UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:23-cv-7970-RGK (MAR) Date: July 31, 2024

Title: *Donald Leo Mellein v. United States of America et al*

Present: The Honorable: MARGO A. ROCCONI, UNITED STATES MAGISTRATE JUDGE

Valerie Velasco	n/a
Deputy Clerk	Court Reporter / Recorder

Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
N/A	N/A

Proceedings (in chambers): **PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES, DKT. 92**

On June 18, 2024, Donald Leo Mellein, ("Plaintiff") filed a Motion to Compel discovery responses against United States of America ("Defendant"). ECF Docket No. ("Dkt.") 92. The Court finds these matters suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons set forth below, Plaintiff's motion to compel is **GRANTED**.

I.
BACKGROUND:

Plaintiff rented a safe deposit box at U.S. Private Vaults ("USPV"). Second Amended Complaint ("SAC"), Dkt. 94 ¶ 2. In March 2021, the FBI executed a seizure warrant at USPV, which houses over 800 safe deposit boxes. Id. ¶ 3. The FBI seized Plaintiff's box which contained cash, a gold bar, and gold coins. Id. ¶ 13. Eventually, Defendant returned Plaintiff's cash and gold bar. Id. ¶ 6. The gold coins, however, were not initially listed on the inventory sheet for Plaintiff's box and were not returned. Dkt. 92-1 at 7. Plaintiff filed a previous lawsuit to effectuate the return of his gold coins. See Donald Leo Mellein et al v. United States of America et al, Case No. 2:21-cv-06588-RGK-MAR. After Plaintiff filed the previous lawsuit, Defendant "discovered" forty-seven gold coins in Plaintiff's safe deposit box, which was still in Defendant's control. Dkt. 920-1 at 7. Defendant contends that, after finding the forty-seven coins, the government re-searched every box confiscated during the original search and did not find any more gold coins. Id. Defendant then returned the forty-seven found coins to Plaintiff. Dkt. 92 at 2. Plaintiff, who could not challenge the remaining sixty-three lost coins without first filing an administrative claim with the government, dismissed the pending lawsuit and filed a claim with the FBI to retrieve the remaining missing coins. Id. at ¶ 6–7. The FBI subsequently denied any liability for the missing coins, and thus Plaintiff filed the current complaint on September 22, 2023. Dkt. 1. Plaintiff filed the operative SAC on June 24, 2024. Dkt. 94. Defendant filed an answer on July 8, 2024. Dkt. 98.

On June 18, 2024, Plaintiff filed a motion to compel discovery responses. Dkt. 92. On June 26, 2024, Plaintiff filed a supplemental motion in support of his motion to compel. Dkt. 95. The Court finds these matters suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15.
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II.
DISCUSSION

In his motion to compel "Plaintiff seeks to compel the government to respond to interrogatory nos. 1–5, request for production nos. 2 and 9, and Rule 30(b)(6) deposition topic no 6." Dkt. 92 at 2. These requests seek information about other instances where property went missing after being seized during that same search of USPV in March of 2021. Id.

A. APPLICABLE LAW

Generally, under the Federal Rules of Civil Procedure,

> 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, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, 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. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Relevancy is broadly defined to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). However, a court "must limit the frequency or extent of discovery otherwise allowed" if "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C). "A party seeking discovery may move for an order compelling an answer, . . . production, or inspection." Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv). The moving party bears the burden of demonstrating the sought discovery is relevant. Cabrales v. Aerotek, Inc., No. EDCV 17-1531-JGB-KKX, 2018 WL 2121829, at *3 (C.D. Cal. May 8, 2018).

In addition, "[r]elevancy alone is no longer sufficient to obtain discovery, the discovery requested must also be proportional to the needs of the case." Centeno v. City of Fresno, No. 1:16-CV-653 DAD (SAB), 2016 WL 7491634, at *4 (E.D. Cal. Dec. 29, 2016) (citing In re Bard IVC Filters Prods. Liab. Litig., 317 F.R.D. 562, 564 (D. Ariz. 2016)). However, ultimately, "[i]t has long been settled in this circuit that the party resisting discovery bears the burden of showing why discovery should not be allowed." United States ex rel. Poehling v. Unitedhealth Grp., Inc., No. CV 16-8697 MWF (SSX), 2018 WL 8459926, at *9 (C.D. Cal. Dec. 14, 2018) (citing Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975) ("The party who resists discovery has the burden to show discovery should not be allowed, and has the burden of clarifying, explaining, and supporting

its objections.")).

B. ANALYSIS

Defendant contends that Plaintiff's requests for information about other property that went missing during the same FBI search of the same facility under the same search procedures are not relevant or proportional to Plaintiff's individual claim for missing property. Dkt. 92-1 at 16–23. The Court finds Defendant's arguments unpersuasive.

Defendant argues that Plaintiff has not proven that there are any coins missing and has been inconsistent as to how many coins he actually owns. Dkt. 92-1 at 5. This argument relates solely to the merits of Plaintiff's claim and is therefore inappropriate to address in the instant discovery motion. See Nat. Res. Def. Council v. Curtis, 189 F.R.D. 4, 8 (D.D.C. 1999) ("The federal courts have rarely conditioned discovery upon a showing of legal entitlement to ultimate relief.").

