Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 6, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

QUADRON DAY AND TILYA DAY, — **CASE NO. 16-10247-NPO**

DEBTORS. — **CHAPTER 13**

TILYA DAY — **PLAINTIFF**

VS. — **ADV. PROC. NO. 16-01022-NPO**

B & B AUTO SALES, LLC — **DEFENDANT**

ORDER GRANTING IN PART AND DENYING IN PART THE MOTION TO COMPEL DISCOVERY

This matter came before the Court for hearing on October 6, 2016 (the "Hearing"), on the Motion to Compel Discovery (the "Motion") (Adv. Dkt. 11)[1] filed by the defendant, B & B Auto Sales, LLC ("B & B"), and the Plaintiff's Response in Opposition to the Defendant's Motion to Compel (the "Response") (Adv. Dkt. 16) filed by the plaintiff, Tilya Day (the "Plaintiff"), in the Adversary. At the Hearing, Bethany A. Tarpley ("Tarpley") represented B & B and Arnold D.

[1] The docket in the above-styled adversary proceeding (the "Adversary") will be cited as "(Adv. Dkt. ___)." The docket in the related bankruptcy case, Case No. 16-10247-NPO (the "Bankruptcy Case"), will be cited as "(Bankr. Dkt. ___)."

Lee ("Lee") represented the Plaintiff. After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Adversary pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Notice was proper under the circumstances.

Facts

1. The Plaintiff and her husband, Quadron Day (collectively, the "Debtors"), filed a joint petition for relief pursuant to chapter 13 of the Bankruptcy Code on January 27, 2016 (the "Petition") (Bankr. Dkt. 1). The Debtors filed the Chapter 13 Plan (Bankr. Dkt. 2) contemporaneously with the Petition.

2. B & B filed its original proof of claim (the "First POC") (Bankr. Cl. No. 1-1) on January 28, 2016. Attached to the First POC was a Credit Application (the "Credit Application"), which contained the Plaintiff's full social security number, date of birth, and telephone number. B & B filed the Motion to Redact (the "Motion to Redact") (Bankr. Dkt. 9) on January 29, 2016, requesting that the Court enter an order allowing it to redact the Plaintiff's personal identifying information, which it inadvertently included in the First POC. (Mot. to Redact at 1). According to the Motion to Redact, B & B attached the Credit Application to the First POC in error. (*Id.*). The Court entered the Order Granting Motion to Restrict Public Access and Redact Document (Bankr. Dkt. 13) on February 8, 2016.

3. On January 29, 2016, B & B filed a second Proof of Claim (the "Second POC") (Bankr. Cl. No. 1-2), which indicated that B & B had a secured claim of $8,158.00. (Second POC at 2). Attached to the Second POC was a Promissory Note (Second POC at 5), evidencing the fact

that on February 12, 2014, the Plaintiff purchased a 2010 Dodge Charger (the "Charger") from B & B for $15,550.86. According to the Second POC, the Charger has a value of $11,475.00. (Second POC at 2). The Credit Application was attached to the Second POC, but the Plaintiff's social security number, birth date, and telephone number were redacted. (*Id.* at 4).

4. The Plaintiff initiated the Adversary on February 23, 2016, by filing the Complaint for Contempt of Court, Injunctive and Declaratory Relief, Damages, and Other Relief in a Core Adversary Proceeding (the "Complaint") (Adv. Dkt. 1). In the Complaint, the Plaintiff alleged that the First POC "is a public document and the Defendant has made the Plaintiff's private, sensitive and personal nonpublic information available to the general public." (Compl. at 2). According to the Plaintiff, B & B's public display of her personal identifying information would allow "an identity thief to hijack the plaintiff's identity . . . ." (*Id.* at 3). Because B & B is "a sophisticated financial creditor with knowledge of the bankruptcy rules and procedure," the Plaintiff argued that it had "an obligation to comply with all applicable rules and statutes when filing claims and participating in the bankruptcy process." (*Id.*). The Plaintiff alleged that B & B violated the Gramm-Leach-Bliley Act ("GLBA") 15 U.S.C. § 6801 *et seq*., the Uniform Local Bankruptcy Rules for the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi (the "Local Rules"), the E-Government Act of 2002 (the "E-Government Act") 44 U.S.C. § 3500 *et seq.*, Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, "and others." (*Id.* at 3-4).

5. B & B filed the Answer (Adv. Dkt. 4) on March 18, 2016, denying the allegations raised in the Complaint.

6. B & B filed the Motion on July 29, 2016, requesting that the Court require the Plaintiff "to fully and completely answer the Defendant's First Set of Interrogatories and Requests

for Production of Documents" pursuant to Federal Rule of Civil Procedure 37(a). (Mot. at 1). B & B alleged that it served the Plaintiff with the First Consolidated Set of Interrogatories, Request for Admissions and Request for Production of Documents (the "First Requests") (Mot. Ex. A)[2] on or about May 23, 2016. (*Id.*). The Plaintiff responded to the First Requests on June 30, 2016 (the "Plaintiff's Response to First Requests") (Mot. Ex. B). According to B & B, it "sent the Plaintiff a good faith letter attempting to resolve the discovery dispute" (the "Good Faith Letter") (Mot. Ex. C) on July 1, 2016. (*Id.*). B & B argued that the Plaintiff's Response to First Requests was filed "after the 30 days prescribed in Fed. R. Civ. P. 36(a)(3)," so the Requests for Admissions should be deemed admitted. (*Id.* at 1-2). If the Court were to determine that the Plaintiff's Response to First Requests was timely filed, B & B argued that the Court should compel the Plaintiff "to fully and completely answer the following requests: 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, and 16."[3] (*Id.* at 2). According to B & B, the "Plaintiff failed to completely answer the requests for admissions he decided to respond to." (*Id.*). B & B identified each interrogatory and argued the reasons why the Plaintiff should be compelled to respond, and also requested payment of attorneys' fees pursuant to Federal Rule of Civil Procedure 37(a)(5)(A). (*Id.* at 6).

7. On August 23, 2016, the Plaintiff filed the Response, arguing that B & B failed to attempt to resolve the dispute in good faith. (Resp. at 1). "The Defendant sent one letter that Plaintiff's counsel never received." (*Id.*). The Plaintiff "suspects" that the letter was never

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[2] The interrogatories contained in the First Requests will be defined as the "Interrogatories" and each interrogatory will be referred to as "Interrogatory No. ___"; the requests for production contained in the First Requests will be defined as the "Requests for Production" and each request will be referred to as "Request No. ___"; and the requests for admission contained in the First Requests will be defined as the "Requests for Admissions" and each request will be referred to as "Request for Admission No. ___."

[3] The Court will discuss each of the aforementioned requests fully herein.

received because it contained the wrong zip code. (Mot. Ex. C). According to the Plaintiff, the first time her counsel saw the letter was when he received the Motion. (Resp. at 1). Although B & B argued in the Motion that the Requests for Admission should be deemed admitted because the Plaintiff failed to respond within thirty (30) days, the Plaintiff argued that, upon Lee's request, B & B's counsel "graciously agreed" to extend the deadline to respond to July 1, 2016. (*Id.*; Resp. Ex. 1). The Plaintiff subsequently served the Plaintiff's Response to First Requests on June 30, 2016, the day before the agreed upon deadline. (*Id.*). The Plaintiff also "stands by her original responses as they are accurate" because "some, if not all the requests do seek irrelevant information." (*Id.* at 2). "The Defendant's requests are not relevant to the germane issue here and therefore discovery is not permissible." (*Id.*). Additionally, "as to the requests for production, as stated in the responses, [the Plaintiff] doesn't have anything to produce." (*Id.*).

8. At the Hearing, Lee requested that the Court decline to hear the Motion because B & B failed to include a certificate of good faith pursuant to Rule 7037-1 of the Local Rules ("Rule 7037-1"). Tarpley argued that because the Motion provided that she conferred with the Plaintiff in good faith, B & B at least complied with the spirit of the rule. According to Tarpley, she made several attempts to communicate with Lee in good faith and sent the Good Faith Letter on July 1, 2016. Although Lee stated that he never received the Good Faith Letter because it was addressed to the wrong zip code, Tarpley noted that the Good Faith Letter was attached to the Motion, meaning Lee did have knowledge of the Good Faith Letter. Taken together, Tarpley's attempts to negotiate with Lee in good faith and the Good Faith Letter show that B & B made a good faith attempt to resolve the discovery disputes before filing the Motion. After considering the parties' arguments, the Court determined at the Hearing that Tarpley complied with Rule 7037-1 and heard

the Motion.[4]

9. As to the merits of the Motion, Tarpley argued that the Plaintiff refused to answer any questions in the First Requests that she deemed to be irrelevant, including requests regarding damages she suffered, her address or telephone number, whether she is currently employed, whether she is involved in ongoing litigation, whether her social security number has previously been displayed, and she refused to itemize the damages she allegedly incurred. Tarpley contended that each request the Plaintiff objected to falls within the scope of discoverable information because each request is reasonably calculated to lead to information B & B needs to prove its defenses. Tarpley requested that the Court deem as admitted the Requests for Admission that the Plaintiff refused to answer altogether.

10. Lee argued that the Plaintiff responded to the requests that were not irrelevant, but B & B does not like her answers. According to Lee, the Adversary will hinge on the Court's contempt powers under § 105,[5] and the requests to which the Plaintiff objected are irrelevant. Lee contended that the Plaintiff stands by the objections she asserted in the Plaintiff's Response to

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[4] Rule 7037-1 provides that before a motion to compel is filed, "all counsel shall be under a duty to confer in good faith to determine to what extent discovery disputes can be resolved before presenting the issue to the bankruptcy judge." MISS. BANKR. L.R. 7037-1(a). B & B complied with this portion of Rule 7037-1 by making several attempts to negotiate with Lee. Additionally, the Court will not hear a motion to compel unless counsel for the movant incorporates "in the motion a certificate that counsel has conferred in good faith with opposing counsel in an effort to resolve the dispute and has been unable to do so." *Id.* In the Good Faith Letter, B & B's counsel indicated that it served as its "good faith attempt to resolve issues raised by your failure to fully respond to my discovery requests." (Good Faith Letter at 1). Although Lee stated he never received the letter because it contained an inaccurate zip code, the Court finds that the Good Faith Letter attached to the Motion, which was filed July 29, 2016, well before the Hearing, allowed ample time to resolve the discovery disputes, and, thus, B & B substantially complied with Local Rule 7037-1.

[5] Hereinafter, all code sections refer to the bankruptcy code found at title 11 of the U.S. Code unless indicated otherwise.

First Requests because the requests to which she objected are irrelevant.

Discussion

Fortunately, most attorneys that appear before this Court are able to resolve their discovery disputes without judicial intervention so that it is not often that the Court is required to devote its limited time and resources to determining whether a party sufficiently answered a question or provided requested information. The parties in the Adversary, however, were unable to resolve their dispute regarding the First Requests. The Court, therefore, must address each request argued in the Motion and the Response to determine whether the Plaintiff should be compelled to answer or provide documentation, whether the Plaintiff did in fact adequately answer each contested request, or whether the contested requests fall within the scope of discoverable information. Additionally, the Court must determine whether the Plaintiff complied with the deadline for responding to the Requests for Admission.

Federal Rule of Civil Procedure 26 ("Rule 26"), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7026, provides that parties "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. . . ." FED. R. CIV. P. 26(b)(1). In 2015, Rule 26(b)(1) was amended to include six (6) proportionality factors to be used in determining whether a request falls within the scope of discoverable information. 10 COLLIER ON BANKRUPTCY ¶ 7026.03 (16th ed. 2016). "The Advisory Committee Note explains that these factors were included as a limitation on the scope of discovery in order to 'reinforce[] the Rule 26(g) obligation of the parties to consider these factors in making discovery requests, responses, or objections.'" *Id.* (citing 2015 ADVISORY COMMITTEE NOTE to FED. R. CIV. P. 26, *reprinted in* 6 Moore's Federal Practice, § 26 App. (Matthew Bender 3d ed.)). The 2015 amendment also revised the statement previously

contained in Rule 26(b)(1) that "[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* Instead, Rule 26(b)(1) "now simply provides that '[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.'" *Id.* This statement was revised in 2015 because the "reasonably calculated" phrase had been "used by some, incorrectly, to define the scope of discovery." *Id.* n.6.

Based on the foregoing law, the current scope of Rule 26 provides that a party may discover information that is relevant to any party's claim or defense, in consideration of the six (6) factors proscribed by Rule 26(b)(1). FED. R. CIV. P. 26(b)(1). The six (6) enumerated factors are: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties' relative access to relevant information; (4) the parties' resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. *Id.* The relevancy requirement, which has always been a threshold requirement contemplated by Rule 26, is to be construed broadly. *Oppenheimer Fund Inc. v. Sanders,* 437 U.S. 351 (1978). The Fifth Circuit Court of Appeals has noted that although the "scope of permissible discovery is limited by the requirement of relevance . . . relevance is broadly defined in the context of discovery." *Wyatt v. Kaplan*, 686 F.2d 276, 284 (5th Cir. 1982). "It is not error to deny discovery when there is no issue of material fact." *Id.* (citation omitted).[6]

Because the term "relevance" is not defined by the Federal Rules of Civil Procedure or

[6] Although the aforementioned cases were decided prior to the 2015 amendment that deleted the "reasonably calculated" language, the amendment did not "fundamentally" change the burden of satisfying Rule 26(b). *Carr v. State Farm Mut. Auto. Ins., Co.,* 312 F.R.D. 459, 466 (N.D. Tex. 2015). Other courts have also held that the relevancy requirement of Rule 26(b) is "still to be construed broadly" in accordance with *Oppenheimer.* *See Lightsquared Inc. v. Deere & Co.,* 2015 WL 8675377, at *2 (S.D. N.Y. 2015); *Bagley v. Yale,* 2015 WL 8750901, at *7 (D. Conn. 2015).

Bankruptcy Procedure, courts look to Federal Rule of Evidence 401, which provides that evidence is relevant if it "has any tendency to make a fact more or less probable than it would be without the evidence." *Ries v. Ardinger (In re Adkins Supply, Inc.)*, 555 B.R. 579, 589 (Bankr. N.D. Tex. 2016) (citing FED. R. EVID. 401). Courts broadly construe this definition, "especially in the context of discovery requests, which 'should be considered relevant if there is *any possibility* that the information sought may be relevant to the claim or defense of any party.'" *Id.* (quoting *Merrill v. Waffle House, Inc.,* 227 F.R.D. 467, 470 (N.D. Tex. 2005) (emphasis added)). "Information sought only fails the relevance test if it is clear that it could have 'no possible bearing on the claim.'" *Id.*

Rule 37 of the Federal Rules of Civil Procedure, as made applicable to the Adversary by Rule 7037, allows a discovering party to "move for an order compelling . . . discovery." FED. R. CIV. P. 37(a)(1). Rule 37(a)(4) provides that "an evasive or incomplete . . . answer, or response must be treated as a failure to . . . answer or respond." FED. R. CIV. P. 37(a)(4). In the Motion, B & B identified each one of the Interrogatories, Requests for Production, and Requests for Admission it argues the Plaintiff should be compelled to answer. The Court will address each request separately, keeping in mind that the Federal Rules of Civil Procedure were amended in 2015 to reinforce the requirement that discovery requests be proportionate to the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. 10 COLLIER ON BANKRUPTCY ¶ 7026.03 (citing 2015 ADVISORY COMMITTEE NOTE to FED. R. CIV. P. 26, *reprinted in* 6 Moore's Federal Practice, § 26 App.; FED. R. CIV. P. 26(b)(1)). Each request contained in the First Requests must meet both the relevancy and proportionality requirements.

