

**IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES** **PLAINTIFF**

**VS.** **CASE NO. 25CI1:22-cv-00286-EFP**

**MISSISSIPPI COMMUNITY EDUCATION CENTER, INC., et al** **DEFENDANTS**

**PLAINTIFF MDHS'S MOTION TO COMPEL DISCOVERY RESPONSES FROM  
DEFENDANT BRETT FAVRE**

Plaintiff MDHS moves under Mississippi Rule of Civil Procedure 37(a)(2) to compel full and complete responses to the interrogatories, requests for production of documents, and requests for admissions propounded upon Defendant Brett Favre.

**INTRODUCTION**

This Motion to Compel is about the substance, not the untimeliness, of Favre's discovery responses.<sup>1</sup> No matter whether the Court allows Favre to raise untimely objections, he cannot raise baseless ones.

Although Favre raised objections to each one of MDHS's discovery requests, MDHS does not want to burden the Court with discovery disputes. MDHS carefully evaluated its requests, Favre's objections, and the positions each side raised in good faith correspondence. MDHS determined that Favre has resolved several issues through supplementation. MDHS, therefore, only brings to the Court's attention Favre's meritless general objections, his improper redactions, and his specific objections to four interrogatory responses, two requests for production, and one request for admission. MDHS respectfully asks that the Court find that these objections should be withdrawn and Favre should be compelled to fully respond to the requests.

---

<sup>1</sup> Favre's opposed motion to withdraw his deemed admissions and allow objections to discovery [Dkt. 425] is pending before the Court. MDHS stands on its position that Favre's objections are untimely.

## FACTS

MDHS first propounded requests for production to Favre on June 23, 2022. *See* Notice of Service [Dkt. 158]; *see also* Service Email [Dkt. 436-1]. After MDHS sent a good faith letter to Favre about his absent responses, MDHS agreed to allow Favre additional time to respond to those requests, and Favre served his responses on November 18, 2022. *See* First Good Faith Letter [Dkt. 436-2]; Email Extension [Dkt. 436-3]; Favre's Notice of Service of Responses [Dkt. 180].

On April 20, 2023, MDHS sent Favre a second good faith letter on his responses to the first set of requests for production. *See* Second Good Faith Letter [Dkt. 436-4]. On April 27, 2023, MDHS served a second set of requests for production and a first set of interrogatories and requests for admissions on Favre. *See* Notices of Service [Dkt. 358-360].

On May 1, 2023, Favre responded to MDHS's good faith letter, noting the overlap between the first set of requests and the second. *See* July 31, 2023 Good Faith Letter [Dkt. 436-5]. Accordingly, MDHS chose to wait to examine Favre's responses to MDHS's second set of discovery before pursuing a motion to compel.

After Favre's deadline for responding to the second set of discovery passed, having heard nothing from Favre, MDHS sent yet another good faith letter on July 31, 2023, noting that Favre's objections to discovery were now waived by his failure to timely respond. *See* Third Good Faith Letter [Dkt. 436-7]. Favre responded to this letter on August 3, 2023, denying that the requests for admissions were deemed admitted or that his objections were waived. *See* Favre's Response to Third Good Faith Letter [Dkt. 436-8]. MDHS responded on August 9, 2023. *See* MDHS's Fourth Good Faith Letter [Dkt. 436-9].

On August 15, 2023, MDHS sent a fifth good faith letter, this time on the substance of Favre’s discovery responses. *See* Exhibit “A,” Aug. 15, 2023 Good Faith Letter. MDHS laid out the deficiencies in Favre’s second set of discovery responses so that he could address those deficiencies. Favre has not responded by letter, but he has since made supplemental document productions, which resolved some of the issues MDHS detailed in its letter. Favre has not, however, supplemented his responses to withdraw any objections or to answer any interrogatories more fully. While Favre has ceased over-redacting documents in subsequent document productions, he has not reproduced earlier document productions that were improperly redacted. MDHS asks that Favre be compelled to fully answer discovery.

