

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

<b>DAVID BENHAM,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	
<b>vs.</b>	)	<b>CASE No. 11-CV-339-JED-FHM</b>
	)	
<b>OZARK MATERIALS RIVER ROCK,</b>	)	
<b>LLC,</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**OPINION AND ORDER**

Plaintiff’s Continued Motion to Compel Discovery [Dkt. 96] is before the undersigned United States Magistrate Judge for decision. Plaintiff seeks an order pursuant to Fed.R.Civ.P. 37(a) compelling Defendant to comply with discovery requests under Rule 34 which compels a party to produce and permit the requesting party or its representative to inspect, copy, test, or sample items in the responding party’s possession, custody or control. The motion has been fully briefed and is at issue.

**Background**

Plaintiff served Defendant with discovery requests on December 12, 2012. Plaintiff subsequently filed his Motion to Compel, [Dkt. 67], which was granted on May 3, 2013, [Dkt. 74]. Plaintiff complains that Defendant has not complied with the Court’s previous discovery order and requests the following:

- 1) An Order directing Defendant to provide a Privilege Log;
- 2) An Order compelling Defendant to fully respond to Request for Production No. 8 which seeks “[all] records of fuel purchased for the operation of equipment for the production of gravel from your gravel mining operation, since January 1, 2006,”
- 3) An Order compelling Defendant to fully respond to Request for Production No. 11 which seeks “[a]ll federal and state tax returns showing the income received from your gravel mining operation since January 1, 2006.”

Defendant responds that it has produced a Privilege Log and Plaintiff is in agreement. Defendant claims it has produced tax returns and is in compliance with Request for Production No. 11. Plaintiff counters that Defendant is not in compliance with Request for Production No. 11 because tax documents produced by Defendant were 2007 through 2012 Schedule C tax forms of Brad Eastman rather than Ozark Materials River Rock, LLC’s federal and state income tax returns for 2006 through 2012.

Defendant further claims that it is not in possession of documents responsive to Request for Production No. 8. Plaintiff counters that Mr. Eastman’s Schedule C forms for 2007 through 2012 indicate fuel was claimed as an expense. Thus, Defendant should be in possession of supporting documentation.

Analysis

There is no basis on which to deny the motion to compel. Plaintiff's Continued Motion to Compel is GRANTED.

- \* In response to Request for Production No. 8, Defendant is required to produce entire federal and state income tax returns for the years 2006 through 2012 for Ozark Materials River Rock, LLC.
- \* Defendant is required to perform a diligent search for documents responsive to Request for Production No. 11. If the Defendant is unable to locate responsive documentation, a detailed explanation of its search efforts will be provided to Plaintiff. Further, Defendant will provide an explanation as to why it is not in possession of the fuel records when those costs are claimed on Mr. Eastman's 2007 through 2012 Schedule C forms.
- \* Defendant is required to provide supplementation of its responses to these discovery requests on or before September 9, 2013.

SO ORDERED this 26th day of August, 2013.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE