

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON

**ASCION, LLC, d/b/a/ Reverie,** )  
)  
**Plaintiff,** )  
)  
**v.** )  
)  
**TEMPUR SEALY INT'L, INC.,** )  
**et al.,** )  
)  
**Defendants.** )

Civil Case No.  
5:17-CV-403-JMH-EBA

**OPINION and ORDER**

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This matter is before the Court upon Defendants' Motion for Sanctions (DE 161), and in particular, whether dismissal of this action pursuant to Fed. R. Civ. P. 41(b) is warranted. The present issue was referred to the Honorable Edward Atkins. (DE 162). On July 13, 2022, Judge Atkins issued his Report and Recommendation (DE 179), recommending that Defendants' motion for sanctions be granted to the extent that the Court order Plaintiff to pay fees incurred in connection with Defendants' pursuit of sanctions and all associated filings. (*Id.* at 19-20). There are no objections to consider. See 28 U.S.C. § 636(b)(1)(C).

Upon review, the Court finds Judge Atkins' recommendations to be well reasoned and correct. In so finding, the Court notes that the Report (DE 179) displays a thorough understanding of the posture of this case, taking into account all pertinent deadlines and events from the inception of this case, carefully considering

each side's respective positions and all arguments advanced by the parties in their briefings.

Finally, on an unrelated note, the Court considers Defendants' most recent Motion (DE 183), requesting a one-week extension of time for which to file dispositive motions and motions *in limine*. Plaintiff does not oppose the requested relief, as no impact would result on current trial deadlines. (*Id.* at 2; DE 183-1, ¶ 5). As such, having considered counsel's declaration in support of the motion, as well as the reason proffered for the extension, the Court FINDS good cause to grant Defendants' motion.

For the foregoing reasons, finding itself fully advised in the premises, and finding itself in agreement with the analysis in Judge Atkins' Report and Recommendation (DE 179), the Court CONCLUDES that the conclusions therein should be adopted in full, without comment.

IT IS HEREBY **ORDERED and ADJUDGED** as follows:

1. Magistrate Judge Atkins' Report and Recommendation on Defendants' Motion for Sanctions (DE 179) is hereby **ADOPTED IN FULL**.
2. Plaintiff's Emergency Motion to Stay Deadline for Final Election of Asserted Claims (DE 68) is **DENIED AS MOOT**.
3. Defendants' Motion to Supplement the Record for Purposes of Assessing Sanctions (DE 164) is **GRANTED**.

4. Defendants' Motion for Sanctions (DE 161) is **GRANTED** insofar as Plaintiff is **ORDERED** to pay for all costs associated with the Defendants' pursuit of sanctions and the drafting of the supplemental filings entered in support thereof, as well as the time that counsel expended in briefing the aforementioned issues before the Court.
5. Defendants' unopposed Motion for Extension of Time (DE 183) is **GRANTED**.
6. The parties shall file all dispositive motions and motions *in limine*, including those made pursuant to *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579 (1993), no later than **August 22, 2022**.

Dated this the 10th day of August, 2022.



**Signed By:**

**Joseph M. Hood** *JMH*

**Senior U.S. District Judge**