## **ARGUMENT**

### **A. Interrogatory Responses**

Favre begins his interrogatory responses with a long list of general objections. *See* Exhibit “B,” Favre Interrogatory Responses. These objections are improper under *Ford Motor Co. v. Tennin*, 960 So. 2d 379, 393 (Miss. 2007). There, the Mississippi Supreme Court held, “‘General objections’ applicable to each and every interrogatory or request for production are clearly outside the bounds of [Rules 33 and 34]. If a party wishes to lodge an objection to a question or request submitted by the opposition, that party must make such objection to that specific question or request.” *Id.*; *see also Southpoint Bank v. Origin Bank*, No. 3:21-cv-156-TSL-MTP, 2022 U.S. Dist. LEXIS 21843 (S.D. Miss. Jan. 27, 2022) (Parker, Mag. J.) (“blanket, and often inapplicable” general objections raised in that case led to “unnecessary discovery delay and confusion” and were “dilatatory at best and obstructive at worst.”). The Court, therefore, should order these general objections withdrawn.

For Favre's individual interrogatory responses, MDHS quotes verbatim the contested requests, the specific objections to the request, the grounds for the objection, and MDHS's explanation why the objection or response is insufficient:

**Interrogatory No. 9:** Describe in detail all documents and/or recordings and/or data concerning the subject matter of this action that have been destroyed, lost, discarded, or otherwise disposed of, including (a) a description of the document and/or recording; (b) the date each such document and/or recording was destroyed, lost, etc.; (c) the manner of disposal; (d) the reason(s) for disposal; (e) the identity of each person who authorized, approved or permitted such disposal; and (f) the identity of each person who disposed of each such document or participated in the disposal thereof.

**Response:** Favre objects to this Interrogatory as overly broad, unduly burdensome, and irrelevant to the claims or defenses in this Action. Favre further objects to the definition of "describe in detail" as calling for legal conclusions and/or assuming facts not in evidence to the extents it seeks any "omission." Favre further reserves the right to supplement his Response as discovery progresses.

Subject to the foregoing objections, Favre states that he has no information responsive to this Interrogatory.

Favre's boilerplate objections violate Rule 33(b)(1) and (4), which requires that not only the objection "be stated with specificity," but also that the "objecting party shall state the reasons for the objection and shall answer to the extent not objectionable." Favre does not set forth how Interrogatory No. 9 is overly broad, irrelevant, or unduly burdensome.

Favre's response to Interrogatory No. 9 is inconsistent with Favre's responses to MDHS's First Set of Requests for Admission. *See* Exhibit "C," Favre RFA Responses. In his Interrogatory response, Favre states he has no information responsive to the disposal of documents, recordings and/or data. But, in response to MDHS's requests for admissions, Favre claims he cannot verify the authenticity of text messages because he no longer has a record of the text messages. Both responses cannot be true. Either Favre has all his text messages, or he does not. If he does not

have certain text messages, Favre has information responsive to Interrogatory No. 9. If he does have all his text messages, he should verify the authenticity of the text messages.

**Interrogatory No. 17:** Describe in detail how you calculated that you had paid 75% of the cost of construction of the USM Athletic Foundation's volleyball facility, as you represented to then-Governor Bryant, in the text message attached to Bryant's Responses to Motion to Compel, Exhibit 12 [Doc. 140-12].

**Response:** Favre objects to this Interrogatory as assuming facts not in evidence. Favre further objects to this Interrogatory to the extent it seeks information which is both irrelevant to the claims or defenses in this Action. Favre further objects to the definition of "describe in detail" as calling for legal conclusions and/or assuming facts not in evidence to the extents it seeks any "omission." Favre further reserves the right to supplement his Response as discovery progresses.

Subject to the foregoing objections, Favre denies that he calculated that he paid 75% of the cost of construction for the Southern Miss Volleyball Facility.

Courts construing the Federal Rules of Civil Procedure, upon which the Mississippi Rules are patterned, hold that "the objection that an interrogatory 'assumes facts not in evidence' is not proper in the course of discovery." *Aluya v. Mgmt. & Training Corp.*, No. 13-cv-1345-AWI-JLT, 2015 U.S. Dist. LEXIS 11420, 2015 WL 402071, at \*6 (E.D. Cal. Jan. 29, 2015); accord *Garcia v. Clark*, No. 10-cv-447-LJO-DLB-PC, 2012 U.S. Dist. LEXIS 51771, 2012 WL 1232315, at \*2 (E.D. Cal. Apr. 12, 2012) ("Assuming facts not in evidence may be the basis for an objection during trial or some other evidentiary hearing. This, however, is discovery.").

Favre's text message to Governor Bryant states: "And also I paid for 3/4 of Vball facility and the rest was a joint project with her and John which was saving me 1.8 million." See Text Message [Dkt. 140-12]. Three divided by four is .75 or 75%. Favre's response to the Interrogatory does not make sense in light of his text message, and he offers no explanation. Favre's response is unclear on whether he is claiming he based his representation to Governor

Bryant on someone else's calculation, or denying he sent the text message, or taking issue with some way that the interrogatory is worded.

Favre's answer to this Interrogatory is relevant to both MDHS's claims and Favre's defenses. MDHS and Favre dispute whether Favre agreed to fund the construction of the volleyball facility before signing a written pledge. What Favre claims to have paid towards the construction of the facility is relevant to that dispute. MDHS asks that the Court order Favre to withdraw his objections and to fully answer the Interrogatory.

**Interrogatory No. 26:** Specifically state whether as of September 1, 2017, you understood the following: (1) that John Davis was the executive director of MDHS; (2) that MDHS was Mississippi's welfare agency; (3) that MDHS was a State agency; and MCEC received funding from MDHS.

**Response:** Favre objects to this Interrogatory on the grounds that it is compound, and each subpart should be considered a separate Interrogatory under the Mississippi Rules of Civil Procedure. Accordingly, Favre will respond as if they are multiple Interrogatories and number them accordingly. Favre objects to this Interrogatory to the extent it is vague and ambiguous as to the terms "welfare agency" and "receiving funding from MDHS." Favre further reserves the right to supplement his Response as discovery progresses.

Subject to the foregoing objections, Favre states:

- Interrogatory 27: Favre was not aware that John Davis was executive director of MDHS as of September 1, 2017.
- Interrogatory 28: Favre was not aware that MDHS was Mississippi's welfare agency as of September 1, 2017.
- Interrogatory 29: Favre was aware that MDHS was a State agency as of September 1, 2017.
- Interrogatory 30: Favre was not aware that MCEC received funding from MDHS as of September 1, 2017.

Favre's attempt to divide Interrogatory No. 26 into four separate interrogatories is wrong.

Magistrate Judge Orlansky's decision in *Clark v. Burlington N. R.R.*, 112 F.R.D. 117 (N.D. Miss.

1986), demonstrates why. There, the court considered an interrogatory that sought the following information:

- (a) The full name, number or other designation of the train;
- (b) The name of the manufacturer of each of the train's engines, the manufacturer's serial number and manufacturer's model number;
- (c) The number of cars included in the train; and,
- (d) The weight and contents of each car, including the engines, of the train.

*Id.* at 119. This counted as one interrogatory, not four, because “it actually is only one question, even though the subparts are separately enumerated. Interrogatory No. 28, in essence, asks defendant to describe its train.” *Id.*

Likewise, Interrogatory No. 26 is actually one question. In essence, Interrogatory No. 26 asks Favre to describe his understanding of the nature of MDHS. For the reasons stated in *Clark v. Burlington N.R.R.*, 112 F.R.D. 117 (N.D. Miss. 1986), Interrogatory No. 26 counts as one, not four, interrogatories.

