

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

LOCKARD AIRCRAFT SALES CO.,
Plaintiff,

vs.

DUMONT AIRCRAFT SALES, LLC, et
al.,

Defendant.

Case No. 16-CV-469-JED-FHM

OPINION AND ORDER

Plaintiff's Motion for Order Compelling Discovery, [Dkt. 79], and Defendant's Motion for Protective Order, [Dkt. 83], are before the undersigned United States Magistrate Judge. The matters have been fully briefed and are ripe for decision. Plaintiff seeks an order compelling Defendants to produce their personal and business tax returns. Defendants seek a protective order preventing Plaintiff from seeking or obtaining that information.

On May 2, 2017, Plaintiff served discovery requests seeking production of Defendants' personal and business tax returns. Plaintiff asserts that Defendants have waived any objection to production of the tax returns by their failure to object. [Dkt. 79, p. 2]. Defendants represent that they have objected to the request and set out the content of their objection. [Dkt. 82, p. 3]. The court notes that Plaintiff failed to comply with the requirement contained in LCvR 37.2: "The opening brief in support of a discovery motion filed pursuant to Fed.R.Civ.P. 26 through 37 shall include a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion." Instead of including a verbatim recitation of its discovery request and the Defendants' answer which contains an objection, Plaintiff attached copies of its discovery requests as an exhibit to its opening brief. Had Plaintiff complied with LCvR

37.2, it would not have presented a factually erroneous assertion. The court finds that no waiver occurred.

Plaintiff filed a motion to compel addressing the May 2017 discovery requests on August 17, 2017, and withdrew that motion on September 10, 2018, [Dkt. 68], after briefing was complete and a hearing on the matter was scheduled. The initial discovery deadline in the case was September 28, 2017. [Dkt. 17]. That deadline has been extended five times, [Dkt. 28, 51, 55, 59, 77], the current deadline passed on February 28, 2019. [Dkt. 77]. Plaintiff filed the instant motion to compel on the date of the current discovery deadline.

Plaintiff has offered no explanation for the delay in filing its motion to compel but more importantly, except for stating its complaint contains a request for punitive damages, Plaintiff has offered no argument addressing why production of the tax returns is necessary to its case. The undersigned is unconvinced that tax returns would necessarily show the net worth information generally relevant to punitive damages.

Plaintiff's Motion for Order Compelling Discovery, [Dkt. 79], is DENIED; Defendant's Motion for Protective Order, [Dkt. 83], is GRANTED.

SO ORDERED this 9th day of May, 2019.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE