UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

Case No. 9:18-cv-80311-ROSENBERG/REINHART

DIAMOND RESORTS INTERNATIONAL, INC., et al.,

Plaintiffs,

v.

US CONSUMER ATTORNEYS, P.A., et al.,

Defendants.
_____/

JOINT DISCOVERY MEMORANDUM FOR AUGUST 10, 2020 HEARING

Plaintiffs and the Newton Defendants[1] certify that they have complied with the requirements for pre-hearing consultation, and, in advance of the August 10, 2020 discovery hearing (the "**Hearing**") state as follows as to the issues to be heard by the Court at the Hearing:

I. PLAINTIFFS' FIRST REQUEST FOR PRODUCTION

a. Plaintiffs' Statements

Discovery from Newton remains lacking despite the fact that Newton has been part of this case for more than eighteen (18) months. Specifically, despite representations from Newton—nearly eight (8) months ago—that it would produce documents and electronically stored information ("**ESI**") in response to Request Nos. 1, 5, 6, 8, 10, 11, 12, 14, 37, 41, 43, and 56,[2] Plaintiffs still do not have a complete (and in some cases nearly complete) production.

Method of Production. Newton's counsel has represented that production of "contracts, emails, doc[uments] received from consumers, complaints, testimonials, declarations, and documents along with the contracts in the client file including worksheets (etc.)" ("Consumer

[1] "**Plaintiffs**" are Diamond Resorts U.S. Collection Development, LLC and Diamond Resorts Hawaii Collection Development, LLC. The "**Newton Defendants**" or "**Newton**" are Newton Group Transfers, LLC, The Newton Group ESA LLC, Interval Broker Direct, LLC and Newton Group Exit, LLC ("**NGE**").

[2] These numbers correspond to Requests sent to Newton Group Exit but the categories of documents requested mirror requests made to all the Newton Defendants. A reference chart for the Requests is attached as **Exhibit 1.** Newton's Responses to the Requests for Production are attached as **Exhibits 2-4.**

Files") will be produced by August 7.[3] Since the parties last conferred on July 29, 2020, Newton has started production of what appears to be Consumer Files. However, the method of production is not compliant with the Federal Rules. *See* Fed. R. Civ. P. 34(b). Newton's production is incomprehensible, and not organized or labeled in any way to correspond to particular requests or particular Diamond Owners. Further, the production is convoluted, with non-contract files mixed in, making it impossible to know if a complete production has been made.[4] Plaintiffs requested some identifying information from Newton, but that request has gone unanswered to date.

Scope of Diamond Owners at Issue: Setting aside the method of production, which limits Plaintiffs' ability to review and determine completeness, there is a remaining dispute about the scope of Diamond Owners at issue for the purpose discovery and production. Newton has only agreed to produce Consumer Files for the approximately 112 Diamond Owners identified in association with Plaintiffs' tortious interference damages. Newton's unilateral determination that only certain Consumer Files are relevant ignores Plaintiffs' Lanham Act claims and the host of Owners at issue related to that claim. *ADT LLC v. Vivint, Inc*., 17-CV-80432, 2017 WL 8404330, at *6 (S.D. Fla. Nov. 20, 2017) (A plaintiff need **not** "establish that it suffered 'damages' in order to prevail on its Lanham Act claim"); *Burger King Corp. v. Mason*, 855 F.2d 779, 781 (11th Cir. 1988) ("[T]he law in this Circuit is well settled that a plaintiff need not demonstrate actual damage to obtain an award reflecting an infringer's profits under . . . the Lanham Act"). The requested documents should be produced for the entire universe of Diamond Owners at issue—which is approximately 570 Diamond Owners in addition to the hundreds of Owners Newton identified for the first time on June 25, 2020 in amended responses to Plaintiffs' First Set of Interrogatories.

"Welcome Packet" (Request 10) Newton stated it would produce a template of its "welcome and confirmation packet." This template has not been produced.

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[3] These productions may partially resolve the issues related to Requests 1 and 6 (contract documents); Request 5 (communications); 8 (sworn statements); 11 and 56 (complaints); 12 (refund requests); and 14 (testimonials), subject to the scope issues raised herein. Plaintiffs are reviewing these productions to determine completeness to the extent possible given the method of production.

[4] *See* July 31, 2020 Production Chart and Email from Newton's counsel, attached as **Composite Exhibit 5.**

"Addresses for Mailers" (Request 43) Newton stated it would produce information regarding addresses where its mailers or paper marketing were sent as it relates to the Diamond Owners. This information has not been produced.

"Expense Reports" (Requests 37, 41) Newton objected but stated it would produce "an expense report" concerning Diamond Owners. Such a report has not been produced.

b. Newton's Statement

Newton Defendants have complied with the letter and/or spirit of every prior discovery conference decision by this Court. Plaintiffs positions are unsupported and unsupportable. Plaintiffs have failed to present any factual evidence showing non-compliance with any Newton Defendant's discovery obligations. Plaintiffs have failed to present any legal authority supporting their view of the method or scope of production that is relevant or appropriate to this case under the present circumstance.

Scope of Diamond Owners at Issue: The scope of Diamond Owners at issue in this case is set by to those consumers on Plaintiffs' Second Amended Rule 26 Initial Disclosures as being consumers who allegedly breached loan obligations. By way of reminder, Plaintiffs dropped their allegations that any consumer breached an obligation to pay maintenance fees, therefore any consumer on any previous list circulated by Plaintiffs who has not breached a loan obligation is no longer at issue in this action.

Tellingly, Plaintiffs completely ignore the issue in their statement above despite knowing exactly why the Newton Defendants are focused on, and have produced, all client files for those consumers who allegedly breached loan obligations on Plaintiffs Rule 26 Disclosures. Plaintiffs fail to show that any other consumer could possibly be at issue since Plaintiffs are not alleging to have been harmed by the action of any other consumer, whether based on allegations of tortious interference or misleading advertisements.

Regarding the Lanham Act claim, as this Court knows well, Plaintiffs have dropped their allegations of reputational harm, competition with Newton Defendants and breached maintenance fee obligations only after the Court relied on those allegations to deny Newton Defendants' motion to dismiss and upon Newton Defendants' investigation into those frivolous and unsupportable allegations.

To that end, on July 24, 2020, the Newton Defendants filed a Motion for Judgment on the Pleadings to have the Lanham Act claim dismissed for failure to allege (1) the requisite injury

being lost sales or harm to reputation, and "sale" is defined as the transfer of title which happened well before the alleged breach of any loan obligation which breach is neither logically nor legally a "sale," and (2) proximate causation regarding lost sales which must be to a competitor, *see Thermolife Int'l LLC v. Vital Pharm. Inc.*, No. 19-cv-61380-BLOOM/Valle, at *4 (S.D. Fla. Oct. 7, 2019) *citing Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 138 (2014) ("when a party claims reputational injury from disparagement, competition is not required..."). During the pendency of the MJOP, the Newton Defendants request that the Court stay the discovery on that claim because it is likely that the MJOP will be granted and is set to be heard in mere weeks. Plaintiffs have duped the Court and Newton Defendants regarding the legitimacy of their Lanham Act claim long enough.

Method of Production. Plaintiffs make empty argument about not receiving proper discovery production; they provide not a single example of what they speak, not to this Court and not during the meet and confer process. Regardless, the Newton Defendants have produced documents in compliance with Fed. R. Civ. 34(b)(2)(E)(i), permitting production "as they are kept in the usual course of business." The Court may remember that Plaintiffs were not required to any thing more than that, and neither should the Newton Defendants.

Specific discovery requests. Plaintiffs erroneously contend that Newton Defendant production in response to Request Nos. 1, 5, 6, 8, 10, 11, 12, 14, 37, 41, 43, 44, and 56 is deficient.

No. 1. Newton Defendants have produced by the date of this hearing all contracts between them and Diamond Owners at issue int his case, i.e., those allegedly who have breached loan obligations. Notably, Newton Defendants have been producing documents on a rolling basis for many months, just like Plaintiffs have been and still are doing, and those prior productions did include some of the contracts of Diamond Owners who did not have loan obligations. However, at this time, given Plaintiffs limited allegations of injury, only those consumers having loan obligations that were allegedly breached are proportionate to the needs of this case; and, once again, Plaintiffs have failed to explain why any other consumer is relevant to the issues in this.

No. 5. Newton Defendants have produced all correspondence between them and Diamond Owners at issue in this case by the date of this hearing, as promised to Plaintiffs during the meet and confer.

No. 6. Newton Defendants have produced all materials prior to the engagement of a consumer.

No. 8. Newton Defendants have produced signed declarations of over 40 Diamond Owners, each of whom have serious complaints about Plaintiffs' misconduct in relation to the relationship between those consumers and Plaintiffs.

Nos. 9. Newton Defendants will have produced all client files of those consumers at issue in this case by August 7 as promised during the parties' meet and confer.

No. 10. Newton Defendants will have produced the welcome packet by August 7 as promised during the parties' meet and confer. (The welcome packet merely asks consumers to sign a power of attorney and contract, and provide timeshare documents such as maintenance fee bill and others, all of which has also been produced.)

Nos. 11-12. Newton Defendants will have produced the complaints and refund requests made by those consumers at issue in this case by August 7 as promised during the parties' meet and confer. Notably, Newton Defendants previously have produced complaints of those consumers who are no longer at issue in this case. Complaints and refund requests are either made in writing and placed int he client file, which has been produced, or by telephone and call logs produced as well.

No. 14. Newton Defendants will have produced testimonials, etc. by August 7 as promised during the parties' meet and confer.

Nos. 37, 41. Newton Defendants have, in compliance with the Court's prior order during a discovery conference, produced extensive spreadsheets showing flow of funds.

No. 43. Newton Defendants will have produced addresses by August 7 as promised during the parties' meet and confer. Notably, addresses of consumers have been rolled out in prior productions by way of having produced client files in prior productions.

No. 44. Newton Defendants will have produced all advertising materials including videos ordered by the Court. Plaintiffs contend that Newton Defendants have the obligation to copy their entire publicly available website and information thereon to produce to Plaintiffs, however Plaintiffs have once again failed to demonstrate the legality and propriety of that demand. Plaintiffs allege only that a few advertisements published by Newton Defendants are false or misleading, nevertheless Newton Defendants have produced far more than that because the Court ordered it. Just because Plaintiffs allege a Lanham Act claim does not entitle them to go on a fishing expedition into every single advertisement ever published by a Newton Defendant, or to

cause the Newton Defendants to go the burden of making copies of a website that is publicly available merely to produce it to Plaintiffs.

No. 56. As with number 11 above, Newton Defendants will have produced testimonials, etc. by August 7 as promised during the parties' meet and confer.

Newton Defendants have produced about twenty thousand pages of documents, and in addition there they have gone to great lengths to prepare and produce the flow of funds in an organized and easy to understand manner pursuant to the Court's prior order at a previous discovery conference. Plaintiffs also should have honored the parties' meet and confer by waiting until the last production as promised on August 7 and, if they had, they would not be moving forward on baseless arguments without having taken the time to properly review the copious production, *see* footnote 3 above wherein Plaintiffs admit to this fact: "Plaintiffs are reviewing these productions to determine completeness...."

In sum, the Newton Defendants have complied with their discovery obligations, and Plaintiffs have failed to show otherwise. If, however, the Court finds otherwise then the Newton Defendants request that the Court permit the Newton Defendants an opportunity to full brief any issues that may be the subject of any Court finding during the discovery conference.

Finally, Plaintiffs seek to attach a "reference chart" as Exhibit 1 but they intentionally withheld that chart from Newton Defendants prior to the filing of this joint memorandum, and therefore that chart should be disregarded by the Court.

II. PRODUCTION ISSUES FROM FEBRUARY 2, 2020 DISCOVERY ORDERS

a. Plaintiffs' Statement

Newton has failed to comply with the Court's Orders at the February 2, 2020 Discovery Hearing (the "**February Hearing**") as it relates to: (1) Production of Advertising/Marketing/ Informational Materials and (2) Flow of Fund Production.

Advertising/Marketing/Informational Materials. At the February Hearing, the Court ordered Newton to produce "anything . . . shown to a potential customer from January 2015 – December 2019." Tr. at 38:21–39:4.[5] This included "any advertising, marketing, informat[ion], anything that [Newton] used to provide information to an individual person, the general public, or anybody in between that explained to those people the services that [Newton] was offering." Tr.

[5] The Hearing transcript is attached as **Exhibit 6.**

at 39:17–25. This production was Court-ordered to be produced by March 13, 2020. Tr. at 39:10–16. Newton has produced a limited selection of documents which Newton's counsel represented was "everything responsive to the advertisement request."[6]

Contrary to counsel's assurances, Newton has failed to produce any web-based advertisements, radio advertisements, or videos.[7] For instance, there are Newton informational advertisements on Newton's website which Newton has not produced—nor has Newton produced any previous versions. Likewise, Newton has a Facebook page with more than 20 videos that were not produced. While these are still publicly available, Plaintiffs have no way to verify what advertisements are no longer available. More to the point, Plaintiffs should not be forced to scour the internet for advertisements Newton was ordered to produce.[8] As to general marketing documents, Plaintiffs recently deposed a Newton consumer advisor whose sole job is to sit with potential clients and sell them Newton's alleged services. During this deposition, Plaintiffs learned that this consumer advisor has a presentation which he shows consumers at the point of sale. This presentation was not produced and the deponent represented he had not been asked for it, nor had he been asked to preserve it or prior versions of it. These point-of-sale documents are precisely what the Court ordered Newton to produce. Tr. 40:5–6 ("If [Newton] had a sales presentation and there was a PowerPoint, you are to produce the PowerPoint."). With limited ability to check the completeness of the production by Newton, Plaintiffs have discovered numerous deficiencies.

Flow of Funds Production. At the February Hearing, the Court additionally ordered Newton to produce documents showing the flow of funds between Newton and the Newton partners. Tr. 58:22–61:16. Specifically, the Court ordered production of "any payments that were made to [the partners], either salary, 1099, or other bonuses." Tr. 60:14–17. Newton produced a chart showing extremely nominal payments which, upon conferral with Newton's counsel, represented the payments made by Newton to the partners that can be specifically tied to specific Diamond Owners. This is not what the Court ordered, Newton never moved for reconsideration or to modify the Court's order, and Newton should be ordered (again) to produce these documents.

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[6] *See* Chart of Advertising/Marketing/Informational Production, attached as **Exhibit 7.**

[7] In conferring, Newton's counsel represented that Newton does not have any commercials.

[8] The Court further provided Newton with the opportunity to review this production and lodge an objection if this was too burdensome. Tr. at 39:10–16. Newton failed to do this.

b. Newton's Statement

Advertising/Marketing/Informational Materials. Plaintiffs contentions are once again inaccurate and legally unsupportable. The only evidence they suggest supports their position is the unfinished deposition of Charles Staples, who has not fully testified on the issues and for which the Newton Defendants have not had the opportunity to examine. This deposition is scheduled to go forward in September. Meanwhile, Plaintiffs' attempt to use Mr. Staples inchoate testimony should be disregarded as premature. The Newton Defendants, as explained above, have produced all advertising material that they were ordered to produce and which is relevant and proportionate to the issues in this case. Moreover, Plaintiffs belief that their Lanham Act claim permits them discovery into every single advertisement ever published by a Newton Defendant is unsupported and unsupportable. That is not relevant to this case and it is not proportionate to the needs of the case.

The Lanham Act statute requires "shall be liable in a civil action by any person who **believes** that he or she is or is likely to be damaged by such act." 15 U.S. Code § 1125(a)(1). Plaintiffs are not permitted to fish for an advertisement that they don't know exists to use to support their claim because they clearly do not have a **belief** that they have been damaged by any advertisement that they are not aware of.

In fact, Plaintiffs responded to an interrogatory regarding the advertisements they believe are false and misleading as follows, see Plaintiff's response to No. 27[9]:

> "At this time, Plaintiff refers to and incorporates each and every advertisement attached to, referenced in or cited in the Third Amended Complaint (along with any additional advertisements identified in prior versions of the Complaint). However, Plaintiff's discovery efforts to locate, and analyze the veracity of, advertisements employed by the Newton Defendants are ongoing. The Newton Defendants recently made a production of advertising materials that purported to be comprehensive which contains false or misleading statements. Notwithstanding assurances of completeness, Plaintiff subsequently learned about certain radio advertisements used by the Newton Defendants that were not disclosed in the Newton Defendants' prior productions. Plaintiff therefore has legitimate doubt concerning whether Defendant has met its discovery obligations to produce advertisements. Since discovery is ongoing, Plaintiff reserves the right to amend or supplement this Response."

[9] These responses were marked "Confidential" and are therefore not being filed with this Joint Memorandum but the parties will work collaboratively to get these to the Court.

Plaintiffs' interrogatory response shows that they are playing games – they only allege the advertisements in the Third Amended Complaint are false or misleading, and they are on an improper fishing expedition for materials that have been in the public domain for a long time.

Flow of Funds. As explained, the Newton Defendants have gone to great lengths to produce a flow of funds relating to almost 600 Diamond Owners that were initially on Plaintiffs' lists, including funds that were distributed to its owners. Plaintiffs are not entitled to anything more.

15 U.S.C. § 1117(a): "When . . . a violation under section 1125(a) or (d) of this title . . . shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits. . . . The court shall assess such profits . . . or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. . . . If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty."

A. RELEVANCE AND DISCOVERY

We understood the Court ordered production of financial information relating to the claims in this case, not of information that is unrelated to the claims in this case. And while compensation or distributions paid to the Newton Defendants' owners is not actually relevant in any respect in this case, we already have produced evidence of all such payments to the extent they relate to Diamond and the timeshare members at issue in this case. *See Mishawaka Mfg. Co. v. Kresge Co*., 316 U.S. 203, 206-07 (1942) ("The plaintiff of course is not entitled to profits demonstrably not attributable to the unlawful use of his mark").

"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." FRE 401. *See United States v. Hall*, 653 F.2d 1002, 1005 (5th Cir. 1981) ("To be relevant . . . [there] are two distinct requirements: (1) The evidence must be probative of the proposition it is offered to prove, and (2) the proposition to be proved must be one that is of consequence to the determination of the action. . . . Simply stated, the proposition to be proved must be part of the

hypothesis governing the case — a matter that is in issue, or probative of a matter that is in issue, in the litigation"); *see also McArdle v. City of Ocala*, Case No: 5:19-cv-461-Oc-30PRL (M.D. Fla. Mar. 31, 2020), at p.5 ("In order to frame and resolve the discovery dispute, it is essential to determine what the purpose of the discovery is. That will help determine what the parties need (or don't need) and hopefully the most cost and time effective way to get there. Indeed, as the commentary to Rule 26 informs us, '[a] party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them.' Id.")

15 U.S.C. § 1117(a), *supra*, establishes what is relevant to assessment of the amount of the "defendant's profits": (i) evidence of the "defendant's sales," and (ii) evidence of "cost[s] or deduction[s] claimed." This statutory assessment of profits is straightforward: it must be made based upon proof of revenues (which is the only proof a plaintiff must furnish), and if a defendant claims costs or other deductions, then the assessment also must be made based upon proof of those costs or deductions (if furnished by a defendant). Nothing else is relevant to assessment of a defendant's profits under section 1117.

If Newton Defendants were claiming any compensation/distribution paid to Newton Defendants' owners as a cost or deduction under section 1117(a), then that compensation/distribution might be relevant for that reason. *Compare Champion Spark Plug Co. v. Sanders*, 108 F.Supp. 674, 678 (E.D.N.Y. 1952) (under section 1117, defendant partners may seek a deduction for the portion of their salaries that is not attributable to the activities at issue in the case) *with Durbin Brass Works, Inc. v. Schuler*, 532 F.Supp. 41, 44 (E.D. Mo. 1982) ("the salary of a partner should not be deducted as an expense"). But Newton Defendants do not claim that any payment (or part of any payment) to any of their owners is a cost or deduction that should reduce an assessment of profits in this case pursuant to section 1117(a). Thus, evidence of other compensation/distributions paid to the owners is not relevant.

Aside from the Lanham Act claim, there is no claim or defense in this case to which any financial information held by the Newton Defendants has any relevance. Their owners are not parties to this case. There is no claim, allegation, or evidence that money is recoverable from any owner for any reason, e.g., based on a cause of action for a voidable or fraudulent transfer. And the Newton Defendants' ability to pay a judgment is not relevant to any "claim or defense" herein, either. *See Lane v. Capital Acquisitions*, 242 F.R.D. 667, 669 (S.D. Fla. 2005) (financial records

of individual defendants in the case were not relevant to any claim or defense, as "Defendants' financial ability to settle this action or satisfy a judgment is not relevant" thereto).

B. DISCOVERY IS LIMITED TO RELEVANT INFORMATION

Parties cannot obtain discovery of matter unless it is relevant to any party's claim or defense. FRCP 26(b)(1) establishes this: "Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. . . ." See also FRCP 33(a)(2) ("An interrogatory may relate to any matter that may be inquired into under Rule 26(b)") and 34(a) ("A party may serve on any other party a request within the scope of Rule 26(b) . . . to produce . . . designated documents"). Thus, discovery can be appropriately limited to less than all relevant matter, but in no case can discovery be expanded to include more than relevant matter.

This is highlighted by FRCP 26(b)(2)(C)(iii), which directs that whether a party makes a motion, "or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that . . . the proposed discovery is outside the scope permitted by Rule 26(b)(1)." (Emphasis added.)

C. DISCOVERY OF MATTER THAT IS RELEVANT, BUT IS SENSITIVE OR PRIVATE

Even if it were relevant, discovery of other compensation/distributions to the Newton Defendants' non-party owners – i.e., of payments unrelated to the claims in this case – would not be proportional to the needs of the case pursuant to FRCP 26(b)(1). Such financial information is sensitive, and its disclosure alone can result in damage to companies like Newton Defendants. *See Duracell Inc. v. SW Consultants, Inc*., 126 F.R.D. 576, 579 (N.D. Ga. 1989). Moreover, not only is this sensitive personal information, it also evidences non-party individuals' income and financial conditions; it is personal and private matter, the disclosure of which should not be compelled without a genuine, concrete need. *See U.S. v. Federation of Physicians and Dentists*, 63 F.Supp.2d 475, 479 (D. Del. 1999) (internal citations omitted) ("Financial information of non-parties in a lawsuit has been held by courts to be private and not routinely available for discovery. 'The right of privacy and the right to keep confidential one's financial affairs is well-recognized' when the information involves non-parties, even though they may be allied to the parties. Courts have shown even more reluctance to force disclosure of financial information when it may be revealed to business rivals, especially when the information would be collateral and not direct proof of the plaintiff's claims. Although the non-party surgeons from whom the Government seeks discovery

all have a stake in the outcome of the case, the Court is inclined to weigh their privacy concerns strongly against the Government's requests. The information sought is private and confidential and discovery would entail the disclosure of sensitive, private information of the non-party surgeons").

