IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRAD CLOVER, Plaintiff, vs. BOARD OF CNTY. COMM'RS OF DOUGLAS CNTY., KANSAS, Defendants.	)	Case No. 21-2388-JWB-KGG

MEMORANDUM & ORDER ON MOTION TO COMPEL

Now before the Court is Defendant's "Motion to Compel." (Doc. 15.) Having reviewed the submissions of the parties, Defendant's motion is **GRANTED** as is Defendant's request for attorneys fees relating to this motion.

BACKGROUND

Plaintiff brings this action resulting to the termination of his employment with the Douglas County Sheriff's Office pursuant to the Americans with Disabilities Act ("ADA"). Plaintiff alleges that during his employment, he "began suffering from post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder in or about August 2015." (Doc. 1, ¶ 8.) He alleges this is the result of a traumatic event he experienced during his employment as a law enforcement officer. (Doc. 16, at 1.)

Plaintiff continues that his alleged conditions "limit his ability to sleep, concentrate, think and read, and generally limit his brain and neurological function." (Doc. 1, ¶ 9.) He further asserts that these conditions "cause memory issues, organizational issues, time management issues, stress and emotional issues, and co-worker interaction issues." (*Id*.) He alleges that the termination of his employment as a result of his disability was discriminatory (Count I) and that Defendant retaliated against him for engaging in a protected activity under the ADA (Count II).

The present motion relates to Plaintiff's responses to Defendant's Interrogatories and Request for Production of Documents. (Doc. 14.) In its motion, Defendant contends that "[b]ecause of the nature of the claims made, [it] believes that [Plaintiff's] medical and psychological history, only back to 2015 for now, is relevant and discoverable." (Doc. 16, at 2.) Defendant "considers the material facts with regard to [Plaintiff's] alleged report of his condition to be relevant as well as his alleged opposition to ADA violations." (*Id*.)

At issue are Interrogatories 1-5, 7, 8, 10, 12-14[1] and Requests for Production Nos. 2, 4-6, 8, 11, 12, 14, and 15. Defendant generally argues that in response to the discovery requests, Plaintiff "either made unsupported objections or simply

[1] Defendant has since withdrawn issues relating to Interrogatories Nos. 5, 8 and 10. (*See* Doc. 18, at 4, 5.)

ignored the plain discovery request." (*Id*.) Defendant also contends that Plaintiff failed to produce documents responsive to the Requests for Production at issue.[2]

ANALYSIS

I. Standards for Discovery.

Fed.R.Civ.P. 26(b) states that

> [p]arties 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 state 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). As such, the requested information must be nonprivileged, relevant, and proportional to the needs of the case to be discoverable. ***Holick v. Burkhart***, No.16-1188-JTM-KGG, 2018 WL 372440, at *2 (D. Kan. Jan. 11, 2018).

Discovery requests must be relevant on their face. ***Williams v. Board of Co. Comm'rs***, 192 F.R.D. 698, 705 (D. Kan. 2000). Relevance is to be "broadly construed at the discovery stage of the litigation and a request for discovery should

[2] Plaintiff argues that prior to filing the present discovery motion, Defendant failed to comply with the "meet and confer" requirement discussed in Paragraph 3(f) of the Scheduling Order. The Court has reviewed the parties' pre-motion communications and finds they were sufficient. Plaintiff's objection is **overruled**.

be considered relevant if there is any possibility the information sought may be relevant to the subject matter of the action." ***Smith v. MCI Telecomm. Corp.***, 137 F.R.D. 25, 27 (D. Kan. 1991).

Once this low burden of relevance has been established, the legal burden regarding the defense of a motion to compel resides with the party opposing the discovery request. *See* ***Swackhammer v. Sprint Corp. PCS***, 225 F.R.D. 658, 661, 662, 666 (D. Kan. 2004) (stating that the party resisting a discovery request based on overbreadth, vagueness, ambiguity, or undue burden/expense objections bears the burden to support the objections). Thus, "the objecting party must specifically show in its response to the motion to compel, despite the broad and liberal construction afforded by the federal discovery rules, how each request for production or interrogatory is objectionable." ***Sonnino v. University of Kansas Hosp. Authority***, 221 F.R.D. 661, 670–71 (D. Kan. 2004).

"Unless a request is overly broad, irrelevant, or unduly burdensome on its face, the party asserting the objection has the duty to support its objections." ***Funk v. Pinnacle Health Facilities XXIII, LP***, No. 17-1099-JTM-KGG, 2018 WL 6042762, at *3 (D. Kan. Nov. 19, 2918) (quoting ***Hammond v. Lowe's Home Ctrs., Inc.***, 216 F.R.D. 666, 670 (D. Kan. 2003)). Further, once the "low burden of relevance is established, the legal burden regarding the defense of a motion to compel resides with the party opposing the discovery request." ***Waters v. Union***

Pac. RR. Co., No. 15-1287-EFM-KGG, 2016 WL 3405173, at *1 (D. Kan. June 21, 2016) (citing ***Swackhammer v. Sprint Corp. PCS***, 225 F.R.D. 658, 661, 662, 666 (D. Kan. 2004) (stating that the party resisting a discovery request based on overbreadth, vagueness, ambiguity, or undue burden/expense objections bears the burden to support the objections)). Within this framework, the Court will address the discovery requests at issue.

II. Discovery at Issue.

A. Interrogatories 1-4.

Interrogatory No. 1 asks Plaintiff to identify communications between him and employees or representatives of Defendant or the Douglas County Sheriff's office "concerning any of the matters in [the] Complaint" and include the "content of the communication." (Doc. 15-2, at 1.) Interrogatory No. 2 asks for each requested accommodation. (*Id*., at 2.) Interrogatory No. 4 asks for "the material facts … as to any allegation that you did not request accommodation of your alleged disability because of your claim that the Defendant was already aware of the alleged disability." (*Id*., at 3.)

Interrogatories 1, 2, and 4 share the same response. Therein, Plaintiff first objects that the information is protected by the work product doctrine. (*Id*., at 2, 3.) It is well-established in this District that the party raising attorney work product objections in response to discovery requests is obligated to include a

privilege log compliant with Fed.R.Civ.P. 26(b)(5)(A). *See* ***Progressive Northwestern Ins. Co. v. Gant***, No. 15-9267-JAR-KGG, 2017 WL 3530842, *6 (D. Kan. Aug. 16, 2017). There is no indication, however, that Plaintiff has submitted a compliant privilege log enumerating any such protected information. Further, the Court can envision no scenario in which this information would be protected by the work product doctrine. This objection is **overruled**.

Plaintiff continues that the Interrogatories are unduly burdensome "to the extent [they] request Plaintiff to describe in narrative form 'all communications …" and encompass "hundreds of interactions" and "communications span[ning] a number of years … ." (*Id*.) Subject to these objections, Plaintiff then lists certain individuals with whom he alleges he has conversations about his disability and/or requests for accommodation – Undersheriff Buchholz, Plaintiff's supervisors (Chris Morris, Lt. Robert Barryman, Cpt. Stacy Simmons, ret. Lt. Steve Freeman, and Lt. Lyle Hagenbuch), Sgt. Brandon Lewis, Lt. Vince Gonzalez, and "Defendant's human resources officer." (*Id*., at 2.) Plaintiff provides little to no description of the conversations, although he indicates he spoke to Buchholz who discussed "his own struggles with anxiety and how he managed it," but allegedly failed to offer assistance while accusing Plaintiff of "using his anxiety as an excuse." (*Id*.) Plaintiff also "reserves the right to supplement his response to this Interrogatory." (*Id*.)

Interrogatory No. 3 seeks "the material facts upon which [Plaintiff relies] that Defendant knew of [his] alleged disability." (*Id*., at 3.) Plaintiff obliquely responds that he had "numerous and regular discussions with Defendant's agents regarding his disability and requesting options to help him manage … his disability" from August 2015 to his termination. (*Id.*) Plaintiff, however, provides no information regarding the substance of any such conversations.

In the present motion, Defendant argues that "[b]ecause words have meaning and import in the context of this litigation and the ADA claim in particular, [Plaintiff] should be compelled to provide this information" sought by these Interrogatories. (Doc. 16, at 2.) Defendant describes Plaintiff's responses as deficient and demands supplemental responses and/responsive documents be provided. (*Id*.)

Plaintiff argues that he has provided sufficient responsive detail. (Doc. 17, at 2-3.) As to Interrogatory No. 1 in particular (conversations with Defendant regarding the allegations in the Complaint), Plaintiff argues that "[t]o the extent Defendant is requesting a transcript of those conversations from Plaintiff's memory, Plaintiff is unable to do so because he does not recall them verbatim." (*Id*., at 2.) He states that defense counsel can "further probe Plaintiff's recollection" during a deposition. (*Id*.) Defendant replies that it

> is not requesting a transcript of these conversations from Clover's memory, nor does [it] require a verbatim

> recitation. All [it] requires is a good faith effort to identify the content of the conversations since, as noted before, words have meaning. And, to be clear, the Board is not required to wait until Plaintiff's deposition to 'probe Plaintiff's recollection.' The tools of discovery afforded by the Federal Rules of Civil Procedure do not mandate one or the other but offer options.

(Doc. 18, at 2.)

Defendant is correct. It is well-settled in this District that

> [p]arties may choose the manner and method in which they conduct discovery. The Federal Rules provide several vehicles for discovery. Parties may choose their preferred methodology. Courts generally will not interfere in such choices.

McCloud v. Board of Geary County Comm'rs, No. 06-1002-MLB-DWB, 2008 WL 3502436, at *2 (D.Kan. Aug. 11, 2008) (citing ***Audiotext Communications Network, Inc. v. U.S. Telecom, Inc.***, No. 9402395–GTV, 1995 WL 625962, at *5 (D.Kan. Oct. 5, 1995)). "'[T]he various methods of discovery ... are clearly intended to be cumulative, as opposed to alternative or mutually exclusive.'" ***Assessment Techns. Inst., LLC v. Parkes***, No. 19-2514-JAR-KGG, 2021WL 2072452, at *3 (D. Kan. May 24, 2021) (citation omitted).

Plaintiff's responses to Interrogatories 1 – 4 are conclusory and lack sufficient supporting factual detail. Plaintiff has the duty to support the allegations in his Complaint and Defendant is within its rights to seek responsive, supporting information and facts through the discovery methodology of its choosing. Plaintiff

is ordered to provide a complete and specific narrative response to Interrogatories 1 – 4 **within thirty (30) days of the date of this Order.**

B. Interrogatory No. 7.

This Interrogatory asks for identifying information from all health care providers who have "treated or examined [Plaintiff] in the last seven years" other than those listed in response to Interrogatory No. 6.[3] Plaintiff objected that this discovery request is overly broad "to the extent it requests medical information unrelated to Plaintiff's damages in this case." (Doc. 15-2, at 4.) Plaintiff continued, however, that relevant providers will be identified "to the extent [he] was treated for conditions related to his damages in this case … ." (*Id*.)

Defendant argues that this discovery request is "reasonably limited in time" from 2015 (when the traumatic event is alleged to have happened) to the present. (Doc. 16, at 2; Doc. 18, at 4.) Defendant also contends that Plaintiff has failed to provide the promised supplementation, although Defendant "is entitled to know each of the treaters." (*Id*.)

Without citing authority, Plaintiff responds that "[m]edical information unrelated to Plaintiff's disabilities is irrelevant to the parties' claims and defenses,

[3] Interrogatory No. 6, which is not a subject of the present motion, asks for identifying information for health care providers "consulted by [Plaintiff] for diagnosis or treatment for any of the injuries [he] complain[s] of in [the] Complaint." (*Id*.) In response, Plaintiff identifies "Interpersonal Psychiatry" in Lawrence, Kansas. (*Id*.)

and Defendant has offered no explanation as to why such medical information is potentially relevant." (Doc. 17, at 3.) The Interrogatory is not, however, facially irrelevant or over broad. It is thus Plaintiff's burden, in opposing the discovery, to support his objections. ***Isberner v. Walmart, Inc.***, 2020 WL 6044097, at *2 (D. Kan. Oct. 13, 2020) (citations omitted). Plaintiff's discovery response and discussion of Interrogatory No. 7 in his briefing fails to do so. This objection is **overruled**. Defendant's motion is **GRANTED** as to Interrogatory No. 7.

C. Interrogatory No. 12.

Interrogatory No. 12 asks for the reasonable accommodation Plaintiff "claim[s] would permit [him] to perform the essential functions of [his] job at the time of [his] termination." (Doc. 15-2, at 5.) Plaintiff provides no answer other than an additional promise to supplement his response. (*Id*.) Plaintiff's brief in opposition states that he has "agreed to supplement this interrogatory and will do so without further delay." (Doc. 17, at 5.) As of the filing of Defendant's reply brief, however, no supplementation had been forthcoming. This portion of Defendant's motion is **GRANTED** as to Interrogatory No. 12. Plaintiff is directed to provide a supplemental response, without objection, **within thirty (30) days of the date of this Order**.

D. Interrogatory No. 13.

Interrogatory No. 13 asks Plaintiff to "[i]dentify each instance of which [he] engaged in a protected activity under the ADA … ." (Doc. 15-2, at 6.) Plaintiff merely refers Defendant to his Complaint absent so much as a reference to particular paragraphs therein. (*Id*.) Defendant contends Plaintiff's response, taken with Plaintiff's Complaint, is "non-specific" because although the term "protected activity" appears in ¶ 33, 34, 35, and 36 of the Complaint, "nowhere is the specific activity identified." (Doc. 16, at 3.)

In his brief in opposition, Plaintiff argues that his "Complaint recites numerous instances of him asserting his rights under the ADA, including by reporting retaliation after asserting his rights." (Doc. 17, at 5.) Defendant replies that "[e]ven a cursory reading of the Complaint fails to identify any language in which [Plaintiff] was 'asserting his rights.' Further, a fair reading of the Complaint provides no identification of which rights he was asserting, to whom he was asserting them, or when he was asserting them." (Doc. 18, at 5.)

Simply stated, Plaintiff's response to this Interrogatory is insufficient. If Plaintiff relies on certain statements in his Complaint, he should identify the paragraphs in the Complaint that are responsive to this Interrogatory. Plaintiff's responsive briefing makes no effort to identify specific, responsive passages in the Complaint and the Court will not presume to identify such passages for Plaintiff. Instead, Plaintiff is directed to provide a supplemental answer to this Interrogatory

containing a narrative response identifying and enumerating, without objection, "each instance of which [he] engaged in a protected activity under the ADA … ." (Doc. 15-2, at 6.) As to each instance, Plaintiff is directed to provide the date, specific description of his alleged protected activity, and material facts supporting the assertion that Defendant knew of the protected activity. (*Id*.) This portion of Defendant's motion is **GRANTED**.

E. Interrogatory No. 14.

Interrogatory No. 14 asks Plaintiff to identify the pharmacies he has used for the past 10 years. (Doc. 15-2, at 6.) Plaintiff objects that the discovery request is overly broad "to the extent it requests medical information unrelated to [his] damages in this case." (*Id*.) He states, however, that he "will produce information relating to any pharmacies from which he received medications for his disability in this case." (Doc. 17, at 5; *see also* Doc. 15-2, at 6.)

Defendant argues that Plaintiff "has placed his physical and mental condition at issue, and [Defendant] is, therefore, entitled to this information." (Doc. 16, at 3 (citing ***Pratt v. Petelin***, 09-2252-CM-GLR, 2010 WL 446474 (D. Kan. Feb. 4, 2010)). The Court agrees. The request is not facially objectionable and Plaintiff has failed to meet his burden to support his objection. Further, Plaintiff is not entitled to pick and choose the responsive medical information he finds to be relevant. This portion of Defendant's motion is **GRANTED**.

F. Document Requests.

Defendant asserts that Plaintiff has failed to produce documents responsive to Requests No. 2, 4, 5, 6, 8, 11, 12, 14 and 15 and has not the completed questionnaire identified at BC0007. (Doc. 16, at 4.) Plaintiff agreed to provide responsive documents to all of these discovery requests but largely indicated he would do so "[t]o the extent responsive documents exist" or "[t]o the extent [he] is in possession, custody[,] or control of responsive documents … ." (Doc. 15-3, at 2, 3, 4.)

In response to Defendant's motion, Plaintiff admits that certain responsive documents "have admittedly taken too long." (Doc. 17, at 6.) Defendant indicates that as of the filing of its reply brief, "there has been no production of any documents." (Doc. 18, at 6.)

This portion of Defendant's motion is **GRANTED**. Plaintiff is instructed to provide all responsive documents, without objection, **within thirty (30) days of the date of this Order.**

III. Request for Fees.

Defendant's motion includes a request for costs and fees pursuant to Fed.R.Civ.P. 37. (Doc. 15, at 2.) Subsection (a)(5) of that Rule states that if a motion to compel is granted, "the court must ... 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." The rule continues, however, that "the court must not order payment" when the nonmovant's conduct was "substantially justified … ." Fed.R.Civ.P. 37(a)(5); *see also* ***Meyer v. United States***, No. 16-2411-KGG, 2017 WL 735750, at *5 (D. Kan. Feb. 24, 2017) (discussing the "substantially justified" standard in the context of a motion to compel discovery).

Defendant has prevailed on the entirety of its motion. Based on Plaintiff's discovery responses and briefing, the Court finds no justification – substantial or otherwise – for Plaintiff's failure to appropriately respond to the discovery requests at issue. As such, Defendant's request for attorneys fees is **GRANTED** as to such fees relating to drafting and briefing the present motion. The parties are instructed to confer concerning that amount consistent with this Court's procedure for awarding statutory fees specified in D. Kan. Rule 54.2. ***Meyer***, 2017 WL 735750, at *5.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel (Doc. 15) is **GRANTED**. Supplemental responses are due within 30 days of the date of this Order.

IT IS FURTHER ORDERED that Defendant's request for attorney's fees is **GRANTED**.

IT IS SO ORDERED.

Dated this 22nd day of February, 2022, at Wichita, Kansas.

/S KENNETH G. GALE
KENNETH G. GALE
United States Magistrate Judge