages. If CAIR is unable to provide such an estimate, it

must explain with specificity why it is unable to do so. Then, the parties will discuss the following required topics:

- a. how the parties intend to conduct discovery regarding documents that contain a language other than English; and
- b. how the parties intend to share the cost of any required digitization and translation.

5. Within **SEVEN** days of the discovery conference regarding documents that contain any language other than English, the parties must file a joint notice reporting on the conference as follows:

- a. the date that the conference occurred;
- b. the attorneys in attendance;
- c. CAIR's estimate of the number or percentage of documents in its possession, custody, or control that contain any language other than English, or alternatively CAIR's explanations for any inability to make such an estimate;
- d. whether the parties have reached a written agreement on the two required topics listed above; and

e. whether further conference is required.

SO ORDERED on September 24, 2026.

/s/ *Michael J. Frank*

Michael J. Frank
United States Magistrate Judge