

ORDERED.

Dated: September 26, 2023

  
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Grace E. Robson  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

|   |   |                            |
|---|---|----------------------------|
| In re                                     | ) |                            |
|   | ) |                            |
| Richert Funding, LLC, as substantively    | ) | Case No. 6:18-bk-06276-GER |
| consolidated with Dwight Donald Richert   | ) | Chapter 7                  |
| and Holly Berry Richert,                  | ) |                            |
|   | ) |                            |
| Debtor.                                   | ) |                            |
| _____                                     | ) |                            |
|   | ) |                            |
| Soneet R. Kapila, as Chapter 7 Trustee of | ) | Adv. No. 6:21-ap-00055-GER |
| the Bankruptcy Estate of Richert Funding, | ) |                            |
| LLC, substantively consolidated with      | ) |                            |
| Dwight Donald Richert and Holly Berry     | ) |                            |
| Richert,                                  | ) |                            |
|   | ) |                            |
| Plaintiff,                                | ) |                            |
|   | ) |                            |
| v.  | ) |                            |
|   | ) |                            |
| Black Diamond Holdings, LLC and Black     | ) |                            |
| Diamond Financial Group, Inc.,            | ) |                            |
|   | ) |                            |
| Defendants.                               | ) |                            |
| _____                                     | ) |                            |

**ORDER GRANTING IN PART AND DENYING IN PART  
TRUSTEE'S MOTION TO COMPEL DEFENDANTS TO  
ANSWER TRUSTEE'S CONTENTION INTERROGATORIES**

THIS PROCEEDING came before the Court on July 17, 2023 at 1:30 p.m. upon a discovery status conference, and on August 23, 2023 at 11:00 a.m. for a pretrial conference (the “Hearings”). At the Hearings, the parties presented lengthy arguments regarding the Second Set of Interrogatories<sup>1</sup> that are the subject of the *Trustee’s Motion to Compel Defendants to Answer Trustee’s Contention Interrogatories* (the “Second Motion to Compel”) (Doc. No. 155) filed by the plaintiff Soneet R. Kapila, as Chapter 7 Trustee (“Trustee”). Despite the Court having heard and ruled on numerous discovery disputes in this Adversary Proceeding<sup>2</sup> and the parties’ efforts to meet and confer about the issues raised in the Second Motion to Compel, the parties were again unable to resolve their discovery disputes and seek the Court’s intervention.

### **The Second Set of Interrogatories**

On May 19, 2023, Trustee served the Second Set of Interrogatories. Defendants Black Diamond Holdings, LLC and Black Diamond Financial Group, Inc. (collectively, “Defendants”) each responded to the Second Set of Interrogatories on June 22, 2023.<sup>3</sup> On July 10, 2023, the parties filed the *Joint Motion Requesting the Court Schedule a Discovery Status Conference for July 17, 2023* (the “Motion for Discovery Conference”) (Doc. No. 146), and the Court conducted a discovery conference on July 17, 2023, which was continued to August 23, 2023. On August 22,

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<sup>1</sup> *Trustee’s Second Set of Interrogatories to Defendant Black Diamond Holdings, LLC* (Doc. No. 127-1) and *Trustee’s Second Set of Interrogatories to Defendant Black Diamond Financial Group, Inc. a/k/a Black Diamond Financial Group a/k/a Black Diamond Financial Group, LLC* (Doc. No. 127-2) (collectively referred to as “Second Set of Interrogatories”).

<sup>2</sup> *Order Granting Motion to Compel Plaintiff to Provide Computation of Damages Under F.R.C.P. 26(a)(1)(A)(iii) and Produce Damage-Related Documents* (Doc. No. 52); *Order Granting in Part Motion to Hold Plaintiff Non-Compliant* (Doc. No. 79); *Order Granting Plaintiff, Soneet R. Kapila, Chapter 7 Trustee’s Motion to Compel Defendants to Produce Documents Pursuant to Trustee’s Second Requests for Production* (Doc. No. 113); *Order Granting Plaintiff, Soneet R. Kapila, Chapter 7 Trustee’s Motion to Compel Defendants to Comply with Trustee’s Requests for Inspection* (Doc. No. 120); *Order Granting in Part Trustee’s Motion to Compel Supplemental Answers to Interrogatories* (Doc. No. 121); *Order Granting In Part Defendants’ Motion to Quash Subpoena Directed to Jeffrey D. Cohen, Esq., C.P.A.* (Doc. No. 140); *Order Granting Trustee’s Ore Tenus Motion to Compel Deposition Dates* (Doc. No. 142).

<sup>3</sup> *Defendant Black Diamond Holdings, LLC’s Answers to Plaintiff’s Second Set of Interrogatories* (Doc. No. 146-1) and *Defendant Black Diamond Financial Group, Inc.’s Answers to Plaintiff’s Second Set of Interrogatories* (Doc. No. 146-2) (collectively referred to as the “Answers to Second Interrogatories”).

2023, one day prior to the continued discovery conference, Trustee filed the Second Motion to Compel.

The Second Set of Interrogatories consist of eight identical requests to each Defendant asking about an aggregate of almost 1,000 transactions identified in spreadsheets attached as Exhibits A through E to each set of interrogatories. Interrogatories 1, 2, and 3 attach spreadsheets consisting of hundreds of rows with multiple columns seeking admissions of amounts owed to Debtor, advanced to Defendant, or paid to Debtor, ask Defendant to “state the basis” if Defendant does not agree with the amounts listed, and to identify all documents that support Defendant’s position. Interrogatory 4 attaches a spreadsheet identifying payments made to Debtor and asks Defendant to identify if there are any payments that are not listed. Interrogatory 5 attaches a spreadsheet that lists payments made to Debtor and asks Defendant to identify which invoices, advances, and deferred fees that Defendant “contend[s]” credit was to be applied, as well as to identify the documents that support such “contention.”

Defendants’ Answers to Second Interrogatories objected to seven out of eight requests on the basis that the requests: (a) are unduly burdensome, (b) exceed the 25 interrogatories permitted by Rule 33 of the Federal Rules of Civil Procedure,<sup>4</sup> and (c) can be answered by Trustee’s review of documents and information pursuant to the process set forth in Defendant’s answer to interrogatory 1, as permitted under Rule 33(d). Defendants explain the process, as well as the estimated time it would take to fully answer the Second Set of Interrogatories based on the time already expended (the “Instructions”), and argue that Trustee could obtain the answers to the interrogatories from the documents produced (“Produced Documents”), using the Instructions as

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<sup>4</sup> Rule 33 is made applicable to this proceeding pursuant to Rule 7033 of the Federal Rules of Bankruptcy Procedure.

described by Defendants. The Produced Documents include excel spreadsheets (collectively referred to as the “Defendants’ Spreadsheets”).<sup>5</sup>

Trustee argues that “Defendants have failed to provide the Trustee with any understanding of their position on the flows of monies at issue in this Adversary Proceeding”<sup>6</sup> and the Second Interrogatories are “meaningfully focused and narrowly tailored to the transactions at issue.”<sup>7</sup> To fully respond to the Second Interrogatories “Defendants simply have to type in their answers and do not have [to] retype any other information set forth in the Interrogatory or exhibit itself.”<sup>8</sup> Additionally, Trustee argues the Second Set of Interrogatories are contention interrogatories, and therefore Defendants’ reliance on Rule 33(d) is improper.<sup>9</sup> Finally, Trustee asserts the Business Records are not responsive.<sup>10</sup> Therefore, Trustee seeks an order compelling Defendants to supplement the Answers to Second Interrogatories and award attorneys’ fees and costs.

### **ANALYSIS**

“The overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result.”<sup>11</sup> A party is “entitled to ‘discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.’”<sup>12</sup> Trustee is entitled to

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<sup>5</sup> Doc. No. 146-1 at 5-23; Doc. No. 146-2 at 5-9.

<sup>6</sup> Doc. No. 155 at 13.

<sup>7</sup> Doc. No. 155 at 12.

<sup>8</sup> Doc. No. 155 at 4 n.6.

<sup>9</sup> Doc. No. 155 at 13-16.

<sup>10</sup> Doc. No. 155 at 19 (arguing that Defendants’ Spreadsheets fail to “address the actual[ ] invoices, account purchased addendums, fees[,] etc. at issue as the spreadsheets are not the same timeframe as set forth in the Computation of Damages and at issue in this Adversary Proceeding”).

<sup>11</sup> *Oliver v. City of Orlando*, No. 6:06-cv-1671-Orl-31DAB, 2007 WL 3232227, at \*1 (M.D. Fla. Oct. 31, 2007) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682, 78 S. Ct. 983, 986, 2 L. Ed. 2d 1077 (1958)).

<sup>12</sup> *Schutz v. Oliveras*, No. 8:19-CV-1763-T-30JSS, 2019 WL 13246972, at \*1 (M.D. Fla. Oct. 15, 2019) (quoting Fed. R. Civ. P. 26(b)(1)).

answers on what Defendants' contentions are. However, as drafted, the Second Set of Interrogatories exceeds the limits of what is permitted under Rule 33.

