

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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RAY BRUNSON AND MARY BRUNSON,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-2320-MaV
	)	
	)	
STATE FARM FIRE AND CASUALTY,	)	
COMPANY,	)	
	)	
Defendant.	)	

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ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO  
COMPEL RESPONSES TO INTERROGATORIES AND FOR SANCTIONS

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Before the court is the March 13, 2008 motion of the plaintiffs, Ray Brunson and Mary Brunson (the "Brunsons"), to compel the defendant, State Farm Fire and Casualty Company ("State Farm"), to fully and completely respond to the Brunsons' submitted interrogatories, specifically 1(a), 1(b), 1(d), 1(e), and 1(f). The Brunsons also seek an award of sanctions against State Farm in the form of attorney fees. The Brunsons bring the motion pursuant to Federal Rules of Civil Procedure 33 and 37. State Farm has filed a response in opposition to the motion. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is granted in part and denied in part.

BACKGROUND

This lawsuit arises out of an insurance claim submitted to

State Farm by the Brunsons after their house sustained roof damage and interior water damage during a local hail storm on May 31, 2006. (Pls.' Mem. Supp. 1.) State Farm initially denied the Brunsons' insurance claim for hail damage to their roof, but it offered to pay for the interior water damage. (*Id.* at 2, 6.) The Brunsons proceeded to replace the roof at their own expense and then filed suit against State Farm in the General Sessions Court of Shelby County, Tennessee. (*Id.* at 2.) After a trial on the matter, the Brunsons were awarded damages in the amount of \$24,999.99, which consisted of \$4,475.00 in compensatory damages and \$20,524.99 in punitive damages. (*Id.*) State Farm appealed the judgment to the Circuit Court, and the Brunsons sought to have the action certified as a class action under Rule 23 of the Tennessee Rules of Civil Procedure. (*Id.*)

After the Brunsons submitted various discovery requests, State Farm removed the case to federal court. (*Id.*) In its notice of removal, State Farm alleged that because there were more than one hundred members in the Brunson's proposed class, a proper basis for federal court jurisdiction existed under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(5)(B). (Notice of Removal, Doc. No. 1, May 8, 2007, at ¶ 11.) In two subsequent documents, however, State Farm denied that the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure could be met. (See Pls.' Mem. Supp. 3; Answer, Doc. No. 7, June

13, 2007, at ¶ 23.)

As a result of the apparently inconsistent positions taken by State Farm, the issue of whether proper federal court jurisdiction existed was of paramount importance at a status conference held before Judge Mays on June 22, 2007. In an effort to resolve this issue, Judge Mays instructed the Brunsons to file an amended complaint clarifying with precision the class they sought to establish. (Pls.' Mem. Supp. Ex. 1 at 13-14.) Judge Mays further instructed the Brunsons to submit new discovery requests directed "only toward class certification specifically." (Pls.' Mem. Supp. Ex. 1 at 17.) Pursuant to these instructions, the Brunsons submitted the interrogatories at issue to State Farm on June 28, 2007, and filed their Second Amended Complaint on July 2, 2007. (Pls.' Mem. Supp. 5; Amended Compl., Doc. No. 13, July 2, 2007.) The single interrogatory submitted to State Farm sought the following information:

Interrogatory No. 1: Please state the number of claims filed with State Farm alleging hail damage sustained on May 31, 2006 to real property in Shelby County, Fayette County and/or Tipton County, Tennessee and in respect to each such claim please state:

- (a) The name of such claimant;
- (b) The address of each such property claimed to have been damaged;
- (c) The claim number for each such claim;
- (d) A summary of each such claim in respect to the type(s) of damage sustained, (i.e. roof damage, interior water damage, etc.);
- (e) Whether any such claim for hail damage to a roof was denied in whole or in part and if so, identify which one(s);

- (f) The disposition for each such claim; and
- (g) Whether a lawsuit was filed pertaining to any such claim and if so, the court, docket number and disposition for each lawsuit.

(Pls.' Mem. Supp. Ex. 3.) State Farm mailed the Brunsons its responses to the interrogatory on August 3, 2007. (Pls.' Mem. Supp. 5; Pls.' Mem. Supp. Ex. 4.) Its response stated the following:

RESPONSE: State Farm objects to this Interrogatory as seeking information in violation of Federal and State privacy laws that protect and restrict the disclosure of information about insured, including, but not limited to, the Gramm-Leach-Bliley Act (15 U.S.C.S. § 6801 et seq.), and Tenn. Comp. R. and Regs. R. § 0780-1-72-.04, et seq. State Farm also objects to this Interrogatory as seeking information that is irrelevant and immaterial to Plaintiff's individual claims against State Farm relating to a homeowner's claim, and it is not reasonably calculated to lead to the discovery of admissible evidence. State Farm further objects to this interrogatory as premature because it is an improper attempt to obtain the names and addresses of purported class members prior to class certification. See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

Subject to and without waiving the foregoing objections, State Farm states that the following claims were made on or about May 30 to June 1, 2006 for hail damage from policy holders in Tipton County, Shelby County, and Fayette County, Tennessee, and the corresponding amounts paid on each claim, less applicable deductibles, are as follows:

[The table detailing twenty-five claims by date of loss, claim number, and total amount paid is omitted.]

State Farm further states that all of such claims are closed, and that no lawsuit has been filed as a result or relating to any such claim except for the instant action.

(Pls.' Mem. Supp. Ex. 4 at 3-4.)

The Brunsons argue that State Farm's responses to their

interrogatories are insufficient. Specifically, they allege that State Farm has failed to answer each question separately and fully in writing as required by Federal Rule of Civil Procedure 33(b)(1).<sup>1</sup> The Brunsons contend that State Farm did not provide any answer to interrogatories 1(a), 1(b), 1(d), or 1(e). They claim that 1(f) was only partially answered because the response failed to specify whether the amount paid on other claims was for hail damage to the roof or only for interior water damage. The Brunsons argue that this distinction is critical to determining whether the claims fall within the proposed class.

In its response to the Brunsons' motion, State Farm argues that the information sought is not relevant to class certification. Specifically, State Farm contends that the names and addresses sought by 1(a) and 1(b) are irrelevant to any issues under Rule 23 and that 1(d) and 1(e) seek improper discovery on merits-based information. It also claims that the Brunsons' interrogatories are improperly aimed at identifying potential class members. State Farm further alleges that releasing the personally identifiable information of its customers would violate federal and state privacy laws. Lastly, State Farm argues that it did fully respond to 1(f) and any request for sanctions is unwarranted.

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<sup>1</sup> The court notes that the language that requires interrogatories to be "answered separately and fully in writing" appears in Rule 33(b)(3), not Rule 33(b)(1) as argued in the Brunsons' motion. See FED. R. CIV. P. 33(b).

## ANALYSIS

### A. Rule 33

Rule 33(b)(3) requires that "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." FED. R. CIV. P. 33(b)(3). The Brunsons only submitted one interrogatory with seven sub-parts to State Farm. They argue that Rule 33 requires a separate answer to each of the individual sub-parts. The plain text of Rule 33(b)(3) says that each *interrogatory* must be answered separately and fully. It makes no mention of separately answering sub-parts. While it may have been more clear to label its answer as responding to interrogatory 1(a), 1(b), and so forth, State Farm was under no obligation to do so.

Implicit in State Farm's response to the Brunsons' "Interrogatory No. 1" is its answers or objections to each sub-part. For example, the claims table provided in State Farm's response did not specifically state that it was answering interrogatory 1(c), but it included information, i.e. a claim number, that directly answered 1(c). The Brunsons obviously realized this, as they have not sought to compel a further response to 1(c). To the extent that information applicable to the other sub-parts was not provided, State Farm gave its reasons for objecting. As such, State Farm has complied in principle with the requirement of Rule 33 to separately answer "each interrogatory,"

but its answer is insufficient in several aspects.

B. Interrogatories 1(a) and 1(b)

Interrogatories 1(a) and 1(b) seek the names and addresses of all the individuals in Shelby County, Fayette County, and Tipton County who filed claims with State Farm that alleged hail damage as a result of the storm on May 31, 2006. State Farm objected to providing this information because it was improperly aimed at identifying potential class members, irrelevant, and it would violate federal and state privacy laws.

The status conference held before Judge Mays on June 22, 2007, clearly established that the purpose of the present interrogatory was to establish whether proper federal jurisdiction exists. For this purpose, the Brunsons were instructed to file interrogatories that were only directed toward class certification. Class certification is covered by Rule 23(a) and involves the four elements of numerosity, commonality, typicality, and adequacy of representation. See FED. R. CIV. P. 23(a); *Hamlet v. Bobbie Brooks, Inc.*, No. C77-889, 1980 WL 194, at \*1 (N.D. Ohio June 11, 1980). The names and addresses sought by interrogatories 1(a) and 1(b) are wholly irrelevant and unnecessary for establishing any of the elements for class certification at this stage. See *Bird Hotel Corp. v. Super 8 Motels, Inc.*, No. CIV 06-4073, 2007 WL 404703, at \*4 (D.S.D. Feb. 1, 2007). As such, State Farm was justified in objecting to providing that information. Because the names and

addresses are irrelevant to pre-certification issues, the court need not reach the issue of whether providing that information would violate any federal or state privacy laws.

C. Interrogatories 1(d) and 1(e)

State Farm argues that the information sought in interrogatories 1(d) and 1(e) is irrelevant to class certification because it is merits-based information. This, however, is not the case. In order to determine if the claims identified by State Farm are factually similar to the Brunsons' claim, more elaborate and detailed information is needed. The information sought by interrogatories 1(d) and 1(e) will aid in determining which claims fit the definition of the class and consequently, whether this court may properly exercise jurisdiction. These interrogatories do not seek information solely regarding the merits of the case, as State Farm argues, rather, they seek a factual breakdown of the claims and how they were handled for the purpose of seeing if a class might be certified. Accordingly, State Farm must provide information regarding the claims that it identified as involving hail damage from the May 31, 2006 storm detailing the type(s) of damage alleged in each individual claim and which, if any, claims for hail damage to a roof were denied in whole or in part.

D. Interrogatory 1(f)

Interrogatory 1(f) seeks to elaborate on the other information requested by asking for the disposition of each of the individual

claims involving hail damage. State Farm submits that it was unable to fully understand the interrogatory, so it only responded that each of the claims were now "closed." The Brunsons replied to State Farm that, in addition to giving the final status of the claim, the "disposition" should include information detailing how the money paid by State Farm corresponded to the damages claimed. (Def.'s Mem. Opp'n 13.) This court agrees, for example, that if a claim alleged both hail damage to a roof and interior water damage, State Farm should indicate the amount that it paid for each specific type of damage, not just identify the lump sum total. The disposition of the claim sought in interrogatory 1(f) should include a breakdown of the damages payment. This information is relevant to determining if the claims fall within the class definition, thus providing a basis for federal jurisdiction.

E. Sanctions

The Brunsons' seek sanctions against State Farm in the form of attorney fees. An award of sanctions is not appropriate when a party opposing certain discovery or disclosure was substantially justified in its nondisclosure, response, or objection. FED. R. CIV. P. 37(a)(5)(A)(ii). Opposition is substantially justified if "reasonable people could differ" as to the appropriateness of the contested discovery. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). This court does not find the positions of State Farm so unjustified as to support the imposition of sanctions.

Furthermore, because the motion is being both granted in part and denied in part, the court does not find the Brunsons' argument for sanctions persuasive.

#### CONCLUSION

Because there is no need for the names and addresses of the individual claimants at this stage in the litigation, the Brunsons' motion to compel answers to parts 1(a) and 1(b) of Interrogatory No. 1 is DENIED. To the extent that the motion seeks full and complete responses to parts 1(d), 1(e), and 1(f), it is GRANTED as detailed above. The Brunsons' motion for sanctions is DENIED. State Farm shall serve its supplemental responses to interrogatories 1(d), 1(e), and 1(f) within fifteen (15) days of the date of entry of this order.

IT IS SO ORDERED this 18th day of June, 2008.

s/ Diane K. Vescovo  
DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE