

COMMONWEALTH OF MASSACHUSETTS

02/23/2024

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT

BABAK BABAKINEJAD,

Plaintiff,

v.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendant.

CIVIL ACTION NO. 2181CV01904

**MIT'S MEMORANDUM IN OPPOSITION TO BABAKINEJAD'S MOTION FOR
DEFAULT JUDGMENT AND MOTION TO COMPEL DISCOVERY AND RESPONSE
TO REQUEST TO EXTEND TRACKING ORDER**

I. INTRODUCTION

Defendant Massachusetts Institute of Technology ("MIT") has proceeded with diligence, across four rolling document productions since June 23, 2023, to produce thousands of documents from 19 custodians and a highly sensitive research misconduct investigation file to Plaintiff Babak Babakinejad. Despite MIT's ongoing compliance with its discovery obligations, Plaintiff asks the Court for extraordinary relief: a default judgment. Put simply, there is no basis for the Court to grant that relief. The Motion (which, in violation of Superior Court Rule 9A, is supported by neither a Memorandum of Law nor an Affidavit) offers no support, in law or fact, that would warrant the entry of a default judgment. MIT respectfully respects that the Court deny that motion.

MIT does not, however, oppose Plaintiff's request to extend discovery by 60 days.

II. PROCEDURAL BACKGROUND

On June 23, 2023, the Court entered an Order resolving a series of long-running discovery issues in this case and setting the stage for the parties to engage in extensive document discovery.

Docket No. 28. Among other things, the June 23, 2023, Order provided parameters for the temporal and substantive scope of discovery and confirmed that “the parties have committed to a rolling discovery process, which will begin promptly, acknowledging that the custodian search must first occur.”¹ Docket No. 28. The Court provided for 19 custodians whose documents MIT would be required to search in order to produce responsive, non-privileged documents. *Id.* MIT commenced its searches with diligence and began producing responsive, non-privileged documents.

After the Court entered its Order dated June 23, 2023 (Docket No. 28), MIT has served four rolling document productions on Plaintiff Babak Babakinejad, consisting of documents bearing Bates labels MITBB000001– MITBB014439. Affidavit of R. Nicholas Perkins ¶ 3. The documents produced in the four rolling document productions are the product of searches for responsive, non-privileged documents in (i) the email files of the 19 custodians in this case; and (ii) documents related to the investigation of allegations of research misconduct by Caleb Harper. *Id.* In its first rolling document production on October 31, 2023, MIT produced responsive, non-privileged documents bearing Bates labels MITBB000001–MITBB002271 resulting from searches of the email files of custodians Babak Babakinejad, Lorena Altamirano, Barak Berkowitz, Phyllis Carter, Louis DiBerardinis, Gerald Fallon, Tim Savas, Ben Moorghen, Joichi Ito, and Helene Kelsey.² Perkins Aff. ¶ 4, Ex. A. In its second rolling document production on December 8, 2023, MIT produced responsive, non-privileged documents bearing Bates labels

¹ The Court later provided additional clarity on the scope of discovery in its December 6, 2023, Order, in which it denied MIT’s Motion for a Protective Order to protect from discovery documents relating to the investigation of research misconduct by Caleb Harper. *See* Docket No. 35.

² After the first rolling document production, MIT filed its Status Report Concerning Discovery and Response to Court Order Concerning in Camera Submission to provide the Court with an update on the status of discovery four months after its June 23, 2023, Order. *See* Docket No. 33.

MITBB002272–MITBB006741 resulting from searches of the email files of custodians Hildreth England, Daniel Poitrast, and Jessica Tsymbal. Perkins Aff. ¶ 5, Ex. B. In its third rolling document production on December 19, 2023, MIT produced responsive, non-privileged documents bearing Bates labels MITBB006742–MITBB008304 resulting from searches of the email files of custodians Whitney Burke, Martha Collins, Arielle Johnson, and David Zack. Perkins Aff. ¶ 6, Ex. C. In its fourth rolling document production on February 6, 2024, MIT produced responsive, non-privileged documents bearing Bates labels MITBB008305–MITBB014439 resulting from searches of the email files of custodians Caleb Harper and Martha Zuber, as well as the documents related to the investigation of allegations of research misconduct by Caleb Harper. Perkins Aff. ¶ 7, Ex. D.