The phrases “welfare agency” (i.e., the agency responsible for administering welfare payments) and “receiving funds from MDHS” are neither vague nor ambiguous, and Favre does not satisfy Rule 33(b)(4), because he does not explain his reasons for his objections. MDHS asks that the Court order Favre to withdraw his objections to this Interrogatory. MDHS does not ask that Favre supplement his response made subject to the objections.

**Interrogatory No. 28** [sic]: Describe in detail every instance within the last 15 years in which you have had a claim brought against you, whether civil, criminal, or regulatory, including for each, the year, jurisdiction, claimant, nature of the claim, and how the claim resolved.

**Response:** Favre objects to this Interrogatory, more properly numbered Interrogatory 31, as beyond the limits allowed by the Mississippi Rules of Civil Procedure. Favre further objects to this Interrogatory as overly broad, unduly burdensome, irrelevant to the claims or defenses in this Action, and harassing. Favre further

objects to this Interrogatory to the extent that it seeks information that is already in the possession, custody, or control of MDHS or is available in the public domain. Favre further objects to the definition of “describe in detail” as calling for legal conclusions and/or assuming facts not in evidence to the extent it seeks any “omission.”

As noted above, Interrogatory No. 28 should not be construed as Interrogatory No. 31, because Interrogatory No. 26 is a single question. This objection should be withdrawn.

Favre’s boilerplate objections of “overbroad, unduly burdensome, irrelevant to the claims or defenses in this Action, and harassing” again do not satisfy Rule 33(b)(4), which requires Favre provide the reasons for his objections. He does not set forth how many lawsuits in which he has been sued or why it would be a burden on Favre to find out.

He also does not set forth how Interrogatory No. 28 is irrelevant. Evidence of prior litigation is discoverable, especially when the claims brought in prior litigation are similar to the claims in the litigation in which the discovery is sought. *See, e.g., Dudenhefer v. State Farm Fire & Cas. Co.*, No. 06-4380, 2007 U.S. Dist. LEXIS 37627, at \*9 (E.D. La. 2007) (requiring defendant to produce list of all bad faith lawsuits filed by residents of the same parish against defendant). Here, MDHS will agree to limit its request to any prior claims of conspiracy, fraud, or fraudulent transfer, or any act of dishonesty. Those claims would be similar to the ones alleged in this lawsuit, and they therefore are relevant and discoverable.

Finally, Rule 33(b)(1) requires Favre to answer “to the extent the interrogatory is not objectionable.” MDHS presumes that responsive information exists because Favre claims it is in the public domain, and MDHS is entitled to a response under oath, not what it can glean from news reports. MDHS asks that Favre be compelled to withdraw his objections and answer this interrogatory.



**B. Requests for Production**

**Favre's Responses to First and Second Set of Requests for Production**

As with Favre's interrogatory responses, he asserts general objections at the outset of his responses to both MDHS's first and second set of requests for production. Again, under *Ford Motor Co. v. Tennin*, 960 So. 2d 379, 393 (Miss. 2007), these general objections should be withdrawn.

MDHS has propounded a total of twenty-seven requests for production to Favre. Favre has raised multiple objections to every request. See Exhibit "D," Favre Responses to First Set of Requests for Production of Documents; Exhibit "E," Favre Responses to Second Set of Requests for Production of Documents. All of these responses are deficient, because Rule 34(b)(ii)(C), requires that "[a]n objection must state whether any responsive materials are being withheld on the basis of the objection." Favre did not do so. If Favre is withholding any documents based on his objections, he should say so for each response.

In Favre's early productions, he improperly redacted critical information. Those redactions often made it impossible to identify the sender and/or the recipient of the document. After numerous emails, Favre, in subsequent productions, finally ceased these redactions. See Exhibit "F," email from Daniel J. Koevary. Favre did not, however, reproduce his earlier productions without redactions.

As shown below, the redactions make determining the sender and recipient of any communication difficult and in some cases impossible.

For instance, BLF0000026 is below:

From: Redacted - Non-Responsive Jake VanLandingham  
To: Unspecified

9/20/2022 11:15:33 AM(UTC-5)

**Redacted - Privileged**

MDHS assumes, but cannot be sure, that the first redaction is Jake Vanlandingham's email address or cell phone number, which is neither privileged nor non-responsive. (MDHS also does not understand how the recipient can be "unspecified" or why a communication from Vanlandingham to an unspecified person is privileged).

BLF0000027 is below:

From: + Redacted - Non-Responsive  
To: + Redacted - Non-Responsive Jake VanLandingham

9/15/2022 5:19:51 PM(UTC-5)

Can you call bud now and explain the process and contract with Nancy

The way this document has been produced makes it impossible to determine from whom this was sent. BLF0000026-45 suffer from this same problem.

BLF0000046 is another example:

From: Redacted - Non-Responsive  
Sent: Thursday, May 4, 2017 8:32 AM  
To: Deanna Redacted - Non-Responsive  
Subject:  
Attach: Griffin Architecture.pdf; Untitled attachment.txt

---

The sender in BLF0000046 cannot be determined from the email. And MDHS cannot assume every time it encounters a redaction that Favre was the sender. As shown below, BLF0000079 makes it impossible to identify either the sender or recipient of the email.

**From:** [Redacted - Non-Responsive]  
**Sent:** Thursday, January 26, 2017 6:43 AM  
**To:** [Redacted - Non-Responsive]@kohler.com  
**Subject:** Chris Crenshaw  
**Attach:** Chris Crenshaw.vcf; Untitled attachment.txt

---

Chris is contact for southern miss. Thank you Lauren

There is no legal authority supporting Favre's redactions. Favre knows this. That is why he ceased the redactions in subsequent productions. MDHS asks that the Court order Favre to reproduce without redactions its previous productions.

The following specific RFP responses and/or objections are deficient for the reasons listed below:

**Request No. 14:** Produce your tax returns for fiscal years 2017-2020.

**Response:** Favre objects to this Request to the extent it seeks documents that are irrelevant to the claims or defenses in this Action and not reasonably calculated to lead to the discovery of admissible evidence. Favre further objects to the Request to the extent that it is overly broad, unduly burdensome and harassing because such documents contain personal and confidential, and the information contained therein has no bearing on this Action. Favre further reserves the right to supplement his Response as discovery progresses.

Favre's tax returns are relevant and probative to both MDHS's claims and Favre's defenses. MDHS and Favre dispute whether Favre agreed to fund the construction of the volleyball facility prior to his signing a written pledge. The amounts Favre paid towards the construction of the facility—which presumably would be reflected on his tax returns—are

relevant to that dispute. The tax return also may contain relevant information regarding payments Favre made to or received from any defendant. Any concerns Favre has regarding the personal and confidential information in his tax returns can be addressed by entry of the protective order, to which MDHS agreed.

**Request No. 27:** Produce all written communications responsive to the following search criteria, which are not case-sensitive:

**CUSTODIANS:** Brett Lorenzo Favre

**DATE RANGE:** January 1, 2016 to January 1, 2020

**BOOLEAN SEARCH PHRASES:**

- o “Nancy” or “Zach” or “Jess” or “MCEC” or “New”
- o “Gilbert” or “Jon”
- o “Rodney” or “Bennett”
- o “MDHS” or “Mississippi Department of Human Services” or “Davis”
- o “volleyball” or “vball” or “v-ball”
- o “Welfare” or “poverty” or “poor”
- o “Odyssey” or “Prevacus” or “PresolMD” or “Presol” or “concussion”
- o “Brick and Mortar” or “Brick & Mortar”
- o “Gov” or “Governor” or “Bryant”
- o “Finders Fee” or “Finder’s Fee”
- o “Auditor” or “Shad”
- o “Grant money” or “TANF” or “funding”
- o “Regulations” or “Federal Regulations” or “regs”
- o “Jake” or “Vanlandingham”

Favre objects to this Request as overly broad and harassing in that it seeks all documents that hit on particular search terms without regard to whether such documents are relevant to the claims or defenses in this Action. Favre also objects to this Request to the extent it seeks communications that are not relevant to any claims or defenses in this Action. Favre further reserves the right to supplement his Response as discovery progresses.

