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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

TARA ANN SHERWIN,)
)
Plaintiff,)
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v.)
)
INFINITY AUTO INSURANCE COMPANY,)
)
Defendant.)
_____)

2:11-cv-00043-JCM -LRL

ORDER

Before the court is plaintiff Tara Ann Sherwin’s Motion To Strike. (#93). Defendant Infinity Auto Insurance Company (hereinafter “Infinity”) filed an Opposition (#103), and plaintiff filed a Reply (#107).

Background

Plaintiff was involved in an automobile accident with a third-party which allegedly caused her to “sustain[] injuries to her shoulders, back, bodily limbs, organs and systems, all or some of which conditions may be permanent and disabling.” (#15). Prior to the accident, plaintiff had purchased an automobile policy from defendant Infinity which provided uninsured/underinsured motorist insurance to plaintiff with limits of \$15,000 per person and \$30,000 per accident. *Id.* Following the accident, plaintiff demanded a policy limit payment from defendant Infinity. *Id.* However, after allegedly not engaging in any investigation of her claim, Infinity extended a “nuisance offer” of \$3,183.00 “in exchange for release.” (#39). Plaintiff rejected this offer, and insisted on the policy limit amount based on her injuries and need for surgery. *Id.* Allegedly finding “credibility issues” prior to interviewing the plaintiff or conducting an independent medical examination, Infinity maintained their original “nuisance offer,” and refused to pay the policy limit. *Id.* Plaintiff asserts that this refusal was “without a basis in

1 fact or law,” and that defendant engaged in unfair trade practices when it failed to “properly settle her
2 claim.” (#15).

3 Plaintiff filed her original complaint on August 5, 2010 (#1-3), and the action was removed to
4 this court on January 10, 2011. (#1). In plaintiff’s amended complaint filed on May 17, 2011, she
5 asserts claims for (1) breach of contract, (2) contractual breach of the implied covenant of good faith
6 and fair dealing, (3) tortious breach of the implied covenant of good faith and fair dealing, (4) bad faith¹,
7 and (5) unfair trade practices against defendant Infinity. *Id.* In the prayer for relief, plaintiff seeks
8 special, general and punitive damages. (#15).

9 The close of discovery was August 15, 2011. (#10). On June 29, 2011, defendant filed a motion
10 to extend discovery deadlines (#27), and after the parties agreed on extending discovery, the parties filed
11 a stipulation and order to extend discovery which the court signed. (#41). In the stipulation, the parties
12 agreed to permit certain depositions to take place after the close of discovery on August 15, 2011, and
13 stated that defendant “was still obtaining employment and medical records from [p]laintiff’s providers
14 which may require additional depositions.” *Id.* The stipulation only permitted the depositions, and did
15 not extend discovery deadlines for written discovery or for identifying witnesses. *Id.*

16 On September 28, 2011, defendant filed another motion to extend discovery dates. (#65).
17 Defendant asserted that five depositions remained to be conducted, three by defendant and two by
18 plaintiff. *Id.* Defendant did not request to extend discovery for any other purpose. *Id.* On September
19 28, 2011, the court granted the motion, which extended discovery until January 12, 2012. (#73). On
20 December 8, 2011, the parties filed another stipulation and order to extend discovery. (#82). In the
21 stipulation, the parties agreed that they could supplement the report of their expert witnesses and could
22 take certain depositions on or before March 12, 2012. *Id.* The parties stated that “[b]esides supplements
23 to the expert reports, the parties agree at this time that these depositions are the only discovery allowed
24

25 ¹ The court recently dismissed her claims for contractual breach of the implied covenant of good faith and fair
26 dealing, tortious breach of the implied covenant of good faith and fair dealing, and bad faith. (#29).

1 and that any party wishing to conduct any other discovery will have to apply to obtain the stipulation
2 of the opposing party or apply to the court for permission to conduct the same.” *Id.* The court signed
3 the stipulation on December 9, 2011. (#83).