Defendant also contends that Plaintiff's counsel is simply fishing for other potential clients through the information they might receive through their discovery requests. Id. at 6. To support their argument, Defendant cites In re Williams-Sonoma, Inc., 947 F.3d 535, 539–40 (9th Cir. 2020), where the court refused the plaintiff's discovery request sought for the purpose of finding an eligible class representative. Here, Plaintiff is not looking for a class representative. Rather, Plaintiff seeks information about other occurrences where property went missing property during the same exact search where his own property allegedly went missing; Plaintiff argues that information about the procedures used and other circumstances may be relevant to his negligence claim. On its face, this is a reasonable justification for the discovery requests. Indeed, other than Defendant's conclusory accusations that Plaintiff's attorneys are looking for other clients, there is no evidence of an improper purpose. In any case, Defendant's allegation is ultimately irrelevant to whether the sought discovery in this case is relevant and proportional to the needs of this case.

Defendant next argues that in an action with a single plaintiff, discovery related to other similar instances of the same conduct is not relevant. However, though Defendant cites to many cases of single plaintiffs being denied similar discovery on relevance grounds, Defendant does not cite to any case that included a negligence claim. By contrast, Plaintiff cites Cooper v. Firestone Tire & Rubber Co., 945 F.2d 1103 (9th Cir. 1991), where the court held that "a showing of substantial similarity is required when a plaintiff attempts to introduce evidence of other accidents as direct proof of negligence. . . ." Id. at 1105. This holding implies, naturally, that there are cases where evidence of other similar instances are relevant to a negligence claim. Here, Plaintiff is specifically asking for discovery regarding other instances of property being lost from the government's March 2021 search of USPV. Dkt. 92 at 2. By definition, these instances would involve property lost from the same place, at the same time, in the same manner, by the same group of government actors; information about these instances would obviously be relevant to whether the government's practices were negligent.

Defendant argues that the discovery sought is disproportionate to the needs of the case, given that only approximately $100,000 is at stake. Dkt. 92-1 at 23. They argue that proportionality does not turn on how significant the amount is to a specific party; rather, it turns on the "burden, costs, and privacy interests of imposing discovery." Id. The Court finds that the discovery sought is proportionate to the needs of the case. Defendant does not actually indicate how much information would be responsive to Plaintiff's requests. They argue that there are 700 boxes total that were searched and seized (Dkt. 92-1 at 23) with maybe three boxes with owners that claimed property was missing (Dkt. 92-1 at 24); the government contends that nothing in those boxes were actually missing (id.). In any case, it seems like there would potentially only be three boxes responsive to Plaintiff's requests. Under these circumstances, the discovery sought would seem to be quite manageable and not obviously disproportionate to the size and needs of the case.

Defendant also claims that Plaintiff can find the information he seeks by looking through the inventory sheets and other files they have already obtained through discovery in this case and past cases. Dkt. 92-1 at 24–25. This argument is unpersuasive. It has already been established that Plaintiff's own coins—including the ones found and returned to him—were missing from his own box's inventory list. Therefore, the inventory lists may not actually contain accurate information, or at least not the entirety of the information that Plaintiff seeks.

Lastly, Defendant argues they have already received the information through the multiple depositions of special agent Lynne Zellhart. Dkt. 92-1 at 20. However, it appears from the transcript that, while the agent knew what had happened during the search, the agent had very little information on what happened after or about any claims about missing property that were made. Dkt. 92-16 at 5–19. Therefore, it does not appear that the information sought here was available through these depositions.

Overall, the Court finds the Plaintiff's requests are relevant and proportional to the needs of the case. Additionally the Court finds the requests are limited in scope as to not be unduly burdensome. Thus, Plaintiff's motion to compel is granted.

III.
COSTS AND FEES

The Court notes that neither party asked for costs. However, pursuant to Federal Rule of Civil Procedure 37(a)(5)(A) ("Rule 37"), if a discovery motion is granted, "the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees," unless the opposing party's objection was "substantially justified" or "other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A).

Here, the Court has granted Plaintiff's motion to compel in full. The Court is inclined to find that the Defendant's position was not substantially justified, and cannot identify any other circumstances that would make an award of expenses unjust. However, given that neither party addressed the issue of costs in the briefing, the Court will give Defendant an opportunity to be heard before making a final determination regarding costs.

IV.
ORDER

Based upon the foregoing reasons, **IT IS THEREFORE ORDERED** that:

(1) Plaintiff's motion to compel is **GRANTED**;
(2) Plaintiff shall file declarations regarding the amount of fees and costs reasonably incurred in bringing the Motion, along with any necessary supporting documents, within seven (7) days of the date of this order. Defendant may file objections to Plaintiff's calculation of fees and costs within seven (7) days of the filing of Plaintiff's declarations. In addition to any objections as to the total costs, Defendant may include any argument that the motion was substantially justified, or other circumstances make an award of expenses unjust.

IT IS SO ORDERED.

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