

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LOL FINANCE COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT P. JOHNSON, individually)
 and, KERI J. MALOLEY, individually)
 and, JOHN DOE, ABC COMPANY,)
 FIRST NATIONAL BANK OF)
 OMAHA, and PAUL JOHNSON &)
 SONS CATTLE CO., Inc.,)
)
 Defendants.)

4:09CV3224

MEMORANDUM AND ORDER

Following the deposition of defendant First National Bank of Omaha’s (“FNBO”) representative, Chris Kalkowski, the plaintiff filed an additional motion to compel and request for sanctions. Filing No. 110. The plaintiff claims FNBO failed to fully provide discovery responses prior to Mr. Kalkowski’s deposition in violation of the court’s order, (filing no. 103). Based on FNBO’s response to the motion to compel (filing no. 112) and the plaintiff’s reply (filing no. 113), it appears FNBO’s documents have now been produced. However, the question remains as to whether FNBO’s post-deposition production of documents prejudiced the plaintiff’s ability to fully depose Mr. Kalkowski and, if so, what remedy and/or sanction should be ordered as a result of FNBO’s untimely response.

Accordingly,

IT IS ORDERED:

- 1) On or before August 23, 2010, the following actions must be completed:
 - a. The parties will discuss and attempt to reach a resolution regarding the necessity and scope of any supplemental deposition of Mr. Kalkowski. Any supplemental deposition will be limited to new matters raised by or within documents produced by FNBO after the deposition was conducted. To the

extent any supplemental deposition is needed due to FNBO's untimely discovery responses, FNBO will be responsible for the reasonable costs and expenses of this supplemental deposition. If the parties reach an agreement regarding a supplemental deposition, they shall file a joint stipulation reflecting that agreement on or before August 25, 2010.

- b. Counsel for LOL Finance and FNBO will discuss and attempt to reach a resolution on LOL Finance's motion for sanctions, (filing no. 110). If the parties reach an agreement on sanctions, they shall file a joint stipulation reflecting that agreement on or before August 25, 2010.
- 2) If the discussions mandated in Paragraphs 1(a) & (b) of this order do not result in an amicable resolution, LOL shall file a motion setting forth the outstanding issues no later than August 30, 2010. With respect to any motion requesting attorneys' fees, the motion shall be accompanied by an affidavit describing, in detail, the basis for any requested fees and expenses.
- 3) To the extent LOL's motion, (filing no. 110), and FNBO's objection (filing no. 112), raise and address the issue of sanctions, these motions remain pending for further consideration following the parties' compliance with this order.

DATED this 19th day of August, 2010.

BY THE COURT:

s/ Cheryl R. Zwart

United States Magistrate Judge