

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

	* * *	
VANESSA RACINE,)	
)	
Plaintiff,)	
)	2:10-cv-01651-LDG -VCF
v.)	
)	ORDER
PHW LAS VEGAS, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

Before the court is plaintiff Vanessa Racine’s Motion To Compel. (#33). Defendants PHW Las Vegas, LLC and PHW Manager, LLC (hereinafter collectively “PHW”) filed an Opposition (#37), and plaintiff filed a Reply (#38).

Plaintiff filed her complaint on September 24, 2010 (#1), alleging that defendants PHW were negligent when they failed to implement security procedures to protect their patrons from individuals following them to their rooms and robbing, assaulting, and committing other crimes against them. Plaintiff asserts that she was “violently assaulted physically and sexually” as a result of defendants’ breach of their duty to check if individuals seeking access to the rooms were in fact guests of the hotel or invitees. (#33). Defendants contend that no such duty exists, and assert that they cannot be held liable for plaintiff’s alleged injuries or damages. (#37).

Motion To Compel (#33)

A. Background/Arguments

On April 11, 2011, defendants received plaintiff’s first set of interrogatories and first request for production of documents. (#33). On May 11, 2011, defendants provided responses to plaintiff’s discovery requests. *Id.* Defendants objected to forty-seven (47) of the requests, and of the twenty-five interrogatories, defendants answered only four, while still asserting objections thereto. *Id.* The defendants’ responses consisted of four common objections: (1) the request/interrogatory seeks

1 information relating to the entire hotel, which is not relevant, because the incident occurred exclusively
2 on the elevators and in a room of the guest tower, (2) no protective order is in place, (3) plaintiff failed
3 to limit the discovery requests to a reasonable time period, as defendants did not own the casino during
4 several years within the time-frame specified in the request/interrogatory, and (4) that defendants were
5 uncertain as to the meaning of several terms and phrases used in the request/interrogatory. *Id.*

6 On May 23, 2011, plaintiff sent a letter to defendants asserting that defendants must withdraw
7 their objections and provide the answers and documents requested. *Id.* Defendants never addressed the
8 issues in plaintiff's letter, and insisted on a protective order. *Id.* Plaintiff contends that she refrained
9 from filing the present motion to compel until a protective order could be entered. *Id.* On October 3,
10 2011, defendants assert that the parties spoke on the phone regarding extending discovery deadlines and
11 the status of obtaining a protective order to govern some of the requested material. (#37). The parties
12 did not discuss the May 23, 2011, letter or the non-protective order related objections. *Id.* With the
13 exception of this one telephone conversation, defendants' counsel asserts, plaintiff's counsel
14 communicated with defense counsel *solely* via email, despite defense counsel continuously insisting that
15 communications be via telephone or written letters. *Id.*

16 On October 5, 2011, defendants' counsel provided plaintiff's counsel with a 17 page proposed
17 protective order. *Id.* However, after plaintiff provided comments and changes to the protective order,
18 the parties were unable to reach an agreement. *Id.* Plaintiff contends that on October 24, 2011, she
19 submitted an electronic message advising defendants that a motion to compel would be filed. *Id.* On
20 October 27, 2011, plaintiff filed the present motion to compel¹. (#33).

21 Defendants allege that the motion should be denied, because at not time did plaintiff sincerely
22 attempt to meet and confer with defendants regarding the discovery dispute. (#37). Defendants contend
23 that plaintiff only sent the demanding letter on May 23, 2011, and never engaged in any meaningful
24

25 ¹ The court notes that the body of the motion to compel (#33) is identical to the May 23, 2011, demand letter
26 (#33 Exhibit 5) to defendants.

1 attempt to resolve the issues without the court's intervention, and never spoke either on the phone or
2 face to face regarding the alleged deficient responses. *Id.* Defendants also argue that plaintiff waited
3 four months after sending the May 23, 2011, letter before raising the issue again. *Id.* Since the parties
4 could not agree on the substance of the protective order, the defendants assert that they will be filing
5 a motion for protective order with the court. *Id.* To date, no motion for protective order has been filed.

6 **B. Discussion**

7 The court finds that both parties have not acted appropriately with regards to the discovery
8 dispute. Plaintiff did not conduct a meaningful meet and confer in an attempt to resolve the dispute
9 without the court's intervention, as she never discussed the dispute *personally* or *telephonically* with
10 defendants' counsel, and only sent a demanding letter for supplemental responses. Federal Rule of Civil
11 Procedure 37(a)(1); Local Rule 26-7(b)(stating that "[d]iscovery motions will not be considered unless
12 a statement of the movant is attached thereto certifying that, after *personal* consultation and *sincere*
13 *effort* to do so, the parties have been unable to resolve the matter without court action.")(emphasis
14 added). Defendants have not filed a motion for protective order with the court, despite objecting to at
15 least twenty-three discovery requests because a protective order was not in place and conveying to the
16 court their intention to file such a motion.

17 Since the parties have expressed that they cannot agree on a protective order, the court has
18 prepared and is entering a protective order in conjunction with this order. The parties shall, within
19 fourteen days from the entry of this order, meet and confer and file a *joint* request for modifications of
20 the protective order. The parties must meet *face to face* and confer within ten days from the entry of
21 this order in an attempt to resolve the discovery issues. The parties shall file a *joint* status report by
22 January 6, 2012, informing the court of any remaining discovery issues.

23 Accordingly, and for good cause shown,

24 IT IS ORDERED that plaintiff Vanessa Racine's Motion To Compel (#33) is DENIED as
25 discussed above. The parties must meet *face to face* and confer within ten days from the entry of this

1 order and shall file a *joint* status report by January 6, 2012, informing the court of any remaining
2 discovery issues.

3 DATED this 7th day of December, 2011.

4 

5 _____
6 **CAM FERENBACH**
7 **UNITED STATES MAGISTRATE JUDGE**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26