THE HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al., on behalf of himself and other similarly situated*,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et al.*,

Defendants.

CASE NO. 2:17-cv-00094-RAJ

DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO COMPEL

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INTRODUCTION

After producing approximately 40,000 documents to Plaintiffs and responding to numerous other discovery requests from Plaintiffs, Defendants merely ask Plaintiffs to do no more than disclose to Defendants the factual basis for their claims. Ironically, given the enormous burden placed upon Defendants by Plaintiffs' extensive discovery requests, Plaintiffs' excuse for refusing to fully comply with Defendants' discovery requests, or even the more moderate version of those requests that Defendants offered in compromise, is that it would be too "burdensome" to simply disclose the evidentiary underpinnings of their claims. Plaintiffs fail to explain how, or why, they would be unduly burdened by a requirement that they simply link documents and other evidence to their allegations. Thus, Defendants' ask the Court to compel Plaintiffs to provide this basic information to Defendants.

Plaintiffs' opposition to this motion to compel rests primarily upon a one-sided telling of the meet and confer negotiations that preceded this motion. This highly slanted narrative is necessary to support Plaintiffs' use of such charged terms such as "blockbuster" and "blunderbuss" to mischaracterize what is being asked of them. To the contrary, what Defendants ultimately asked Plaintiffs to provide in the meet and confer is the most basic information a defendant can seek from a plaintiff who is suing them in any court: (1) to identify the persons who have material information that support the claims alleged in the complaint; and (2) to identify the "key documents" that support those claims.

Contrary to Plaintiffs' assertions, Defendants are not seeking "a detailed telling of Plaintiffs' case in chief." Rather, Defendants' discovery has the salutary goal of narrowing the issues and focusing this complex litigation on those allegations and claims for which Plaintiffs believe they have sufficient evidence. Indeed, Defendants are entitled to this information so that they may prepare for dispositive motions and a possible trial.

Furthermore, Plaintiffs' contention that their responses to Defendants' Interrogatories Nos. 1 and 2 are sufficient is erroneous on its face. Plaintiffs' opaque responses, prefaced by conclusory objections and devoid of any meaningful detail, are plainly deficient under the Federal Rules.

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Lastly, there is nothing improper about Defendants' requests for admission. As permitted by the Federal Rules, they simply require Plaintiffs to admit what is true. That a denial might necessitate a corresponding duty to supplement interrogatory responses under a separate Federal Rule does not make the requests for admission improper.

In summary, Defendants are asking Plaintiffs to identify the most fundamental information required in responding to discovery requests: documents, persons, and information supporting Plaintiffs' claims. The Court should compel Plaintiffs to answer the interrogatories and requests for admission. In the interests of resolving this dispute, Defendants reiterate that they are willing accept discovery from Plaintiffs in accordance with the final position offered to Plaintiffs at the conclusion of the meet and confer process preceding this motion. That is, Plaintiffs should be compelled to: (1) respond to Interrogatory No. 1 by identifying all persons who have material information that supports Plaintiffs' claims and providing a summary of that information; and (2) respond to Interrogatory No. 2 by identifying the material facts that support the controverted allegations in the complaint, and the key documents that support those facts. Because these discovery demands are reasonable and necessary for the defense of the lawsuit, this relief should be granted.

PROCEDURAL HISTORY

Long-unsatisfied with Plaintiffs' interrogatory responses, additionally unsatisfied with Plaintiffs' October 11, 2019 responses to related requests for admission, and facing a then-existing discovery-related motions deadline of October 18, 2019, Defendants initiated a meet and confer, which took place on Thursday, October 17, 2019. As discussed in the Declaration of Brian Kipnis ("Kipnis Decl."), Defendants disagreed with Plaintiffs' contention that the interrogatories were improper, but, in the spirit of compromise, Defendants offered to accept more moderate responses, allowing Plaintiffs to identify (1) only persons whom they believe have material information that supports their claims and a summary of the material information that each person possesses, and (2) the material facts supporting their complaint, and the key documents supporting those facts. *See* Ex. 1, Kipnis Decl., at ¶ 4 (referencing Ex. B). Plaintiffs rejected this offer, forcing Defendants to file the instant motion concerning Interrogatories Nos. 1 and 2 and the requests for admission.

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ARGUMENT

I. Defendants' Interrogatories Are Valid Contention Interrogatories Because They Serve To Narrow And Sharpen The Issues.

Plaintiffs' argument that Defendants interrogatories are overbroad and unduly burdensome fails. This objection is conclusory and speculative; it therefore fails for lack of specificity. *See* Fed. R. Civ. P. 33(b)(4); *see also Plascencia v. Collins Asset Group, LLC*, 2019 WL 859222, at *2-*3 (W.D. Wash. Feb. 22, 2019) (granting a motion to compel where the responsive party offered no explanation why discovery request was overbroad and unduly burdensome in the particular case).

Furthermore, "[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to the application of law to fact." *See* Fed. R. Civ. P. 33(a)(2). Contention interrogatories "may in certain cases be the most reliable and cost-effective discovery device." *Campbell v. Washington*, 2009 WL 577599, at *2-*3 (W.D. Wash. Mar. 5, 2009) (characterizing interrogatories asking a party to identity individuals with information relevant to a party's allegations and those asking a party to identify facts that support their contentions as contention interrogatories). Here, Defendants' contention interrogatories are intended to narrow and sharpen the genuine issues of material fact underlying the case, *see Woods* v. *DeAngelo Marine Exhaust, Inc.*, 692 F.3d 1272, 1280 (Fed. Cir. 2012) ("Contention interrogatories . . . serve an important purpose in helping to discover facts supporting the theories of the parties. Answers to contention interrogatories also serve to narrow and sharpen the issues thereby confining discovery and simplifying trial preparation."), which is illustrated by the fact that Defendants represented to Plaintiffs their interest in key documents and summaries of material information, *see Pauley v. Poured Walls, Inc.*, 2019 WL 3226996 at *2 (S.D. W.Va. July 17, 2019) ("Contention interrogatories . . . will not be overly broad if they only ask for the 'principal or material facts which support an allegation or defense.'"). Narrowing the issues an essential part of discovery in complex civil litigation, and Defendants' interrogatories are valid on this basis. *See* Comment to Fed. R. Civ. P. 33 ("As to requests for opinions or contentions that call for the application of law to fact, they can be most useful in narrowing and sharpening the issues, which is a major purpose of discovery.").

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The timing of Defendants' request that Plaintiffs supplement their interrogatory responses—near the close of a lengthy written discovery period—further legitimizes their propriety as valid contention interrogatories intended to helpfully define and narrow the issues as the case proceeds to the next litigation phase. *See*, *e.g.*, *Campbell*, 2009 WL 577599, at *3 (indicating that while "a [party] might have some difficulty answering a [] contention interrogatory early in the discovery period," later, a party can be expected to have had "some opportunity to discover the facts relating to" their claims). Notably, a meaningful response to Interrogatory No. 1, which asks Plaintiffs to identify individuals believed to have knowledge supporting Plaintiffs' claims, and to detail that knowledge, would be useful to identifying potential deponents, and for tailoring the scope of depositions. *See Baird v. Blackrock Institutional Trust Co.*, 2019 WL 1897489, at *1 (N.D. Cal. Apr. 29, 2019) ("Properly timed contention interrogatories . . . would be less burdensome than depositions at which contention questions are propounded.").

Contrary to Plaintiffs' contentions, Defendants' two interrogatories do not to require Plaintiffs to "provide the equivalent of a narrative or otherwise detailed account of [their] entire case in chief." *See* Dkt. # 301 at 11. Unlike the situation in *United States ex rel. Barko v. Halliburton Co.*, upon which Plaintiffs rely,[1] Defendants are not asking Plaintiffs to investigate and find support for Defendants' case-in-chief. 241 F.Supp.3d 37, 77 (D.D.C 2017). Rather, the interrogatories are Defendants' attempt, following a lengthy period of written discovery during which Defendants bore the entire production burden, to narrow the issues and focus the parties on information that is material and relevant to Plaintiffs' claims. Meaningfully responding to the interrogatories will require some effort on Plaintiffs' part, but such effort is proportional here, and should have reasonably been expected by Plaintiffs when they filed a class action lawsuit and propounded extensive discovery requests into wide-ranging subject areas. Ultimately, Defendants'

[1] Plaintiffs' opposition repeatedly quotes cases without providing factual context. Yet, in this area of the law, the particular facts of the cases cited are all-important in assessing their applicability to the facts in the case at bar, *i.e.*, interrogatories propounded by the defense asking for basic factual information about the underpinnings of the Plaintiffs' claims in a nationwide class action with national security implications.

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interrogatories are an appropriate, effective, and efficient use of the discovery process in this case. *See telSPACE, LLC v. Coast to Coast Cellular, Inc.*, 2014 WL 4364851, at *2 (W.D. Wash. Sept. 3, 2014) (explaining that the Federal Rules are "liberally construed to allow the wide-ranging discovery necessary to avoid surprise at trial and help the parties evaluate and resolve their disputes").

II. Plaintiffs' Responses To Defendants' Interrogatories Are Deficient Because They Are Overbroad And Provide Less Information Than Required By Initial Disclosures

Plaintiffs' responses to Interrogatories Nos. 1 and 2 are deficient in that they are so overly broad that they cannot qualify as responses at all. Plaintiffs responded to Defendants request that they identify individuals believed to have knowledge supporting their claims by identifying, *inter alia*, all "persons identified in documents produced by Defendants as having been participants in the creation or application of CARRP or other similar vetting programs." *See* Dkt. # 289-1. In a lawsuit challenging CARRP and other similar vetting programs, this response essentially identifies all government personnel identified in the 40,000 documents Defendants produced. Plaintiffs made no attempt to detail the knowledge of such persons, even in summary form. *See id.*; *see also* Ex. 1 at ¶ 4 (offering to accept a response that merely summarized identified individuals' knowledge). Accordingly, though interrogatories entitle parties to more information than that provided through initial disclosures, *see* Fed. R. Civ. P. 33, 36, Plaintiffs' response actually provides less information than is required to be disclosed under the initial disclosure rule, *see* Fed. R. Civ. P. 26(a)(1)(A)(i) (requiring the disclosure of the identity of each individual likely to have information, along with the subjects of that information). Plaintiffs' Interrogatory No. 1 response places Defendants in no better a position to evaluate the evidence, Plaintiffs' theories, or the case in general than if Plaintiffs had not responded at all. The rules entitle Defendants to this evaluation, and Plaintiffs' responses are therefore insufficient. *See telSPACE, LLC*, 2014 WL 4364851, at *2; *Wilkerson v. Vollans Auto, Inc.*, 2009 WL 1373678, at *1 (W.D. Wash. 2009).

Likewise, Plaintiffs' response to Interrogatory No. 2, requesting the identification of documents in support of their averments, lists only broad categories of documents, including, *inter*

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alia, all "documents and data produced by Defendants in this litigation," which, it bears repeating, is a volume of 40,000 documents. *See* Dkt. # 289-1. Plaintiffs made no attempt to identify any documents, much less key documents, or to connect any documents to specific averments in their complaint. *See* Ex. 1 at ¶ 4 (Defendants' offer to accept a response identifying material facts that support the controverted allegations in the complaint, and the key documents that support those facts); *cf.* Dkt. # 301 at 8 (indicating that Plaintiffs would not have objected to an interrogatory asking for the identification of "principal" documents "that support a specific allegation"). Thus, Plaintiffs' response to Interrogatory No. 2 provides Defendants with no better information or basis to evaluate the case than if Plaintiffs had simply not responded at all. Accordingly, the response is also arguably insufficient even to meet the less stringent initial disclosure requirements, given that it renders the term "categories" meaningless. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii). The response is therefore deficient under the rules and principles of civil discovery. *See telSPACE, LLC*, 2014 WL 4364851, at *2; *Wilkerson*, 2009 WL 1373678, at *1.

Furthermore, Plaintiffs' meet and confer offer to provide Defendants with "general descriptions" of individuals' knowledge and "categories of documents" is also insufficient, in that it provides Defendants' with no more specificity than what the initial disclosure rules require, and Rule 33 entitles Defendants to more than already required by Rule 26(a)(1). Fed. R. Civ. P. 26, 33.

Plaintiffs have effectively admitted, through most of their responses to Defendants' requests for admission, that they can identify key documents and material evidence they believe support the specific averments in their complaint. *See* Dkt. # 289-2. Defendants have simply asked Plaintiffs—consistent with the Federal Rules of Civil Procedure and the principles of civil discovery, and for the benefit of the parties and the Court moving forward—to now identify, with some level specificity, such documents and evidence. The Court should order Plaintiffs to do so.

CONCLUSION

For the reasons argued above and in Defendants' motion, the Court should grant Defendants' Motion to Compel and Motion Challenging the Sufficiency of Plaintiffs' Answers to Requests for Admission.

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DATED this 8th day of November, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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