MIT indicated in its February 6, 2024 production letter that “[t]he production of the responsive, non-privileged Harper and Zuber emails completes the email productions of responsive, non-privileged documents for the 19 custodians in the case,” and stated that “MIT continues to review documents to ensure compliance with its discovery obligations and the Court’s orders,” and that, “[s]hould MIT discover additional responsive, non-privileged documents, it reserves the right to produce them in supplemental document productions.” Perkins Aff. ¶ 8, Ex. D at 1. MIT also informed Babakinejad that it would “produce a privilege log and conduct a review of responsive documents that partially contain privileged information from the 19 custodian email collections and the Investigation Documents [regarding allegations of academic misconduct by Caleb Harper],” and that, “[i]f the responsive documents which partially contain privileged information can be redacted to protect the privileged information, MIT will make the necessary redactions and produce the documents in redacted form.” Perkins Aff. ¶ 9, Ex. D at 1.

Despite MIT's ongoing compliance with its discovery obligations, Babakinejad continues to submit multiple filings to the Court that make meritless accusations against MIT, including his Response to MIT's Status Report Concerning Discovery, filed on November 29, 2023 (Docket No. 34) and the first version of this Motion (filed without either first conferring with MIT's counsel or serving it on MIT's counsel). *See* Docket No. 36. The Court denied Babakinejad's January 29, 2024, filing for failure to abide by Rule 9A. *See* January 30, 2024, Endorsement on Motion for Default Judgment (Docket No. 36).

On February 1, 2024, following a conference, *see* Perkins Aff. ¶ 11, Babakinejad served the Motion at issue here, which is substantively identical to his filing of January 29, 2024, *compare* Motion, *with* Docket No. 36.¹³

III. ARGUMENT

A. The Motion, Which Fails to Include a Separate Memorandum or Affidavit, Makes No Attempt to Comply With Rule 9A.

Plaintiff's Motion must fail on procedural grounds because it makes no attempt to comply with the requirements of Rules 9A, which states: "A moving party must serve with the motion . . . (1) a separate memorandum stating the reasons, including supporting authorities, that the motion should be granted and (2) affidavits or other exhibits evidencing facts on which the motion is based." Mass. Sup. Ct. R. 9A(a)(1). The Supreme Judicial Court has held: "The fact that [a] plaintiff represents himself does not excuse his noncompliance with procedural rules." *Brossard v. W. Roxbury Div. of Dist. Court Dept.*, 417 Mass. 183, 184 (1994); *see Maza v. Com.*, 423 Mass.

³ The sole differences between the January 29, 2024, filing and the Motion are an update to the number of pages of documents Babakinejad claims to have produced, *see* Motion at 3 n.1, and his apparent acknowledgement, contrary to the claims in his original motion, that MIT had in fact produced emails for Hildreth England. *See* Motion at 3 & n1

1006 (1996) (“Although [plaintiff] has been acting pro se, she is held to the same standards as litigants who are represented by counsel.”). Moreover, here, the Court plainly directed the Plaintiff to the requirements of Rule 9A when it denied, without prejudice, Babakinejad’s earlier version of this motion. *See* January 30, 2024, Endorsement on Motion for Default Judgment (Docket No. 36). Plaintiffs’ persistent refusal to obey Rule 9A is sufficient grounds, by itself, to warrant denial of Plaintiffs’ Motion.

B. Babakinejad’s Argument for the “Extreme Sanction” of a Default Judgment Finds No Support in Facts or Law, Particularly in Light of MIT’s Fulsome and Expeditious Discovery.

