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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

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

2:11-cv-00043-JCM -LRL

ORDER

Before the court is defendant Infinity Auto Insurance Company’s (hereinafter “Infinity”) Motion to Compel Computation of Damages (#19). Plaintiff Tara Ann Sherwin filed an Opposition (#22), and defendant filed a Reply (#25).

Plaintiff’s amended complaint (#15) stems from an automobile accident with a third-party that occurred on March 31, 2009, 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.” As a result of the alleged injuries, plaintiff claims that she “has been required to, and has limited occupational and recreational activities, which have caused and shall continue to cause [her] loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life...” (#15). She filed a complaint alleging (1) breach of contract, (2) contractual breach of the implied covenant of good faith and fair dealing, (3) tortious breach of the implied covenant of good faith and fair dealing, (4) bad faith, and (5) unfair trade practices against her insurance company, defendant Infinity. *Id.* In the prayer for relief, plaintiff seeks special, general and punitive damages.

Motion To Compel Computation of Damages

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), a party is required to disclose “a computation of each

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1 category of damages claimed by the disclosing party – who must also make available for inspection and
2 copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected
3 from disclosure, on which each computation is based, including materials bearing on the nature and
4 extent of injuries suffered.” In its present motion to compel (#19), Infinity contends that plaintiff’s
5 computation of damages is insufficient, because it does not provide an amount for pain and suffering,
6 punitive damages, lost wages, or future loss of income.

7 **A. Relevant Facts**

8 In plaintiff’s computation of damages produced on March 3, 2011, she stated that her “total
9 special damages to date are \$164,468.00,” her “general damages are in an amount in excess of
10 \$10,000.00 and will be determined at trial,” and that she “seeks punitive damages in an amount to be
11 determined by the [c]ourt.” (#19-1 Exhibit A). As defendant felt the computation of damages was
12 inadequate, on April 27, 2011, the parties conducted a telephonic dispute resolution conference in
13 compliance with LR 26-7 in a good faith attempt to resolve the matter. During the conference, Infinity
14 explained to plaintiff that it was not satisfied with the computation, and that it should be supplemented
15 to provide “a computation of each category of damages,” including “each element of past and future
16 special damages, general damages and punitive damages related to the causes of action that were pled.”
17 (#19). Plaintiff agreed to amend her computation of damages. *Id.* As of the date of filing the present
18 motion, defendant asserts that it had not received an updated computation. *Id.*

19 After plaintiff received the motion to compel (#19), she allegedly realized that a “clerical error”
20 occurred, and that the amended disclosure was executed, but not mailed. (#22). Therefore, she
21 expediently delivered the following amended disclosure to defendant.

22 FED. R. CIV. P. 26(a)(1)(C) STATEMENT

23 Plaintiff TARA SHERWIN’s contractual damages total \$11,817-
24 discovery is continuing. Plaintiff also seeks the following damages:

- 25 1. General damages inflicted by Defendant’s failure to tender policy
26 limits, including damages for pain, suffering, and emotional distress.
Such damages shall be determined by the trier of fact, but shall not be
less than the cost of Plaintiff’s treatment and future treatment,

1 \$164,468.00, less the \$15,000 paid by the tortfeasor, along with any
2 additional damages assessed by the trier of fact as a result of the impact
3 of the low offer on Plaintiff's inability to obtain additional treatment to
alleviate her pain and suffering and the impact of the low offer on
Plaintiff's ability to earn funds necessary to obtain additional treatment.

4 2. Extra-contractual damages inflicted by Defendant's failure to tender
5 policy limits, including, but not limited to, damages for bad-faith and
6 violation of NRS 686A.310. Such damages shall be determined by the
7 trier of fact.

8 3. Punitive damages in an amount to be determined by the trier of fact.
9 (#22-1 Exhibit 1-D)

10 Subsequently, on January 4, 2011, plaintiff Sherwin informed defendant that she was also making
11 claims for lost wages and future loss of income, and that she would "supplement her computation"
12 accordingly. (#25 Exhibit C). Defendant has not received a supplement to the amended computation.
13 (#25).

14 **B. Argument**

15 Infinity contends that the amended computation of damages is still insufficient, as it does not
16 include an amount for pain and suffering and punitive damages, and because it has not been
17 supplemented with amounts for lost wages and future loss of income. (#25). As both lost wages and
18 future loss of income are purely economic damages, defendant argues that plaintiff should be capable
19 of providing these figures. Additionally, defendant contends that the "inclusion of non-economic
20 damages is essential to an evaluation of the claim," and that plaintiff's refusal to provide these
21 computations bars her "from requesting or suggesting the value of such damages at the time of trial from
22 the jury." *Id.*

23 Plaintiff argues that Infinity is not seeking the "arbitrary values for pain and suffering and
24 punitive damages" in order to facilitate settlement, but instead that it is improperly insisting on these
25 values to "anchor a jury." (#22). This is not the purpose of Rule 26, she contends. Further, she argues
26 that "such damages are in the province of the jury and need not be associated with a specific dollar
amount in a computation of damages." *Id.*