I. Interrogatories

Federal Rule of Civil Procedure 33 ("Rule 33"), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7033, governs interrogatories. Rule 33 provides that an "interrogatory may relate to any matter that may be inquired into under Rule 26(b)." FED. R. CIV. P. 33 (a)(2). A party responding to an interrogatory "is not generally required to conduct extensive research in order to answer an interrogatory. . . ." *Norris v. First Fed. Savs. & Loan of Lorain (In re Norris),* No. 11-6089, 2012 WL 1565602, at *3 (Bankr. N.D. Ohio. May 2, 2012) (citing *Garcia v. Clark,* No. 1:10-CV-00447-LJO-DLB PC, 2012 WL 1232315, at *1 (E.D. Cal. Apr. 12, 2012)). Instead, the responding party is only required to make "a reasonable effort to respond." *Id.*

A. Interrogatory No. 2

In Interrogatory No. 2, B & B asked the Plaintiff,

> [w]hat is the name, last known address, present whereabouts, telephone number, and place of employment of each person known or believed by you to have any knowledge of the alleged damages of the Plaintiff.

(Mot. at 3). The Plaintiff simply responded "[t]he plaintiff," without also providing her address, present whereabouts, telephone number, or place of employment. (Plaintiff's Resp. to First Requests at 2). In the Motion, B & B argued that the Plaintiff failed to adequately respond to the interrogatory. (Mot. at 2). "While the Defendant would, of course, contact Plaintiff through her attorney, it is entitled to this information." (*Id.*). In consideration of the standard proscribed by Rule 26, the Court finds that the Plaintiff sufficiently responded to Interrogatory No. 2. In her response to Interrogatory No. 2, the Plaintiff identified herself as the only individual with knowledge of the damages she claims to have incurred. (Plaintiff's Resp. to First Requests at 2). Because the additional information sought in Interrogatory No. 2 is included in the Petition or

elsewhere in the record of the Bankruptcy Case regarding the Plaintiff,[7] the Court finds that B & B's easy access to this information, and the fact that she cannot contact the Plaintiff directly because she is represented by Lee, renders the Plaintiff's response sufficient.

B. Interrogatory No. 7

Interrogatory No. 7 asked the Plaintiff to,

> [p]lease indicate whether you, anyone related to you, an employer, a previous employer, creditor or any other person or entity has ever published your name, date of birth, or social security number. Please indicate the ways in which you verified this information to be true.

(Mot. at 3). In the Plaintiff's Response to First Requests, the Plaintiff responded, "[n]one other than [B & B] to Plaintiff's knowledge." (Plaintiff's Resp. to First Requests at 4). B & B argued in the Motion that Interrogatory No. 7 "specifically requests that the Plaintiff 'indicate the ways in which you verified this information to be true'" and, instead of objecting, the Plaintiff "refused to provide this information or show in any way that the Plaintiff took any steps to verify that her name, date of birth, and social security number had not already been published." (Mot. at 4).

The Plaintiff was required to use "common sense and reason" in answering Interrogatory No. 7 but was not required to conduct extensive research. *Garcia,* 2012 WL 1232315, at *1 (citation omitted). The Plaintiff answered Interrogatory No. 7 sufficiently, stating that to her knowledge, B & B is the only one to have ever published her personal identifying information. She was not required by Rule 33 to take any steps to verify her response other than to answer each interrogatory under oath. FED. R. CIV. P. 33(b)(3). Accordingly, the Court finds that the Plaintiff sufficiently responded to Interrogatory No. 7 and should not be compelled to identify the methods she used to verify the information she provided in response to Interrogatory No. 7.

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[7] The Court notes the irony of B & B filing a motion to compel the Plaintiff to reveal certain information it is accused of disseminating to the public, which is the basis of the Adversary.

C. Interrogatory No. 8

Interrogatory No. 8 asked the Plaintiff,

> [h]ave you ever been involved in any other lawsuit, either as a Plaintiff or a Defendant, other than the current action? If so, please state the style and cause number of any such action, the court in which such action is or was pending, and the current status or final disposition of such action. This includes any other bankruptcy, small claims court action, UCC lien filed against you, or justice court action.

(Mot. at 4). The Plaintiff objected to Interrogatory No. 8 because it "seeks information that is irrelevant." (Plaintiff's Resp. to First Requests at 4). In the Motion, B & B argued that this interrogatory seeks relevant information because "whether or not the Plaintiff had other law suits, claims or liens, filed against her where her name, date of birth, and social security number would already be in the public record is clearly relevant to [B & B's] defense of this matter." (Mot. at 4).

As the Court previously discussed, courts within the Fifth Circuit broadly construe the relevancy requirement contained in Rule 26. Information is relevant if it has "any tendency" to make a fact more or less probable and a relevancy objection will only be sustained if it is clear that the information sought could have no possible bearing on the claim or defense of a party. *See In re Adkins Supply, Inc.*, 555 B.R. at 589. The Court finds that it is at least possible that the information sought by Interrogatory No. 8 may be relevant to B & B's defense as to the damages the Plaintiff allegedly incurred as a result of her publication of personal identifying information. Accordingly, the Court finds that the Plaintiff should be compelled to answer Interrogatory No. 8.

D. Interrogatory No. 9

In Interrogatory No. 9, B & B asked the Plaintiff to list,

> [a]ny and all expenses and amounts paid on behalf of, or for the benefit of the Plaintiff resulting from the publication of Plaintiff's social security number, date of birth, or home address, including the amount paid, the person paid, and the reason for said payment.

(Mot. at 5). In the Plaintiff's Response to First Requests she stated that she "anticipates at the very least $2400-the cost of 20 years of LifeLock service; $2400-the cost of 20 years of TrueCredit credit monitoring services." (Plaintiff's Resp. to First Requests at 4). B & B argued in the Motion that the Plaintiff misconstrued the interrogatory because it was "not asking about Plaintiff's speculative damages but what damages the Plaintiff has actually PAID to date." (Mot. at 5).

The Court finds that the Plaintiff did respond to Interrogatory No. 9 by indicating that she will incur $4,800.00 in damages from obtaining credit monitoring services. Nonetheless, Interrogatory No. 9 does also request that the Plaintiff list the amounts that she has paid or that has been paid on her behalf as a result of B & B's actions. Accordingly, if the Plaintiff has already paid an amount for credit monitoring or for other damages incurred as a result of B & B's actions, the Court finds that she should be compelled to provide that information to B & B.

E. Interrogatory No. 11

Interrogatory No. 11 asked that the Plaintiff "itemize fully all amounts of money you claim the Defendant owes the Plaintiff." (Mot. at 5). The Plaintiff simply responded "at least $4800." (Plaintiff's Resp. to First Requests at 5). According to B & B, this "is clearly not an itemization of damages but rather just a lump sum figure." (Mot. at 5). The Court finds that, in conjunction with her response to Interrogatory No. 9, the Plaintiff sufficiently responded to Interrogatory No. 11. While it is true that the Plaintiff may not have itemized the amount of money she claims B & B owes in her response to Interrogatory No. 11, in her response to Interrogatory No. 9, the Plaintiff provided that she would be required to pay $2,400.00 for LifeLock and $2,400.00 for TrueCredit, for a total of $4,800.00. Thus, it is clear that the Plaintiff believes that she has incurred *at least*

$4,800.00 in damages because she allegedly will have to pay for credit monitoring services for twenty (20) years. If she later discovers that her damages exceed $4,800.00, and her response to Interrogatory No. 11 is incomplete or incorrect, she must amend or supplement that response in a timely manner under Rule 26(e). In consideration of the standards set forth by Rule 26, the Court finds that the Plaintiff has provided the information requested by Interrogatory No. 11.

II. Requests for Production

Federal Rule of Civil Procedure 34 ("Rule 34"), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7034, governs the production of documents through discovery. Rule 34 allows parties to request the production of documents within their "possession, custody, or control," as long as the request falls within the scope of Rule 26(b). FED. R. CIV. P. 34(a).

A. Request No. 4

Request No. 4 asked the Plaintiff to produce copies of "any and all correspondence that exist[s] between yourself and [B & B], whether the same was generated by you, your attorney, or any other party, that concerns the underlying facts of this lawsuit." (Mot. at 5). The Plaintiff objected to Request No. 4 as irrelevant, but "[s]ubject to the objection, none in Plaintiff's possession." (Plaintiff's Resp. to First Requests at 7). B & B argued in the Motion that a request that concerns the underlying facts of the Adversary is relevant and the "objection merely illustrates the Plaintiff's willingness to play fast and loose with the discovery process." (Mot. at 5). Because of the Plaintiff's ambiguous answer, B & B argued that it was unclear to it whether "it is in possession of all correspondence the Plaintiff may have at this time." (*Id.*).

Again, information is relevant if it has "any tendency" to make a fact more or less probable and a relevancy objection will only be sustained if it is clear that the information sought could have

no possible bearing on the claim or defense of a party. *See In re Adkins Supply, Inc.*, 555 B.R. at 589. The Court finds that it is unnecessary to determine the relevance of Request No. 4 because the Plaintiff provided a sufficient response to the request. Despite her objection to Request No. 4, the Plaintiff stated that she had no correspondence between herself, or her attorneys, and B & B in her possession. The Court finds that this response was sufficient to address the request propounded by Request No. 4 and the Plaintiff should not be compelled to take any further action.

B. Request No. 6

Request No. 6 requested that the Plaintiff,

> [p]lease produce a copy of each and every document filed in each and every lawsuit that you have been a party [to], including but not limited to, your prior bankruptcy action, including all proof of claims filed against you, this bankruptcy action and all proof of claims filed against you, all justice court actions filed against you, all small claims court actions filed against you in Mississippi, Michigan, and any other states, all UCC filings filed against you, and any other lawsuits in which you were a Plaintiff or a Defendant.

(Mot. at 6). The Plaintiff objected to Request No. 6, arguing that it sought irrelevant information. (Plaintiff's Resp. to First Requests at 7). B & B argued in the Motion that this request sought information that would allow it to determine "whether or not the Plaintiff had other law suits, claims or liens, filed against her where her name, date of birth, and social security number would already be in the public record . . . ." (Mot. at 6). According to B & B, this information is relevant to its defense in the Adversary.

As stated previously, information is relevant if it has "any tendency" to make a fact more or less probable and a relevancy objection will only be sustained if it is clear that the information sought could have no possible bearing on the claim or defense of a party. *See In re Adkins Supply, Inc.*, 555 B.R. at 589. Although Request No. 6 may be relevant as it is at least possible that the information sought may be relevant to B & B's defense, the Court finds that it does not fall within

the scope of permissible discovery under Rule 26. Interrogatory No. 8 sought the style and case number of any other lawsuit involving the Plaintiff, and, as addressed above, the Plaintiff should be compelled to respond to Interrogatory No. 8. Requiring the Plaintiff to provide copies of "each and every document filed in each and every lawsuit" including the Bankruptcy Case would be unduly burdensome. At least two (2) of the six (6) proportionality factors proscribed by Rule 26 indicate that the Plaintiff should not be compelled to respond to Request No. 6: (1) the parties' relative access to relevant information and (2) whether the burden or expense of the proposed discovery outweighs the likely benefit.

In response to Interrogatory No. 8, the Plaintiff should identify each lawsuit, bankruptcy case, state court actions in every state, and UCC filings to which she has been a party. As B & B noted in the Motion, these cases and documents will be public record (Mot. at 6), and B & B can then obtain the documents relevant to its defense. Presumably, requiring the Plaintiff to produce every document in every case in which she has ever been a party would produce a large quantity of irrelevant information. The burden and expense of procuring every document in every case will outweigh any benefit conferred upon B & B by receiving those documents. Accordingly, the Court finds that the information the Plaintiff will provide in her response to Interrogatory No. 8 will be sufficient to also address the information sought by Request No. 6. The Plaintiff's objection to Request No. 6 should be sustained on the ground that it falls outside the scope of discovery. The Plaintiff, therefore, will not be compelled to provide the documents requested in Request No. 6.

III. Requests for Admission

B & B argued in the Motion and at the Hearing that because the Plaintiff responded to its Requests for Admission beyond the thirty (30) days proscribed by Federal Rule of Civil

Procedure 36(a)(2) (“Rule 36”), the requests should be deemed admitted. (Mot. at 1-2). If the Court decides not to deem the Requests for Admissions as admitted, B & B argued that the Plaintiff should be compelled to respond to the requests she did not adequately answer. The Court will first determine whether the Requests for Admissions are deemed admitted.

A. Motion to Deem Requests as Admitted

Rule 36, which is made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7036, provides that a matter is deemed admitted unless the party to whom the request is directed serves a written answer or objection within thirty (30) days after being served. FED. R. CIV. P. 36(a)(3). “A shorter or longer time for responding may be stipulated to under Rule 29[8] or be ordered by the court.” *Id.*

Thirty (30) days from the date of service of the First Requests, May 23, 2016, was June 22, 2016. Federal Rule of Bankruptcy Procedure 9006(f) extends the deadline by three (3) days when service is by mail or by electronic means. FED. R. BANKR. P. 9006(f); FED. R. BANKR. P. 9006(f) advisory committee’s note to 2001 amendment (no changes made after 2015 amendments). The Certificate of Service contained in the Plaintiff’s Response to First Requests indicates that it was served by e-mail on June 30, 2016. (Plaintiff’s Resp. to First Requests at 11). Accordingly, the three-day extension applied and because June 25, 2016 was a Saturday, the original deadline to reply was June 27, 2016. The Plaintiff’s Response to First Requests was served on June 30, 2016, after the deadline. Accordingly, unless the parties agreed to extend the deadline, the Plaintiff’s Response to First Requests was untimely.

[8] Federal Rule of Civil Procedure 29 (“Rule 29”), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7029, allows the parties to agree to extend the deadline to respond to discovery requests unless it would “interfere with the time set for completing discovery, for hearing a motion, or for trial.” FED. R. CIV. P. 29(b).

The Plaintiff attached to the Response an e-mail exchange between Lee and Thomas A. Womble ("Womble"), counsel of record for B & B (the "E-Mails") (Resp. Ex. 1). In the E-Mails, Lee informed Womble that he had a four (4)-day trial the week the Plaintiff's response to the First Requests was due. (E-Mails at 1). Lee requested that Womble extend the deadline to respond to the First Requests to July 1, 2016. (*Id.*). As the Plaintiff noted in the Response, Womble "graciously agreed," responding with, "that is fine." (*Id.*). Accordingly, the Court finds that, pursuant to Rules 36 and 29, the parties agreed to allow the Plaintiff until July 1, 2016, to respond to the First Requests. Because the Plaintiff filed the Plaintiff's Response to First Requests on June 30, 2016, before the agreed upon deadline, her response to the Request for Admissions was timely. The Court, therefore, denies B & B's request to deem the Requests for Admissions as admitted.