If the Court chooses to reach the merits of the Motion, the Court should deny it. Babakinejad’s Motion fails to establish that he is entitled to the extraordinary remedy of a default judgment. First, Babakinejad cites no rule or case law to further his argument that he is entitled to a default judgment; his claim for relief is entirely unsupported. While Rule 37 of the Massachusetts Rules of Civil Procedure permits a court to “render[] a judgment by default against [a] disobedient party” who “fails to obey an order to provide or permit discovery,” Mass. R. Civ. P. 37(b)(2)(C), “[d]efault judgment is an extreme sanction that requires a finding of wilfulness, bad faith, or fault,” *Oearn v. Lowell Lodge*, 78 Mass. App. Ct. 1101, at *1 (2010) (quotation marks omitted) (affirming denial of default judgment where trial judge “concluded that neither the claimed discovery abuses nor the alleged spoliation, to the extent spoliation occurred at all, were intentional and worthy of such an extreme sanction”); *see also Gos v. Brownstein*, 403 Mass. 252, 257 (1988) (noting that “due process requirements may limit the sanction of dismissal”).

Babakinejad is not entitled to a default judgment here because MIT has complied with the Court’s order and produced more than 14,000 pages of emails from the 19 custodians the Court identified as appropriately within the scope of discovery and remains dedicated to doing so until discovery closes. *See Perkins Aff.* ¶¶ 8–10, Ex. D. The substantial discovery MIT has served in

this case exposes Babakinejad’s allegations as misleading and inaccurate. There has been no “refusal to provide essential documents,” Motion at 1, nor does MIT “continue to withhold [information crucial to Plaintiff’s claims] improperly,” Motion at 2. Instead, MIT has approached discovery in a comprehensive and systematic way, producing documents in the Bates range MITBB000001 through MITBB014439 over the course of four rolling productions, *see* Perkins Aff. ¶¶ 3–7, Exs. A–D, as the Court contemplated in its June 23, 2023, Order, *see* Docket No. 28 (“To be clear, the parties have committed to a rolling discovery process, which will begin promptly acknowledging that the custodian search must first occur.”) Further, MIT has stated its specific intention to continue to review and produce responsive discovery in this case. *See* Perkins Aff. ¶¶ 8–10, Ex. D at 1. The fact that MIT’s searches, reviews, and productions of thousands of documents have taken a number of months, particularly given the highly sensitive nature of many of the documents involved and the fact that the Court ordered a rolling production, does not constitute a “fail[ure] to obey an order to provide or permit discovery,” Mass. R. Civ. P. 37(b)(2), much less a failure that “is the result of wilfulness, bad faith, or fault,” *Oeurn v. Lowell Lodge*, 78 Mass. App. Ct. 1101, at *1. In light of MIT’s productions, the argument that “there has been a consistent pattern of non-cooperation from counsels representing Defendant” falls flat. *See* Motion at 3.

In short, MIT continues to fulfill its discovery duties in this case, in spite of Babakinejad’s attempts to derail the process with filings that find no support in facts or law and baseless accusations against MIT and its counsel. Notwithstanding Babakinejad’s recent conduct, and in the spirit of cooperation, MIT raises no opposition to his requested 60-day extension of discovery.

It is MIT's hope that the remainder of the discovery in this case can proceed in an orderly and comprehensive fashion.

III. CONCLUSION

For the reasons stated above, MIT respectfully requests that the Court deny Babakinejad's Motion, but raises no opposition to his request to extend discovery by 60 days.

**MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,**

By its attorneys,

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Dated: February 12, 2024

CERTIFICATE OF SERVICE

I, R. Nicholas Perkins, hereby certify that, on February 12, 2024, I caused a true and correct copy of the foregoing document to be served by email on Plaintiff Babak Babakinejad.

/s/ R. Nicholas Perkins
R. Nicholas Perkins