III. PLAINTIFFS' SECOND REQUEST FOR PRODUCTION[10]

a. Plaintiffs' Statements

Request 10 requests communications between Newton and any other person regarding specific Diamond Owners, Paul and Diane Reeve. Newton objected in part on the basis that such production would include communication between Newton and its counsel in this current action. During the parties' conferral, undersigned counsel reiterated that Diamond is not seeking communication between Newton and its counsel in this lawsuit. However, it is unclear if additional documents have been withheld. For instance, it is unclear if Newton has fully produced all documents between itself and DC Capital as it appears only six discrete emails have been produced by Newton that are emails between it and DC Capital (NG 05400–NG008467).

b. Newton's Statement

Newton Defendants have produced everything in their possession, custody and control in response to this request. By way of background, the Reeves came to the Newton Defendants seeking an exit of their Diamond Ownership based on many complaints against Diamond, and they had hired a Newton Defendant to help them exit ownership because Plaintiffs refused to let them exit. It was only because the Reeves hired a Newton Defendant that Plaintiffs gave them a full refund by rescinding their purchases in exchange for testimony against Newton Defendants. In any event, Plaintiffs have obtained all correspondence from the Reeves regarding Newton Defendants, and from Newton Defendants regarding the Reeves.

IV. NEWTON'S SECOND REQUESTS FOR ADMISSIONS[11]

a. Newton's Statement

Plaintiffs' responses to these request for admissions, Nos. 48 - 51, 55-56, 62-74, 76-78, 81-83 (see **Exhibit 9** for the requests and responses thereto), are evasive and incomplete because they do not answer the question asked, but rather make argument regarding something other than

[10] Newton Exit's Responses to Plaintiffs' Second Request for Production is attached as **Exhibit 8.**

[11] These responses were marked "Confidential" and are therefore not being filed with this Joint Memorandum but the parties will work collaboratively to get these to the Court.

answering the question asked. The Newton Defendants are entitled to an answer to the question asked.

Fed. R. Civ. 36(a)(4) provides: "Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party 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."

Plaintiffs responses simply do not comply with this rule and they should be ordered to serve compliant responses.

b. Plaintiffs' Statement

Plaintiffs disagree with Newton's assertions about Plaintiffs' responses to Newton's Second Requests for Admissions; rather, Plaintiffs complied with the Rule's requirements and admitted what they could admit but, when qualification was required, specified what was admitted and what was denied. Fed. R. Civ. P. 36(a)(4). As worded, the requests for admissions cannot be answered with a simple "admit" or "deny" that would conclusively bind Plaintiffs. *See Blake v. Batmasian*, 15-CV-81222, 2016 WL 7447240, at *1 (S.D. Fla. June 23, 2016) (denying to compel better responses; "Plaintiff's requests for admissions are improperly worded and apparently designed to gain an improper advantage over Defendants, which the Court will not permit.")

DATED this 6th day of August, 2020.

s/Lindy K. Keown
Brandon T. Crossland
Florida Bar No. 0021542
Julie Singer Brady
Florida Bar No. 0389315
Lindy K. Keown
Florida Bar No. 117888
Joshua R. Jacobson
Florida Bar No. 1002264
BAKERHOSTETLER
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801
Telephone: (407) 649-4000

Facsimile: (407) 841-0168
Email: bcrossland@bakerlaw.com
jsingerbrady@bakerlaw.com
lkeown@bakerlaw.com
jjacobson@bakerlaw.com
emachin@bakerlaw.com
mrios@bakerlaw.com
psalemi@bakerlaw.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/Lindy K. Keown