

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLORIA TOELLE,

Plaintiff,

vs.

WALMART ASSOCIATES, INC.,

Defendant.

7:14CV5008

ORDER

The defendant previously moved to compel the plaintiff's discovery responses, ([Filing No. 10](#)), stating that despite its communications with plaintiff's counsel, the plaintiff had provided no response to defendant's Written Interrogatories and Requests for Production of Documents served over two months earlier. That motion was withdrawn when the plaintiff thereafter served discovery responses.

The defendant now brings a second motion to compel, stating that "[a]fter reviewing the documents that were requested as opposed to the Documents produced, Walmart's counsel discovered that a great number of documents were not produced as requested," including documents explaining plaintiff's alleged "past medical expenses in excess of \$276,000.00," ([Filing No. 15](#)), and the records of her alleged twelve medical providers. ([Filing No. 16-1](#)).

Defense counsel attempted to resolve the issue with plaintiff before filing a second motion to compel, but to no avail. The currently pending motion to compel was filed on February 20, 2015. ([Filing No. 15](#)). The plaintiff did not respond to the motion, and the deadline for doing so has passed. The motion is deemed unopposed, and the facts submitted in support of the motion are deemed admitted. The court finds the plaintiff's failure to comply with discovery is not substantially justified.

Accordingly,

- 1) The defendant's motion to compel, ([Filing No. 15](#)), is granted.

2) The plaintiff shall fully respond to the defendant's discovery requests by no later than March 31, 2015. The failure to do so will result in further sanctions, up to and including prohibiting the plaintiff from introducing documentary or testimonial evidence supporting her claim of injury and related damages arising from the alleged accident at issue, or dismissal of Plaintiff's claims in their entirety.

3) The defendant's request for an award of attorney fees and costs is granted, and

a. On or before March 27, 2015, defense counsel shall serve plaintiff's counsel with an itemization of defense counsel's fees and costs incurred in filing **both** motions to compel.

b. Plaintiff's counsel shall respond to this itemization within ten calendar days thereafter.

c. If the parties agree as to the amount to be awarded, on or before April 6, 2015, they shall file a joint stipulation for entry of an order awarding costs and fees to the defendant.

d. If the parties do not agree on the attorney fees and costs to be awarded, or if the plaintiff does not timely respond to the defendant's itemization and demand, the defendant shall file an application for assessment of attorney fees and costs by no later than April 13, 2015. This application shall be submitted in accordance with the court's fee application guidelines outlined in Nebraska Civil Rules 54.3 and 54.4.

March 13, 2015.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge