**United States Bankruptcy Court**
**Northern District of Illinois**
**Eastern Division**

**<u>Transmittal Sheet for Opinions for Publishing and Posting on Website</u>**

**Will This Opinion be Published Yes**

**Bankruptcy Caption:** In re Camilo Andres Ferro

**Bankruptcy No. 20 B 10492**

**Adversary Caption:** Renew Packaging, LLC v. Camilo Andres Ferro

**Adversary No. 20 A 00273**

**Date of Issuance:** September 21, 2021

**Judge:** Donald R. Cassling

**Appearance of Counsel:**

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**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In re: | ) | Bankruptcy No. 20 B 10492 |
| | ) | |
| CAMILO ANDRES FERRO, | ) | |
| | ) | |
| Debtor. | ) | Chapter 7 |
| | ) | |
| | ) | |
| | ) | Honorable Donald R. Cassling |
| RENEW PACKAGING, LLC, | ) | |
| | ) | |
| Plaintiff, | ) | Adversary No. 20 A 00273 |
| | ) | |
| v. | ) | |
| | ) | |
| CAMILO ANDRES FERRO, | ) | |
| | ) | |
| Defendant. | ) | |

## ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL [Dkt. No. 45]

This matter came before the Court on the motion of Plaintiff Renew Packaging, LLC to compel Defendant Camilo Andres Ferro to answer certain interrogatories propounded upon him and for Defendant to pay the expenses that it incurred in seeking this relief. Having considered the motion to compel, the parties' briefs, and the history of this bankruptcy case and adversary proceeding, the Court grants Plaintiff's motion.

## BACKGROUND

Many of the underlying facts were previously outlined in the Order (the "December Order") denying Defendant's motion to dismiss this adversary proceeding and are incorporated by reference. (*See* Adv. Dkt. No. 28.) That Order details the litigation history between these litigants, including the arbitration awards that were entered in Plaintiff's favor and against Defendant, and confirmed by the state court.

Following denial of that motion, Defendant answered the complaint and then the Court entered a scheduling order that gave the parties four months to complete discovery. (Adv. Dkt. Nos. 35, 37.) The cutoff was enlarged by a month and a half (through July 3, 2021) when the Court granted the parties' agreed motion seeking that extension. (Adv. Dkt. Nos. 38, 42.)

Plaintiff propounded upon Defendant fourteen interrogatories on May 2, 2021. (Mot. at Ex. A, Adv. Dkt. No. 45.) Defendant then provided untimely and incomplete answers to those interrogatories on June 17, 2021. (*Id.* at Ex. B.) Even though many interrogatories concerned matters that should have been within Defendant's personal knowledge, all but one of Defendant's incomplete responses specified that Defendant's "investigation continues." (*Id*. at pp. 5-8.)

By letter dated June 30, 2021, Plaintiff demanded that Defendant amend his answers no later than July 6, 2021. (*Id.* at Ex. C.) The parties then conferred on August 10, 2021, but were unable to reach an agreement. Plaintiff then filed this motion to compel the next day.

Sometime between August 17, 2021, and September 4, 2021,[1] Defendant amended his answers to the interrogatories. (Resp. Br. at Ex. No. 1, Adv. Dkt. No. 52.) These answers remain incomplete and, like Defendant's original answers, are submitted in connection with Defendant's ongoing "investigation."

**ANALYSIS**

Litigants can and should work out most discovery disputes without judicial intervention. When they cannot reach an accord and an objection is raised, however, the objecting party must show why a *particular* discovery request is improper. *Gile v. United Airlines, Inc.*, 95 F.3d 492, 495 (7th Cir. 1996); *Kodish v. Oakbrook Terrace Fire Prot. Dist.*, 235 F.R.D. 447, 450 (N.D. Ill. 2006). That burden cannot be met by "a reflexive invocation of the same baseless, often abused litany that the requested discovery is vague, ambiguous, overly broad, unduly burdensome or that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." *Burkybile v. Mitsubishi Motors Corp.*, No. 04 C 4932, 2006 WL 2325506, at *6 (N.D. Ill. Aug. 2, 2006) (internal quotations omitted).

Federal courts have explained that objections of this ilk are "tantamount to not making any objection at all." *Fudali v. Napolitano*, 283 F.R.D. 400, 403 & n.2 (N.D. Ill. 2012) (quotation omitted) (citing cases). Indeed, such assertions are simply "a common refrain of parties to litigation who would prefer, understandably, not to comply with discovery requests that involve anything other than the slightest effort." *Jenkins v. White Castle Mgmt. Co.*, No. 12 C 7273, 2014 WL 3809763, at *2 (N.D. Ill. Aug. 4, 2014). And so, the party objecting to the discovery of relevant matters in a federal court typically must support its assertions by affidavit or other reliable evidence. *Burton Mech. Contractors, Inc. v. Foreman*, 148 F.R.D. 230, 233 (N.D. Ind. 1992). Defendant has offered neither.

[1] Defendant states that he served his amended answers on August 17th; Plaintiff states that he did not receive them until September 4th, when it received them as an attachment to Defendant's response brief. (Reply. Br. at p. 2, Adv. Dkt. No. 53.)

The reflexive invocation of boilerplate general objections is precisely how Defendant responded to many of Plaintiff's discovery requests.[2] The Court rejects each such general objection for the reasons set forth above. *Novelty, Inc. v. Mountain View Mktg., Inc.*, 265 F.R.D. 370, 375 (S.D. Ind. 2009). Defendant's non-boilerplate arguments, however, merit further discussion.

1. Interrogatories 2 through 5

Defendant contends that fully responding to interrogatories 2 through 5 is "impossible" because seven of the seventeen alleged customers of Plaintiff to which those interrogatories refer are not actually its clients. (Resp. Br. at p. 4.) Defendant failed to support this assertion by affidavit or other reliable evidence. *Burton*, 148 F.R.D. at 233. More to the point, given the arbitrator's award, he could not have done so. In awarding damages to Plaintiff for Defendant's tortious interference with Plaintiff's business, the state-court arbitrator found that each of the seventeen entities was a customer of Plaintiff and, for the reasons stated in the December Order, that finding is binding on this Court. (*See* December Order at p. 5.) Defendant is therefore collaterally estopped from contesting whether those entities were Plaintiff's customers.

2. Interrogatories 6 through 12

Next, Defendant argues that interrogatories 6 through 12 are "impossible" to answer. (Resp. Br. at p. 5.) For the first time in his brief, he characterizes them as "contention interrogatories." (*Id.* at p. 4.) Defendant argues that they are inappropriate because the ultimate burden of proof lies with Plaintiff and some interrogatories require him to answer a question in the negative. (*Id.*)

The Court disagrees. 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." *Thomas & Betts Corp. v. Panduit Corp.*, No. 93 C 4017, 1996 WL 169389, at *2 (N.D. Ill. Apr. 9, 1996) (internal citation omitted). Although not models of clarity, Plaintiff's interrogatories 6 through 12 are understood easily enough. Consider Plaintiff's twelfth interrogatory:

> State all bases on which you believe that [Defendant] or [his company's] acceptance of payment from [Plaintiff's] customers, including but not

[2] For example, Defendant's amended response to Plaintiff's second interrogatory states in part:

> This Interrogatory is vague and overbroad as the time period is not specific enough (definition from January 1, 2018) for an answer via interrogatory and seeks information that is neither relevant to the allegations of [the] Complaint to Determine Dischargeability of Debt filed on August 7, 2020 nor reasonably calculated to lead to the discovery of admissible evidence . . . .

(*See* Resp. Br. at pp. 3-4 of Ex. A, Adv. Dkt. No. 52.)