Subject to and without waiving the foregoing objections, Favre is willing to discuss the scope of this Request via a telephone conference.

The search terms Favre identifies as having used in his Response to Interrogatory No. 4 overlap to some degree with the terms listed above. However, Favre's list is under-inclusive. By searching only for "Nancy New," for instance, Favre's searches will not hit on emails or texts referring casually to her only as "Nancy." MDHS knows that these documents exist from text messages between Defendant Jacob Vanlandingham and Favre. Favre has not claimed that any other women named "Nancy" are a large part of his life, and therefore, he has given MDHS no reason to believe this search term will result in the production of irrelevant documents. The same reasoning applies to the searches for "Zach New" and "Jon AND Gilbert." Likewise, MDHS asked for a search for "Gov" or "Governor"; in text messages with Nancy New, Favre often referred to Governor Bryant this way, without using his last name. And he often used the shorthand "vball" or "v-ball" instead of "volleyball," so searches for "volleyball stadium," "volleyball court," and "volleyball facility" are also underinclusive.

Based on a comparison between the searches Favre ran and the search terms requested, the following searches still need to be performed:

- Nancy
- Zach
- Jon OR Gilbert
- Gov
- Governor
- "Brick and Mortar" or "Brick & Mortar"
- "Finders Fee" or "Finder's Fee"
- "Grant money"
- "Regulations" or "Federal Regulations" or "regs"
- "volleyball" or "vball" or "v-ball"

In a world where people receive hundreds of emails and text messages daily, searches are the only reasonable way to determine relevant documents. MDHS does not agree that its search terms are overbroad, and it does not agree that Favre can run the searches but then only produce

what he alone deems relevant. This is why Favre's failure to state whether he has withheld responsive documents based on his objections is critical.

**C. Requests for Admission**

As noted above, Favre's request for admission responses are inconsistent with his response to Interrogatory No. 9. In his Interrogatory response, Favre states he has no information on the disposal of documents, recordings and/or data. But, in response to MDHS's requests for admission, Favre claims he cannot verify the authenticity of text messages because he no longer has a record of the text message. Both responses cannot be true. Either Favre has all of his text messages, or he does not.

**CONCLUSION**

For the reasons stated above, MDHS respectfully asks that its Motion to Compel be granted.

DATED: October 9, 2023.

Respectfully submitted,

MISSISSIPPI DEPARTMENT OF HUMAN  
SERVICES

By Its Attorneys,  
JONES WALKER LLP

By: /s/ Kaytie M. Pickett  
KAYTIE M. PICKETT

Kaytie M. Pickett, Bar No. 103202  
Adam Stone, Bar No. 10412  
Clarence Webster III, Bar No. 102111  
Andrew S. Harris, Bar No. 104289  
Abbey Adcock Reeves, Bar No. 105720  
JONES WALKER LLP  
190 East Capitol Street, Suite 800 (39201)

Post Office Box 427  
Jackson, Mississippi 39205-0427  
Telephone (601) 709-3344  
Telecopy (601) 949-4804  
Email: astone@joneswalker.com  
kpickett@joneswalker.com  
cwebster@joneswalker.com  
areeves@joneswalker.com

Stephen F. Schelver, Bar No. 101889  
Special Assistant Attorney General  
Office of the Attorney General  
Civil Litigation Division  
Post Office Box 220  
Jackson, Mississippi 39205  
Telephone: (601) 359-3680  
Facsimile: (601) 359-2003  
Email stephen.schelver@ago.gov

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date filed the foregoing with the Court's MEC system,  
which sent notice to all counsel of record.

This the 9th day of October, 2023.

/s/ Kaytie M. Pickett  
KAYTIE M. PICKETT