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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

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CLERK OF THE COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

and

ANTONIO ANGLIN

Intervener

v.

Case No.: 8:00-CV-2012-T-24EAJ

ENTERPRISE LEASING COMPANY,

Defendant.

ORDER

Before the court is **Defendant's Motion To Compel EEOC To Disclose Its Calculation Of Back Pay Damages In Compliance With Rule 26** (Dkt. 143) filed on May 24, 2002; **Motion for Sanctions Against Intervener For His Failure To Comply With This Court's April 19, 2002, Order To Provide Back Pay Disclosures Pursuant To Rule 26** (Dkt. 146) filed on May 29, 2002; **Plaintiff EEOC's Response To Defendant's Motion To Compel EEOC To Disclose Its Calculations Of Back Pay Damages In Compliance With Rule 26** (Dkt. 149) filed on June 13, 2002; **Antonio D. Anglin's, Plaintiff/Intervener, Response To Defendant's Motion For Sanctions** (Dkt. 150) filed on June 17, 2002; and **Defendant's Memorandum Of Law In Opposition To Anglin's Motion For Attorneys' Fees And Costs On Behalf Of Himself And EEOC** (Dkt. 151) filed on July 2, 2002.

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Defendant, Enterprise Leasing Company (“Enterprise”), seeks to compel Plaintiff Equal Employment Opportunity Commission (“EEOC”) and Plaintiff Intervener Antonio Anglin (“Anglin”) to provide it with more specific back pay disclosures. Enterprise seeks to compel Anglin to provide it with a more specific damages disclosure of his claim for constructive discharge. Enterprise also seeks sanctions against the EEOC and Anglin.

I. Procedural Background

Enterprise originally filed its motion to compel the EEOC to disclose the back pay damages on March 20, 2002, (Dkt. 123) but formally withdrew that motion on the April 8, 2002, (Dkt. 131) and indicated to the court that the EEOC had agreed to provide Enterprise with more specific disclosures.

Enterprise filed its first motion to compel more specific initial disclosures against Anglin on March 20, 2002, (Dkt. 122) which was granted when Anglin failed to respond (Dkt. 136). Anglin, in his response to Enterprise’s motion for sanction, contends that Enterprise did not confer with his counsel before filing the original motion. Anglin attaches a letter that he sent Enterprise dated April 1, 2002, pointing out that no 3.01(g) conference had been held before Enterprise filed its first motion. Anglin contends that he informed Enterprise that he would be responding to Enterprise’s motion by letter. Anglin, by letter dated April 22, 2002, supplemented his Rule 26 disclosures. Anglin argues that Enterprise never contacted his attorneys once it deemed the letter of April 22, 2002, deficient and before Enterprise filed the pending motion against him.

II. Analysis

Rule 26(a)(1)(C), Fed. R. Civ. P., requires a party to provide to other parties:

a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34

the documents or other evidentiary material not privileged or protected from disclosure, on which such calculation is based.

Additionally, pursuant to Rule 26(e), parties are under a duty to supplement Rule 26 disclosures if the party learns that in some material respect, the information disclosed is incomplete or incorrect and if additional information has not otherwise been made known to the other parties during the discovery process.¹ If a party fails to comply with Rule 26, the party does so at its peril.

The EEOC and Anglin disclosed that they are seeking \$49,300, plus interest, in back pay damages. This calculation is based on what Anglin allegedly made as a Management Trainee at Enterprise, \$22,000/year, and what he would have earned had he been promoted to higher levels of management, a maximum of \$50,000/year.

Enterprise contends that the EEOC and Anglin have refused to identify the specific promotions that they claim Anglin was discriminatorily denied. Enterprise also contends Plaintiffs have not indicated how they arrived at the maximum figure of \$50,000 per year. Finally, Enterprise argues that the EEOC and Anglin were required, pursuant to Rule 26(a)(1)(C), Fed. R. Civ. P., to provide it with a computation of how they arrived at the \$49,300 figure with reference to specific promotions that Anglin was allegedly discriminatorily denied, and the dates that these specific promotions were denied Anglin, as well as any documentation to support this calculation.