**A. Applicability of Rule 33(d)**

Defendants argue that the Business Records and Defendants' Spreadsheets are responsive to the Second Interrogatories pursuant to Rule 33(d), and Trustee can glean the answers by examining the Business Documents pursuant to the Instructions contained in the Answers to Second Interrogatories.

Trustee argues Rule 33(d) is improper because the Second Set of Interrogatories are contention interrogatories.<sup>13</sup> There is no binding precedent in the Eleventh Circuit on whether Rule 33(d) applies to contention interrogatories.<sup>14</sup> Regardless, contention interrogatories are disfavored in the Middle District of Florida,

should be used sparingly and, if used, should be designed (1) to target claims, defenses, or contentions that the propounding attorney reasonably suspects may be the proper subject of early dismissal or resolution or (2) to identify and narrow the scope of unclear claims, defenses, and contentions. Interrogatories that purport to require a detailed narrative of the opposing parties' case are generally improper because they are overbroad and oppressive.<sup>15</sup>

The Second Set of Interrogatories ask Defendants to admit or deny owing the amount asserted by Trustee, to set forth the amount Defendants admit is owed, state the basis for every factual and legal contention regarding Trustee's damage calculation, and identify documents and communications for any facts forming the basis for the amounts that are owed. While Trustee

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<sup>13</sup> *Renew Packaging, LLC v. Ferro (In re Ferro)*, 632 B.R. 656, 660 (N.D. Ill., Bankr. 2021) (alterations in original) (quoting *Thomas & Betts Corp. v. Panduit Corp.*, No. 93 C 4017, 1996 WL 169389, at \*2 (N.D. Ill. Apr. 9, 1996)) ("Contention interrogatories ask an opposing party to 'indicate what it contends or whether it makes some specified contention[;] . . . [to] state all facts or evidence upon which it bases some specific contention; [to] take a position and apply law and facts in defense of that position; or [to] explain the theory behind some specified contention.'").

<sup>14</sup> *A.R. v. Dudek*, No. 12-60460-CIV, 2015 WL 11143084, at \*4 (S.D. Fla. Oct. 9, 2015) (recognizing that there is no binding Eleventh Circuit precedent on whether Rule 33(d) applies to contention interrogatories).

<sup>15</sup> *Middle District Discovery: A Handbook on Civil Discovery Practice in the United States District Court for the Middle District of Florida* § 4(C) (Feb. 1, 2021), <https://www.flmd.uscourts.gov/civil-discovery-handbook/chapter04/c-other-interrogatory-issues>.

argues the interrogatories are focused and targeted, they ask Defendants to explain why Trustee's calculation of damages is incorrect, versus seeking clarification of Defendants' contentions or defenses asserted in the case. The Court finds the interrogatories are improper as drafted because they force an exhaustive or oppressive catalogue of information, are overbroad and unduly burdensome.<sup>16</sup>

**B. Second Set of Interrogatories Exceed Amount Permissible Under Rule 33**

In addition, because the Second Set of Interrogatories ask for more than just Defendants' contentions, the Court finds that interrogatory numbers 1 through 6 and number 8 violate Rule 33(a)(1). Rule 33(a)(1) allows a party to serve only 25 interrogatories, including all discrete subparts. For example, the Second Set of Interrogatories includes a request for documents that support a denial that amounts are owed. Courts recognize this type of request as a separate interrogatory.<sup>17</sup>

**C. Defendants Must Provide Better Explanation**

Trustee is asking for a description and "understanding of [Defendants'] position on the flows of monies at issue in this Adversary Proceeding." Defendants represented to the Court that Defendants' Spreadsheets reflect their view and understanding of the universe of transactions between Debtor and Defendants. Therefore, the Court treats Defendants' Spreadsheets as a contention as to the "flows of monies at issue in this Adversary Proceeding" and Trustee is entitled to a better response on the basis for the contention.

Based on the circumstances, while Rule 33(d) could apply to the referenced contention, the Court finds Trustee made a *prima facie* showing that Defendants' reliance on the Produced

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<sup>16</sup> See *id.*

<sup>17</sup> *Commodores Ent. Corp. v. McClary*, No. 6:14-cv-1335-Orl-37GJK, 2015 WL 12843874, at \*3 (M.D. Fla. Nov. 6, 2015) (citing *New River Dry Dock, Inc. v. Falls at Marina Bay, L.P.*, No. 08-60216-CIV, 2008 WL 2620727, at \*4 (S.D. Fla. June 30, 2008)).

Documents and Defendants' Spreadsheets is "inadequate to the task of answering the discovery, . . . because the information is not fully contained in the documents, [or the information] is too difficult to extract."<sup>18</sup> The Defendants' Spreadsheets and Answer to Second Set of Interrogatories, including the methodology or "instructions" provided to Trustee do not reveal answers to the Second Set of Interrogatories. First, neither the rows nor the columns of the spreadsheets provide a sufficient description for Trustee to understand the transactions listed. Second, neither the spreadsheets nor the Answer to Second Set of Interrogatories specify where information regarding the line items in the spreadsheets can be found in the Produced Documents. Defendants are "substantially more familiar with the documents at issue"; therefore, the burden to ascertain answers is not substantially the same for Trustee and Defendants.<sup>19</sup> Therefore, Defendants must provide more detail than what is contained in the spreadsheets, or produce a corporate representative with knowledge for deposition who can explain the information contained in the spreadsheets as well as Defendants' contentions as to the claims and defenses at issue in this proceeding. The Court acknowledges it is a difficult task for the parties to craft written discovery regarding the approximately 1,000 transactions between Debtor and Defendants. Requiring Defendants to perform over 1,000 hours of work to respond to the Second Set of Interrogatories in the manner requested by Trustee is overly burdensome. However, expecting Trustee to glean adequate information from the Produced Documents and Defendants' Spreadsheets is unreasonable.

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<sup>18</sup> See *Prolow v. Aetna Life Ins. Co.*, No. 9:20-CV-80545, 2022 WL 3024754, at \*5 (S.D. Fla. July 26, 2022) (quoting *U.S. S.E.C. v. Elfindapan, S.A.*, 206 F.R.D. 574, 576 (M.D.N.C. 2002)).

<sup>19</sup> *Id.* (quoting *Jones Creek Invs., LLC v. Columbia Cnty.*, No. CV 111-174, 2012 WL 12898402, at \*5 n.9 (S.D. Ga. Nov. 8, 2012)).

The Court, having reviewed the Second Motion to Compel, the Second Set of Interrogatories and the Answers to Second Interrogatories, the record, and having considered applicable law and the arguments of counsel, it is

**ORDERED:**

1. The Second Motion to Compel (Doc. No. 155) is **GRANTED IN PART** and **DENIED IN PART** as set forth herein.

2. The Court grants that part of the Second Motion to Compel that seeks better responses as to Defendants' Spreadsheets.

3. Defendants shall either: (a) provide Trustee revised spreadsheets that provide detail on the account name, invoice number, advance and other descriptions for each transaction listed in the spreadsheet within fourteen (14) days from entry of this Order; or (b) produce a corporate representative with knowledge that can explain Defendants' Spreadsheets and contentions as to the transactions at issue in this proceeding for a deposition within twenty-eight (28) days of the entry of this Order (or such other date that the parties agree to in writing).

4. In addition, within seven (7) days of the entry of this Order, Defendants are directed to: (a) make available to Trustee and his professionals the person with the most knowledge regarding how to utilize the "instructions" and decipher the Produced Documents as set forth in the Answers to Second Interrogatories ("Person"); (b) instruct the Person to demonstrate how to apply the "instructions" so that Trustee may extract the information necessary to answer the Second Interrogatories from the Business Records; and (c) produce the information compiled by Defendants' staff in anticipation of responding to the Second Set of Interrogatories served on Black Diamond Financial Group, Inc. that are referenced in the Answers to Second Interrogatories.<sup>20</sup>

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<sup>20</sup> See Doc. No. 146-1 at 2; Doc. No. 146-2 at 2.



5. The balance of the relief requested in the Second Motion to Compel is denied.

6. Effective immediately, Trustee, Defendants, and their respective counsel, must attend all hearings regarding disputed discovery issues in person. *See Hearings on Discovery Disputes in Jacksonville and Orlando Divisions Effective September 1, 2023.*<sup>21</sup>

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Attorney Esther A. McKean is directed to serve a copy of this Order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.

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<sup>21</sup> [http://www.flmb.uscourts.gov/orlando/Hearings\\_on\\_Discovery\\_Disputes\\_in\\_Jax\\_and\\_Orl.pdf](http://www.flmb.uscourts.gov/orlando/Hearings_on_Discovery_Disputes_in_Jax_and_Orl.pdf).