B. Motion to Compel Answers to Certain Requests

In the Motion, B & B argued that if the Court does not deem the Requests for Admissions admitted, the Court should compel the Plaintiff to answer Request for Admission Nos. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, and 16.[9] Rule 36 allows a party to request that the opposing party admit the truth of any matters that fall within the scope of Rule 26(b)(1) "relating to: (A) facts, the application of law to fact, or opinions about either; and (B) the genuineness of any described documents." FED. R. CIV. P. 36(a)(1). Under Rule 36, if a party does admit a matter, "the answer must specifically deny it or state in detail why the

[9] Rule 7037-1(b) provides that motions raising issues concerning discovery "shall quote verbatim each. . . request for admission to which the motion is addressed, and shall state (i) the specific objection, (ii) the grounds assigned for the objection (if not apparent from the objection itself), and (iii) the reasons assigned as supporting the motion. . . ." MISS. BANKR. L.R. 7037-1(b). Although B & B failed to comply with Rule 7037-1(b), the Court will nonetheless address each interrogatory it claims the Plaintiff should be compelled to answer.

answering party cannot truthfully admit or deny it." FED. R. CIV. P. 36(a)(4). If the opposing party objects to a request for admission, "[t]he grounds for objecting to a request must be stated. A party must not simply object solely on the ground that the request presents a genuine issue for trial." FED. R. CIV. P. 36(a)(5). "The requesting party may move to determine the sufficiency of an answer or objection," and unless the Court finds that an objection was justified, "it must order that an answer be served." FED. R. CIV. P. 36(a)(6). If an answer does not comply with Rule 36, the Court "may order either that the matter is admitted or that an amended answer be served." *Id.* The Court will individually rule on each of the Requests for Admission below.

1. Requests for Admission Nos. 4 and 5

Requests for Admission Nos. 4 and 5 asked the Plaintiff to admit that neither the GLBA nor the E-Government Act provides a private right of recovery. (Plaintiff's Resp. to First Requests at 8). The Plaintiff objected to both of these requests on the ground that they call for a legal conclusion. (*Id.*). Rule 36 allows B & B to request an admission of the facts or the application of law to facts. Requests for Admission Nos. 4 and 5 do not ask the Plaintiff to admit a fact or make an admission regarding the application of the law to the specific facts and circumstances of the Adversary. Instead, Requests for Admission Nos. 4 and 5 ask the Plaintiff to admit an ultimate, material conclusion of law. Accordingly, the Court sustains the Plaintiff's objection to Requests for Admission Nos. 4 and 5.

2. Request for Admission No. 6

In Request for Admission No. 6, B & B asked the Plaintiff to admit that she did not suffer any physical injury as a result of B & B's actions. (*Id.*). The Plaintiff admitted this. (*Id.*). The Court is unsure why B & B challenged this response, as the Plaintiff admitted she

did not suffer any physical injuries as a result of B & B's actions. Because the Plaintiff admitted Request for Admission No. 6, she will not be compelled to provide any further answer.

3. Requests for Admission Nos. 7, 8, 9, 10, and 11

Requests for Admission Nos. 7, 8, 9, 10, and 11 asked the Plaintiff to admit that she had not experienced financial identity theft, criminal identity theft, identity theft, business or commercial identity theft, or medical identity theft as of the date the First Requests were filed. (*Id.* at 8-9). The Plaintiff objected to each of these requests on the ground that her identity could have been stolen and misused and she "would not necessarily know of it given the nature of identity theft, but this does not mean she has not experienced it." (*Id.* at 9). Subject to that objection, the Plaintiff denied Requests for Admission Nos. 7, 8, 9, 10, and 11. (*Id.*). Rule 36 allows B & B to make requests for admission regarding the facts, as long as the request falls within the scope of Rule 26. In addition to allowing the responding party to admit, deny, or object to a request for admission, Rule 36 also provides that the respondent "may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny." FED. R. CIV. P. 36(a)(4).

Whether the Plaintiff's identity has actually been stolen is relevant to B & B's defense, as it will affect the type and amount of any damages she may be awarded in the Adversary. The Court will compel the Plaintiff to answer Requests for Admission Nos. 7, 8, 9, 10, and 11 within fourteen (14) days. The Plaintiff must answer Requests for Admission Nos. 7, 8, 9, 10,

and 11 in accordance with Rule 36(a)(4), either admitting, denying,[10] or providing that she lacks knowledge sufficient to answer after conducting a reasonable inquiry.

4. Requests for Admission Nos. 13, 14, 15, and 16

In Requests for Admission Nos. 13, 14, 15, and 16, B & B asked the Plaintiff to admit that: (1) Tower Loan filed claims against her in Leflore County Justice Court; (2) other claims were filed against her in Leflore County Justice Court; (3) Greenwood Hospital secured a judgment against her in Leflore County Circuit Court for failure to pay a debt; and (4) she has civil judgments against her in Ingham County 54th A District Court for failure to pay debts. (*Id.* at 9-10). The Plaintiff objected to each of these requests on the ground that they were irrelevant. (*Id.* at 10).

On their face, these requests do not appear to be relevant to B & B's defense. It is unclear how the Plaintiff's involvement in these previous lawsuits has any bearing on B & B's alleged violations. At the Hearing, B & B had the opportunity to establish that the information sought in the requests was relevant, but no connection between the requests and its defense was established. The Court presumes that these requests were aimed at determining whether the Plaintiff's personal identifying information has been previously disclosed. The Court will compel the Plaintiff to answer Interrogatory No. 8, which seeks this same information. After the Plaintiff responds to Interrogatory No. 8, B & B will possess the information it needs to make a determination regarding any previous disclosure of the Plaintiff's personal identifying information. Accordingly, the Court deems Requests for

[10] Although the Plaintiff stated that, subject to her objection, she denied Requests for Admission Nos. 7-11, her response indicated that she was asserted lack of knowledge sufficient to admit or deny. The Plaintiff may deny Request for Admission Nos. 7-11 in her amended response if she has gained knowledge sufficient to respond.

Admission Nos. 13, 14, 15, and 16 outside the permissible scope of discovery; therefore, the Plaintiff's objections to these requests are sustained.

IV. Attorneys' Fees

In the Motion, B & B argued that it is entitled to the attorneys' fees it incurred in bringing the Motion. Pursuant to Federal Rule of Civil Procedure 37 ("Rule 37"), made applicable to the Adversary by Federal Rule of Bankruptcy Procedure 7037, if a motion to compel discovery is granted, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." FED. R. CIV. P. 37(a)(5)(A). Rule 37 also provides that the Court must not award attorneys' fees if "the opposing party's nondisclosure, response, or objection was substantially justified," or if "other circumstances make an award of expenses unjust." FED. R. CIV. P. 37(a)(5)(A)(ii)-(iii).

The Court finds that B & B's request for attorneys' fees should be denied. Generally, the Motion raised minor complaints that expressed disagreement with the responses the Plaintiff gave in the Plaintiff's Response to First Requests. Under Rule 37, the Court finds that "other circumstances make an award of expenses unjust." FED. R. CIV. P. 37(a)(5)(A)(iii). The Plaintiff and B & B are equally at fault for the necessity of this Order, offsetting any attorneys' fees that should be awarded so that each party is responsible for its own attorneys' fees.

Conclusion

Having considered the standard and proportionality factors proscribed by Rule 26 and the precedent defining the scope of the term "relevance" in the discovery context, the Court has

determined that the Plaintiff should be compelled to provide a proper response to Interrogatory Nos. 8 and 9. Her responses to Interrogatory Nos. 2, 7, and 11 were sufficient. Additionally, the Court finds that the Plaintiff's response to Request No. 4 was sufficient, and her objection to Request No. 6 should be sustained.

Although the Plaintiff filed the Plaintiff's Response to First Requests more than thirty (30) days after they were served, the deadline for her to respond to the First Requests was extended to July 1, 2016, by agreement between Lee and Womble. The Plaintiff filed the Plaintiff's Response to First Requests before this extended deadline. The Requests for Admission, therefore, will not be deemed admitted. Regarding B & B's request that the Court compel the Plaintiff to answer certain Requests for Admissions, the Court sustains the Plaintiff's objections to Requests for Admission Nos. 4, 5, 13, 14, 15, and 16. The Plaintiff must respond to Requests for Admission Nos. 7, 8, 9, 10, and 11 in accordance with Rule 36(a)(4). She will not be compelled to respond to Request for Admission No. 6, which she admitted in compliance with Rule 36. Finally, B & B's request for attorneys' fees under Rule 37(a)(5)(A) is denied.

IT IS, THEREFORE, ORDERED that the Plaintiff shall serve an amended response to the First Requests within fourteen (14) days from the date of this Order.

IT IS FURTHER ORDERED that the Plaintiff is hereby compelled to answer Interrogatory Nos. 8 and 9.

IT IS FURTHER ORDERED that the Plaintiff's responses to Interrogatory Nos. 2, 7, and 11 were sufficient and she will not be compelled to respond further.

IT IS FURTHER ORDERED that the Plaintiff sufficiently responded to Request No. 4 and she will not be compelled to respond further.

IT IS FURTHER ORDERED that the Plaintiff's objection to Request No. 6 is hereby sustained.

IT IS FURTHER ORDERED that the Plaintiff is hereby compelled to answer Requests for Admission Nos. 7, 8, 9, 10, and 11 in accordance with Rule 36(a)(4).

IT IS FURTHER ORDERED that the Plaintiff's objections to Request for Admission Nos. 4, 5, 13, 14, 15, and 16 are hereby sustained.

IT IS FURTHER ORDERED that the Plaintiff sufficiently responded to Request for Admission No. 6 and she will not be compelled to respond further.

IT IS FURTHER ORDERED that B & B's request for attorneys' fees is denied.

IT IS FURTHER ORDERED that the Court will set a trial date for the Adversary after the Plaintiff serves her amended response to the First Requests.

##END OF ORDER##