

**IN THE U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

COLLEEN A. GRAHAM,

Complainant,

v.

CREDIT SUISSE SECURITIES, ET AL.,

Respondents.

Case No. 2019-SOX-00040

**SIGNAC'S OPPOSITION TO GRAHAM'S MOTION TO COMPEL AND FOR LEAVE
TO AMEND, AND CROSS-MOTION TO EXTEND SIGNAC'S TIME TO RESPOND**

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INTRODUCTION

Complainant's Motion to Compel and For Leave to Amend ("Graham's Motion") against Credit Suisse Securities (USA) LLC ("Credit Suisse") and Signac LLC ("Signac") should be denied in its entirety, and Signac's Cross-Motion to Extend Time to Respond should be granted. While Complainant focuses on the delay in her receipt of Signac's responses to Complainant's Requests for Production ("RFPs"), she neglects to tell the Court that Signac has already produced *nearly fifty-three thousand pages of documents* covering the topics set forth in the RFPs at issue during the arbitration proceeding following the end of Complainant's employment with Signac. Indeed, Signac's prior, extensive document productions largely obviate the issues raised concerning discovery in Graham's Motion.

In addition, Complainant has not even bothered to argue (nor can she) that she has been prejudiced by the delay in the receipt of Signac's responses to the RFPs, despite her seeking a number of extraordinary remedies, including striking Signac's defenses related to the requested documents. Instead, Complainant focuses her motion entirely on the mere fact that Signac's responses to the RFPs were served approximately three weeks after the new deadline following the decision on the motion to dismiss, which – given Signac's prior extensive productions of documents and information and the lack of any prejudice to Complainant – provides no support for the relief Complainant seeks from this Court.

Signac was a joint venture formed by, among others, Credit Suisse in 2016 to build, test, and market a product to help financial institutions identify rogue traders. Signac is now a dissolved entity. It has no employees or business operations – just lawyers managing the wind-down of the business. Signac has long ago produced all documents relevant to Complainant's claims in its possession. Complainant makes no effort to explain why she needs more documents from Signac in order to fairly litigate the case. Indeed, Complainant did not even attempt to schedule a meet-

and-confer with Signac’s counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. Given Signac’s short and excusable delay, and the lack of prejudice to Complainant, the Court should deny Graham’s Motion in its entirety and grant Signac’s cross-motion to extend its time to respond to the RFPs.

BACKGROUND

As set forth below, Signac joins in certain arguments made in Credit Suisse’ Opposition to Complainant’s Motion to Compel and for Leave to Amend (the “CS Opposition”), and in Credit Suisse’ Cross Motion for Entry of Confidentiality Order (the “CS Cross-Motion”), and requests that the Court deny Graham’s Motion in its entirety and grant the Signac Cross-Motion and the CS Cross-Motion.

During the JAMS arbitration captioned *Graham, et al. v. Palantir Technologies Inc., et al.*, JAMS NO. 1425025009, that was previously completed, concerning, among other things, the Complainant’s employment by Signac and the termination of that employment, Signac produced **fifty-two thousand eight hundred and eighty-two (52,882)** pages of documents related to the Complainant’s employment with Signac. *See* Declaration of MaryBeth Shreiner, dated May 1, 2020 (“Shreiner Decl.”), ¶ 2. Signac made this production to Complainant on January 31, 2018. *See* Shreiner Decl., ¶ 3.

Despite this extremely comprehensive prior production of documents, on August 2, 2019, Complainant served broad RFPs seeking further discovery from each of the Respondents. On September 12, 2019, based on a motions filed by Respondents, a stay was put in place for all discovery pending a decision on the motions for summary decision and the motions to dismiss. On January 16, 2020, a decision was issued on the motions for summary decision and motions to dismiss, and the deadline to respond to the RFPs was set as February 17, 2020.

Given that it is no longer operating as a company, during the course of this litigation, Signac and its counsel have largely followed the lead of the joint venture partners, including Credit Suisse, to avoid unnecessary duplicative attorneys' fees in this matter. On January 30, 2020, the parties collectively discussed discovery deadlines and Signac and Credit Suisse made clear to Complainant that no additional documents would be produced prior to entry of a protective order. *See* Declaration of Joseph Lockinger, dated May 1, 2020 ("Lockinger Decl."), ¶ 2. Following this conversation, and based on the belief that a motion for a protective order was forthcoming in place of initial responses to the RFPs, Signac did not respond to the RFPs on the February 17, 2020 deadline. Lockinger Decl., ¶ 3. During the scheduling call with the Court on February 27, 2020, it was made clear to counsel for Signac that Credit Suisse had responded to the RFPs by interposing responses and objection, despite not having made a motion for a protective order. Lockinger Decl., ¶ 4. As such, on March 13, 2020, Signac interposed its own Responses and Objections (the "Responses") to the RFPs. Lockinger Decl., ¶ 5.

ARGUMENT

I. Signac's Late Responses to the RFPs are the Result of Excusable Neglect and the Deadline Should Now Be Extended.

Signac served on Complainant its Responses on March 13, 2020, approximately three weeks after the February 17, 2020 deadline. Signac requests that the Court formally extend its time to interpose its Responses under 29 C.F.R. §18.32(b)(2) from February 17, 2020, until March 13, 2020, based on excusable neglect resulting in Signac's delayed filing of its Responses. "When an act may or must be done within a specified time, the judge may, for good cause, extend the time ... [o]n motion made after the time has expired if the party failed to act because of excusable neglect." 29 C.F.R. §18.32(b)(2). The test for determining whether excusable neglect has been established is (i) the danger of prejudice to the other party, (ii) the length of delay and its potential

impact on judicial proceedings, (iii) the reason for the delay, and (iv) whether the movant acted in good faith. *Pioneer Investment Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *see also Iopa v. Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1301 (9th Cir. 2019) (applying the excusable neglect test from *Pioneer* to 29 C.F.R. §18.32(b)(2)).

Applying these factors here dictates that the Court should find excusable neglect and extend Signac's time to respond pursuant to 29 C.F.R. §18.32(b)(2) from February 17, 2020, until March 13, 2020 – the date on which Signac served its Responses on Complainant.

First, there is no danger of prejudice to Complainant in granting Signac's requested extension. None has even been alleged in Graham's Motion. Complainant already has Signac's Responses. In addition, as mentioned, Signac has already produced nearly fifty-three thousand pages of documents related to the claims asserted by Complainant and it is unclear what else would be produced based on these RFPs, if anything. Further, there is currently an order from the Office of Administrative Law Judges ("OALJ") imposing a stay of all procedural deadlines in this case (the "Tolling and Suspension Order") meaning that mere delay would not represent any prejudice.¹

Second, given the current stay on all procedural deadlines based on the Tolling and Suspension Order and the significant time until the discovery is scheduled to close, the approximately three week delay in responding to the RFPs will have no impact on discovery in this proceeding.

Third, there is a justifiable reason for the delay. As is set forth above, Signac is now a dissolved entity. Given that it is no longer operating as a company, during the course of this

¹ On March 23, 2020, the OALJ ordered that all procedural deadlines in cases currently pending before the OALJ were suspended until May 15, 2020, due to the COVID-19 national emergency. On April 10, 2020, the suspension of procedural deadlines was extended until June 1, 2020, and further modified to set forth that the new deadline would be determined by the date on which the period of tolling ends ("Supplemental Order").

litigation, Signac and its counsel have largely followed the lead of the joint venture partners, including Credit Suisse, to avoid unnecessary duplicative attorneys' fees in this matter. Signac interposed its own Responses to the RFPs on March 13, 2002, just a few weeks after the deadline and as soon as it reasonably could after learning that Credit Suisse had also served responses and objections rather than filing a motion for a protective order.

Finally, as mentioned, Complainant did not even attempt to schedule a meet-and-confer with Signac's counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. Signac interposed the Responses to the RFPs as soon as it became clear that placeholder objections were appropriate while a Protective Order was still pending.

II. Even if the Cross-Motion for an Extension is not Granted, the Relief Sought by Complainant under 29 CFR § 18.57 Should be Denied.

Even if Signac's time to respond to the RFPs is not extended, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57 should be denied in its entirety.

First, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57(b) for failure to comply with a judge's discovery order is meritless. Specifically, 29 C.F.R. § 18.57(b)(1) states that if "a party . . . fails to obey an order to provide or permit discovery . . . the judge may issue further just orders." Complainant has not identified any such order that Signac has failed to comply with by providing its Responses to the RFPs after the deadline. Complainant's assertion that Signac's service of the Responses after the deadline represents a failure to comply with the Initial Prehearing Order and Notice of Hearing, dated June 19, 2019 (the "Prehearing Order") is misplaced. In fact, the Prehearing Order only states that the parties must complete all discovery **at least 40 days prior to the date of the evidentiary hearing**, which is currently scheduled for August 3, 2020. As such, the Prehearing Order's current deadline of June 24, 2020 is still

approximately seven weeks from the date of this opposition. In addition, given the OALJ's current Tolling and Suspension Order, it is likely that the new deadline to complete discovery would be ninety-three days after the tolling period ends on June 1, 2020, which would be September 2, 2020.² As such, Complainant has ample time to complete whatever additional discovery she needs and Signac has not failed to comply with the Prehearing Order. Complainant's unsupported assertion to the contrary is entirely frivolous.

