

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

COMFORT LINE PRODUCTS, INC.,

Plaintiff,

v.

Case No: 2:17-cv-198-FtM-99CM

OCEANTIS LLC and MICHAEL
SHAWN O'BRIEN,

Defendants.

ORDER

This matter comes before the Court upon review of Defendants, Oceantis, LLC's, and Michael Shawn O'Brien's, Motion to Compel Discovery Responses filed on October 23, 2018. Doc. 46. Defendants seek to compel documents identified in Plaintiff's Rule 26 Disclosures, documents Plaintiff failed to provide in the Rule 26 Disclosures, answers to interrogatories and responses to requests for production. *Id.* at 1-4. Plaintiff has not responded as the time to do so has not yet passed. Nevertheless, for the reasons stated herein, the motion will be denied without prejudice.

First, the motion is untimely. The original Case Management and Scheduling Order ("CMSO") in this case clearly states: "The Court may deny as untimely all motions to compel filed after the discovery deadline."¹ Doc. 27 at 7. The Rule 26 Disclosures were served on July 21, 2017, and Defendants provide no reason for the

¹ The Amended CMSO indicates all directives set forth in the original CMSO remain in effect. *See* Doc. 41 at 2.

delay in seeking the documents that should have been included in the Rule 26 Disclosures or that were identified in the same. *See* Doc. 46 at 2-3. Additionally, the extended deadline for Defendants' discovery requests was on August 6, 2018, but Defendants fail to explain why they waited until over a month after the September 14, 2018 discovery deadline to file the present motion. *See id.* at 3-4; *see also* Doc. 44. Further, the parties twice requested extensions of the discovery deadline without ever referencing the long-standing discovery disputes. *See* Docs. 39, 43. This unexplained untimeliness is reason enough to deny the motion.

Second, Middle District of Florida Local Rule 3.01(g) requires that each motion filed in a civil case, with certain enumerated exceptions not at issue here, "stat[e] whether counsel agree on the resolution of the motion." M.D. Fla. R. 3.01(g). Here, Defendants' motion references emails or discussions as to particular discovery issues, and "Defendants certify that they have made a good faith effort to obtain the subject discovery without court action prior to the filing of the present motion." *Id.* at 2-4. There is no indication, however, the parties meaningfully conferred about the present motion. Therefore, the Court directs Defendants to meaningfully confer with Plaintiff about the requested relief to try to reach an agreeable resolution of the discovery issues, and, if motion practice is still necessary, to refile the motion in accordance with the Local Rules.² Further, if Defendants determine a motion to

² The Court is aware of the parties' requirement to file a joint status report on or before November 2, 2018, as directed by the Honorable Sheri Polster Chappell. The Court expects the parties will be able to resolve or narrow the discovery issues raised in this motion while discussing the overall case and preparing the required report. *See* Doc. 47.

compel is necessary, Defendants are directed to address why its motion should not be denied as untimely.

The Court expects the parties—as officers of the Court—to cooperate with each other. The parties are reminded, “[d]iscovery in this district should be practiced with a spirit of cooperation and civility.” *See* Middle District Discovery, A Handbook on Civil Discovery Practice in the United States District Court for the Middle District of Florida § I.A.1. From this point forward, the parties are expected to facilitate the discovery process, meaningfully confer about disputes, and engage in civil and concise motion practice when necessary. Failure to comply with these directives could result in sanctions.

ACCORDINGLY, it is

ORDERED:

Defendants, Oceantis, LLC’s, and Michael Shawn O’Brien’s, Motion to Compel Discovery Responses (Doc. 46) is **DENIED without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida on this 25th day of October, 2018.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record