4 On February 20, 2012, defendant made its Twentieth Supplemental Disclosure Pursuant to Fed.
5 R. Civ. P. 26(a), adding a new witness, Wade Hansard, and seven pages of additional documents. (#93-
6 1). On February 24, 2012, defendant made its Twenty-First Supplemental Disclosure, adding four more
7 witnesses and 98 additional pages of documents. (#93-2). On March 5, 2012, the parties filed another
8 stipulation to extend discovery, stating that there were three depositions currently scheduled: Justin
9 Gaiser- March 12, 2012; John Weber - April 5, 2012; and Kendra Slagle- March 9, 2012. (#88). The
10 parties agreed that the continued deposition of John Weber would be conducted after the discovery cut-
11 off date, and that this deposition was the “only discovery allowed after [d]iscovery [c]utoff...” *Id.* The
12 court signed the stipulation the same day. (#89). On March 7, 2012, defendant made its Twenty-Second
13 Supplemental Disclosure, adding a document entitled “NAIC Unfair Claims Settlement Practices Act
14 with Affidavit of Julienne Fritz.” (#93-3). On April 11, 2012, plaintiff filed the instant motion asking
15 this court to strike defendant’s disclosures made after the discovery cut-off deadline. (#93).

16 **Motion To Strike**

17 In plaintiff’s motion, she asserts that “[d]espite discovery having closed August 15, 2011,”
18 defendant made several disclosures after the discovery cut-off date. (#93). Plaintiff asserts that “[a]ll
19 of the new witnesses and documents were within [d]efendant’s knowledge and control prior to this
20 action having been filed,” and that their untimely disclosures should be stricken. *Id.* Plaintiff argues
21 that the untimeliness of the disclosures was not harmless, as plaintiff (1) already completed all
22 depositions of defendant’s employees and discovery has long been closed, (2) cannot conduct any
23 follow-up written discovery on the newly disclosed documents and witnesses, (3) cannot depose any
24 of the newly disclosed witnesses, and (4) was unable to ask questions relating to the newly disclosed
25 documents during the depositions. *Id.*

26 Defendant opposes the motion, and argues that the purported late disclosures were substantially

1 justified or harmless. (#103). Defendant asserts that many of the documents are merely copies or
2 different versions of photographs or documents that were already produced to the plaintiff, and that the
3 other disclosures were made only recently because plaintiff changed her theory of the case in February
4 2012. *Id.*

5 The late disclosures were substantially justified. Any harm can be mitigated by allowing
6 plaintiff to take depositions limited to issues raised by the three supplemental disclosures. The court
7 finds that striking the disclosures is not appropriate, as defendant has not violated its obligations under
8 Federal Rules of Civil Procedure 26, but has supplemented its disclosures as the parties' theories of the
9 action have evolved throughout the discovery process. Fed. R. Civ. P. 26(e)(1) ("A party who has made
10 a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or
11 request for admission—must supplement or correct its disclosure or response: (A) in a timely manner if
12 the party learns that in some material respect the disclosure or response is incomplete or incorrect, and
13 if the additional or corrective information has not otherwise been made known to the other parties
14 during the discovery process or in writing; or (B) as ordered by the court.").

15 As plaintiff asserts that she has been deprived of the opportunity to depose certain witnesses
16 regarding certain disclosures due to the untimeliness of the disclosures, despite discovery being closed,
17 the court will permit plaintiff to conduct depositions of attorneys from the Alverson, Taylor, Mortenson
18 & Sanders law firm and the telephonic deposition of Christy Ragland. The depositions, if deemed
19 necessary by plaintiff, shall be conducted within thirty (30) days from the date the court issues a ruling
20 on the pending dispositive motions (#91, #92, and #94). The parties' Joint Pretrial Order shall be filed
21 within sixty (60) days from the date the court issues its ruling on the pending dispositive motions (#91,
22 #92, and #94).

23 Accordingly, and for good cause shown,

24 IT IS ORDERED that plaintiff Tara Ann Sherwin's Motion To Strike (#93) is GRANTED in
25 part and DENIED in part, as discussed above.

26 IT IS FURTHER ORDERED that plaintiff Sherwin may conduct the depositions of attorneys

1 from the Alverson, Taylor, Mortenson & Sanders law firm and the telephonic deposition of Christy
2 Ragland. The depositions shall be limited in scope to issues raised by the late disclosures and shall be
3 conducted within thirty (30) days after the date the court issues a ruling on the pending dispositive
4 motions (#91, #92, and #94).

5 IT IS FURTHER ORDERED that the parties' Joint Pretrial Order shall be filed within sixty (60)
6 days after the date the court issues its ruling on the pending dispositive motions (#91, #92, and #94).

7 DATED this 30th day of May, 2012.



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9 **CAM FERENBACH**
UNITED STATES MAGISTRATE JUDGE

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