



The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 26th day of September, 2022.

  
Robert D. Berger  
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:

**MATTHEW WILFRED ROBERTS and  
SHELLEY D. GARZA-ROBERTS,**

Debtors.

Case No. 18-20906  
Chapter 7

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**FREEBIRD COMMUNICATIONS, INC.,  
PROFIT-SHARING PLAN, et al.,**

Plaintiffs,

Adv. No. 18-06063

v.

**MATTHEW WILFRED ROBERTS and  
SHELLEY D. GARZA-ROBERTS,**

Defendants.

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**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO  
QUASH**

This matter comes before the Court on Defendants’ motion to quash (1) the request for production, request for admissions, and interrogatories served by Plaintiffs on July 22 and 23, 2022; and (2) the amended notice of deposition that Plaintiffs served on defendant Matthew Roberts on August 5, 2022.<sup>1</sup>

The Federal Rules of Civil Procedure allow parties 30 days to respond to interrogatories, requests for production, and requests for admission. *See Fed. Rs. Civ. P.* 33-34, 36. Thus, such discovery requests must be served at least 30 days prior to the deadline for completion of discovery. *See Thomas v. Pacificorp*, 324 F.3d 1176, 1179 (10th Cir. 2003). The scheduling order in this case imposed a discovery deadline of August 15, 2022.<sup>2</sup> Because Plaintiffs served their written discovery requests fewer than 30 days prior to the deadline, the Court will grant Defendants’ motion in part as to the request for production, request for admissions, and interrogatories. The Court will also grant Defendants’ motion in part as to the *duces tecum* component of Mr. Roberts’ amended deposition notice, because such requests for production are subject to the 30-day notice requirement of Rule 34.<sup>3</sup>

However, in contrast to written discovery, oral depositions require only seven days’ notice. *See D. Kan. Rule 30.1*. Here, Plaintiffs served the amended deposition

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<sup>1</sup> ECF 112; *id.* ¶¶ 5-8. Defendants’ motion stayed the discovery at which it was directed pending order of the court. *See D. Kan. Rule 26.2*.

<sup>2</sup> ECF 107.

<sup>3</sup> *See Fed. R. Civ. P.* 30(b)(2) (“The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.”); 8A *Fed. Prac. & Proc.* § 2108 (3d ed.) (“The direction that this be ‘a request under Rule 34’ invokes the procedural provisions of Rule 34(b).”).

notice on Mr. Roberts ten days before the August 15 deadline, which was timely under the local rule. And while Defendants argue that Freebird has already deposed Mr. Roberts four times, Fed. R. Civ. P. 30(a)(2)(A)(ii) only applies (to require leave of court) when “the deponent has already been deposed in the case.” Because the amended deposition notice was timely, and because Mr. Roberts has not yet been deposed in this adversary proceeding, the Court will deny Defendants’ motion in part as to the oral deposition of Mr. Roberts.

For these reasons, Defendants’ motion is hereby (1) denied in part as to the oral deposition of Mr. Roberts and (2) granted in part as to Plaintiffs’ request for production, request for admissions, interrogatories, and request that Mr. Roberts produce documents and/or tangible things at deposition. Plaintiffs may, but are not directed to, depose Mr. Roberts within 30 days of the date of this order.

IT IS SO ORDERED.

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