> limited to, the customers listed in Exhibit A, was not wrongful and/or harmful to [Plaintiff].

(Resp. Br. at p. 9 of Ex. A.)

This interrogatory is clear and, in focusing on Plaintiff's customers covered by the arbitration award, is appropriately narrowed in scope to the facts germane to this proceeding.[3] A complete answer to this interrogatory would meaningfully clarify and narrow the issues that might require a trial. *BASF Catalysts LLC v. Aristo, Inc.*, No. 2:07-CV-222, 2009 WL 187808, at *2 (N.D. Ind. Jan. 23, 2009).

Moreover, the interrogatory is proper under the specific facts of this case, because the arbitrator specifically found that Defendant's acceptance of payments from Plaintiff's customers was wrongful. That finding, along with the arbitrator's other determinations, are binding upon this Court, and they closely relate to the elements of Plaintiff's cause of action. (*See generally* December Order.) Plaintiff's complete responses to interrogatories of this ilk will meaningfully advance the resolution of this adversary proceeding and, indeed, help ascertain whether a dispositive motion may be appropriate. And it makes no difference that Plaintiff carries the burden of proof; Defendant is obligated to respond to any appropriate discovery request, subject only to the limits of the Federal Rules and orders of this Court.

3. Interrogatories 13 and 14

Defendant did not address interrogatories 13 and 14 in his brief. In his amended responses, however, he asserts boilerplate objections (which the Court overrules for the reasons previously stated) and, as with his other answers, asserts that his "investigation continues." The time for that investigation was while discovery remained open, and specifically within the 30-day window that the Federal Rules require an interrogatory to be answered. *See* FED. R. CIV. P. 33(b)(2), made applicable to this proceeding by FED. R. BANKR. P. 7033. With no reasoned objection to these interrogatories, Defendant will also be compelled to answer them.

4. Attorney Fees

Finally, the Court addresses attorney fees. Plaintiff states that it is entitled under Federal Rule 37(a)(5) to the fees it incurred in connection with prosecuting this motion to compel. (Mot. at p. 6; Reply Br. at p. 4.) In response, Defendant argues that filing this motion "the day after a meet and confer conference and ask[ing] for attorney fees and costs is not a good faith effort to obtain the disclosure or discovery without court action." (Resp. Br. at p. 4.) Without a more specific and reasoned objection, the Court rejects this attempt

[3] The propriety of broadening the interrogatory through the phrase "including but not limited to" is also clear, for Defendant has an established history of continuing to solicit Plaintiff's customers in violation of the state court's orders and has been sanctioned for his continuing misconduct. (*See* December Order at p. 3.)

to foreclose Plaintiff from recovering any attorney fees it incurred in prosecuting this motion.

As the Seventh Circuit has explained, "[f]ee shifting when the judge must rule on discovery disputes encourages their voluntary resolution and curtails the ability of litigants to use legal processes to heap detriments on adversaries (or third parties) without regard to the merits of the claims." *Rickels v. City of S. Bend, Ind.*, 33 F.3d 785, 787 (7th Cir. 1994). The Court therefore will exercise its broad discretion to impose discovery sanctions, *Commonwealth Ins. Co. v. Titan Tire Corp.*, 398 F.3d 879, 888 (7th Cir. 2004), by giving Plaintiff leave to move for an award of any reasonable attorney fees it incurred in connection with filing this motion no later than October 12, 2021. If Defendant believes that any of those fees are unreasonable, he may object to them no later than October 19, 2021. If Defendant does object, he should specify with particularity why he believes those fees, or any portion of them, are unreasonable. Plaintiff should notice its fee motion for presentment on October 26, 2021.

## CONCLUSION

For all these reasons, Defendant is hereby ordered to fully answer Plaintiff's interrogatories 2 through 14 no later than October 5, 2021.

**ENTERED:**

**DATE:** ____________________ ______________________________

**Donald R. Cassling**
**United States Bankruptcy Judge**