Second, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57(c) for failure to disclose, to supplement an earlier response, or to admit is misplaced here. The C.F.R. Section cited by Complainant concerns failures to provide information or witnesses in disclosures or additional disclosures under 29 C.F.R. § 18.50 (initial disclosures, disclosures of expert testimony, prehearing disclosures, and the form of disclosures) and 29 C.F.R. § 18.53 (supplemental disclosures), or to admit when request under 29 C.F.R. § 18.63 (request for admission). Here, Complainant's RFPs sought production of documents under 29 C.F.R. § 18.61 (production of documents), which is not covered by any part of 29 C.F.R. § 18.57(c).

Finally, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 1857(d) is also misplaced as Responses have already been provided to the RFPs and Complainant has not been prejudiced by the slight delay in receiving these Responses, especially given both the extensive discovery already provided and the Tolling and Suspension Order. More importantly, Complainant has failed to satisfy the requirements set forth in 29 C.F.R. § 1857(d)(1)(ii) to bring this motion for sanctions as the movant must be able to certify she has "in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without the judge's action." As previously noted, Complainant has not even attempted to schedule a meet-

² See footnote 2 of the Supplemental Order.

and-confer with Signac's counsel to discuss what, if any, additional documents she was seeking here before initiating this discovery dispute process. While Complainant's "Good Faith Moving Declaration" sets forth that she made a good faith effort to resolve the discovery dispute it provides no actual details concerning these purported efforts. And no such details exist. As a result, Complainant's application for sanctions under 29 C.F.R. § 1857(d) should be denied for failure to meet the necessary pre-requisites set forth in 29 C.F.R. § 1857(d)(1)(ii).

Even if the Court were to consider this motion for sanctions, none should be granted in this case. Courts analyzing the appropriateness of awarding discovery sanctions generally consider the following factors: "(1) the willfulness of the non-compliant party or the reason for non-compliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance[;] and (4) whether the non-compliant party had been warned of the consequences of non-compliance. *Agiwal v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009). In addition to the four *Agiwal* factors, courts also regularly consider the extent of any prejudice to the party moving for sanctions. *See e.g., Trilegiant Corp. v Sitel Corp.*, 275 FRD 428, 434 (S.D.N.Y. 2011) (declining to impose sanctions where the delay was not willful and any prejudice to party seeking sanctions was mitigated by an extension of the existing discovery deadline). As set forth above, the primary reason for Signac's failure to timely respond is that it is a dissolved entity that has already produced the documents that were in its possession prior to dissolution. Further, the delay in its Responses to the RFPs was short (approximately three weeks), there have been no prior warnings or issues concerning Signac related to discovery, and there is no prejudice to Complainant based on this short delay.

Given all of the above, Graham's Motion seeking sanctions against Signac under 29 C.F.R. § 18.57 should be denied in its entirety.

III. Complainant's Motion for Leave to Amend Should Be Denied For The Reasons Articulated in the Credit Suisse Opposition.

As is set forth in the CS Opposition, the Complainant's proposed amendments should all be denied. Signac joins in the CS Opposition on the points set forth therein and incorporates by reference all relevant factual and legal recitations provided.

IV. A Protective Order Should Be Issued For the Reasons Articulated in the Credit Suisse Cross-Motion.

As is set forth in the CS Cross-Motion, the Respondents have requested that Complainant agree to enter a routine protective order on multiple prior occasions and have been refused. Signac hereby incorporates by reference all relevant factual and legal recitations provided in the CS Cross-Motion and respectfully joins in the request for a protective order as articulated therein.

CONCLUSION

For the foregoing reasons and those set forth in the CS Opposition and CS Cross-Motion, Respondent Signac respectfully requests that the Court: (1) extend Signac's time to respond to the RFPs, (2) deny Graham's Motion in its entirety as it pertains to Signac, (3) enter a protective order substantially in the form set forth in Exhibit H of the CS Cross-Motion to protect confidential information exchanged during these proceedings.

May 1, 2020

/s/ Elizabeth Inglis

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 12, 2019, the original and a copy of the **SIGNAC'S OPPOSITION TO GRAHAM'S MOTION TO COMPEL AND FOR LEAVE TO AMEND, AND CROSS-MOTION TO EXTEND SIGNAC'S TIME TO RESPOND** was filed by e-mail on the following:

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