The EEOC and Anglin argue that their calculation for back pay damages is based on Anglin's personal knowledge of what he earned as a Management Trainee and the approximate salaries of employees at Enterprise with higher level management positions (approximately \$50,000) and

¹Plaintiffs are reminded that a party that fails to disclose information as required by Rule 26(e) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion, any witness or information not so disclosed. Rule 37(c)(1) Fed. R. Civ. P.

therefore there is no documentation to produce in connection with those figures. Plaintiffs contend that Defendant is the one in the best position to obtain any documentation figures as Anglin worked for Enterprise from 1994 through 1997 and Enterprise would have the best knowledge concerning all of its employees' salaries.

The EEOC and Anglin argue that Enterprise is deliberately mis-characterizing their claims as claims that Anglin was denied "specific" promotions. Rather, Plaintiffs' claims are that Enterprise, throughout Anglin's tenure, "consistently" denied him promotional opportunities because of his race (Dkt. 149, pp. 8).

Anglin also seeks backpay damages in a claim for constructive discharge. Anglin has disclosed that he is seeking \$146,000 in backpay damages on this claim. Enterprise asserts that this disclosure is also deficient. Anglin states that this figure represents what he could have earned at Enterprise from 1997 to present, minus what he earned in interim employment. Anglin contends that he produced to Enterprise, during discovery, his tax records from that period. Enterprise asserts that Anglin has not produced all of his tax returns, but it does not state the specific years that are missing. Anglin also responds that he testified during his February 28, 2001, deposition about his employment after he was allegedly constructively discharged from Enterprise.

In sum, the EEOC and Anglin represent that they have nothing further to provide Enterprise. Accordingly, this court denies Enterprise's motions.

Local Rule 3.01(g), M. D. Fla., as amended on July 1, 2002, requires a party filing a civil motion to meet and confer with the opposing party in a good faith effort to resolve the issues raised by the motion.

Both the EEOC and Anglin claim that Enterprise, despite its good faith certificates, did not

comply with Local Rule 3.01(g).

The EEOC argues that Enterprise relies on two letters dated February 13, 2002, and March 19, 2002, as well as its withdrawal of its first motion to compel as its good faith efforts to resolve the dispute prior to filing the pending motion. The EEOC argues that the letters were written and the motion filed and withdrawn before the EEOC provided Enterprise with more specific calculations, and Enterprise did not contact the EEOC before filing this new motion.

Anglin argues that Enterprise likewise did not comply with Local Rule 3.01(g) before filing either of its motions to compel against him. When Anglin raised this issue with Enterprise after the pending motion was filed, Enterprise took the position that the letters it sent to the EEOC in February and March 2002, before Anglin supplemented his responses on April 22, 2002, were sufficient to satisfy Local Rule 3.01(g).

This court also finds that Enterprise did not comply with Local Rule 3.01(g). However, this court declines to award the EEOC and Anglin sanctions at this time as it appears that a “meet and confer” could not have resolved these disputes.

Enterprise is reminded, in future motion practice, that it must fully comply with both the letter and the spirit of the Federal Rules of Civil Procedure and this district’s local rules.

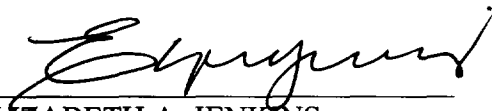
Accordingly, it is **ORDERED and ADJUDGED:**

(1) Defendant’s Motion To Compel EEOC To Disclose Its Calculation Of Back Pay Damages In Compliance With Rule 26 (Dkt. 143) is **DENIED;**

(2) Defendant’s Motion for Sanctions Against Intervener For His Failure To Comply With This Court’s April 19, 2002 Order To Provide Back Pay Disclosures Pursuant To Rule 26 (Dkt. 146) is **DENIED;**

(3) Plaintiff Intervener's Motion For Sanctions (Dkt. 150) is **DENIED without prejudice** to Plaintiff re-asserting it at a later date or on the court's own motion in appropriate circumstances.

DONE AND ORDERED in Tampa, Florida on this 11th day of July, 2002.



ELIZABETH A. JENKINS
United States Magistrate Judge

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Date Printed: 07/12/2002

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