

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KATIE F. WILSON,
Plaintiff,

vs.

WAL-MART STORES, INC.,
Defendant.

Case No. 2:15-cv-1791-RCJ-VCF

ORDER

MOTION FOR PROTECTIVE ORDER (DOC. #36);
MOTION FOR PROTECTIVE ORDER (DOC. #37);
COUNTER-MOTION TO COMPEL (DOC. #54)

This matter involves Plaintiff Katie F. Wilson's civil action against Wal-Mart Stores, Inc.

Before the court are the following motions:

1. Wal-Mart's motion for protective order (Doc. #36) and Wilson's response (Doc. #53).
2. Wal-Mart's motion for protective order (Doc. #37), Wilson's response (Doc. #52), and Wal-Mart's reply (Doc. #66).
3. Wilson's counter-motion to compel (Doc. #54) and Wal-Mart's response (Doc. #72).

For the reasons stated below, Wal-Mart's motion for protective order (Doc. #36) is granted in part and denied in part. Wal-Mart's motion for protective order (Doc. #37) is granted in part and denied in part.¹ Wilson's counter-motion to compel (Doc. #54) is denied.

I. Legal Standard

"A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending." FED. R. CIV. P. 26(c). "The motion must include a certification that

¹ Wal-Mart seeks a protective order as to Request for Production Set 1, Request 1 (hereafter "1-1") and Request for Production Set 4, Request 1 (hereafter "4-1"). RFP 1-1 and RFP 4-1 request Wal-Mart employee files. Pursuant to the parties' joint status report (Doc. #71), the portions of Wal-Mart's motion for protective order (Doc. #37) regarding Wal-Mart employee files are denied as moot. Similarly, Wilson's request to compel (Doc. #54) production of documents responsive to RFP 1-1 and RFP 4-1 is denied.

1 the movant has in good faith conferred or attempted to confer with other affected parties in an effort to
2 resolve the dispute without court action.” FED. R. CIV. P. 26(c). “The court may, for good cause, issue
3 an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or
4 expense.” FED. R. CIV. P. 26(c).

5 II. Discussion

6 1. Wal-Mart’s Request for a Protective Order as to Interrogatories 1, 4, 11, and 13 is Denied

7 Contrary to Wal-Mart’s assertion, Wilson’s interrogatories 1, 4, 11, and 13 do not constitute
8 annoyance, embarrassment, oppression, or undue burden.² This court previously held that
9 Interrogatories 1, 4, 11, and 13 sought discoverable information, Wal-Mart’s responses were inadequate,
10 and ordered Wal-Mart serve adequate responses consistent with the court’s order. (Doc. #43). Wal-
11 Mart’s motion for a protective order as to Interrogatories 1, 4, 11, and 13 is denied.

12 2. Wal-Mart’s Request for a Protective Order as to Request for Production (hereafter “RFP”) First 13 Set, Request 8 (hereafter “1-8”) is Granted

14 Wal-Mart’s request for a protective order as to RFP 1-8 is granted. This court previously held
15 that documents responsive to RFP 1-8 were not proportional to the needs of this action. Wal-Mart is not
16 required to produce documents responsive to RFP 1-8.

17
18 /// /// ///

19 /// /// ///

20
21
22 ² Wal-Mart also seeks a protective order as to Interrogatory 1 based on work-product protection. “[W]hether a certain person
23 has factual knowledge relevant to the lawsuit is not protected by the work product privilege.” *Laxalt v. McClatchy*, 116
24 F.R.D. 438, 443 (D. Nev. 1987). “The [protection] does prevent opposing counsel, however, from inquiring whether the
25 investigator has interviewed that particular person in the course of his investigation.” *Id.* Here, information responsive to
Interrogatory 1 is not protected by the work-product protection. Interrogatory 1 asks, “[s]tate the names, addresses, and
telephone numbers of every person, known to you or to your attorneys, who has or claims to have any knowledge concerning
the facts and circumstances surround the subject incident.” As Wilson is inquiring about individuals with factual knowledge,
rather than individuals Wal-Mart has spoken to, the information requested in Interrogatory 1 is not protected by the work-
product protection.

1 3. Wal-Mart's Request for a Protective Order as to Interrogatories 8 and 12 is Denied

2 Wal-Mart's request for a protective order as to Interrogatories 8³ and 12, on the ground that the
3 interrogatories ask about subsequent remedial measures, is denied. "Information within th[e] scope of
4 discovery need not be admissible in evidence to be discoverable." FED. R. CIV. P. 26(b)(1). This court
5 previously overruled an objection to Interrogatory 12 based on the interrogatory seeking information on
6 subsequent remedial measures in violation of Federal Rule of Evidence 407. (Doc. #43). Similarly,
7 Wal-Mart's objections to Interrogatories 8 and 12 on the same ground are overruled; the information
8 sought by Interrogatories 8 and 12 may in fact be inadmissible in to evidence, but that does not bar
9 Wilson from requesting discovery about Wal-Mart's subsequent remedial measures. Wal-Mart's request
10 for protective order as to Interrogatories 8 and 12 is denied.

11 4. Wal-Mart's Request for a Protective Order as to Interrogatory 10, RFP First Set, Request 16
12 (hereafter "1-16"), and RFP First Set, Request 17 (hereafter "1-17") is Granted

13 Interrogatory 10 and RFPs 1-16 and 1-17 request information about prior "slip and fall" lawsuits
14 and incidents at any Las Vegas Wal-Mart location in the past five years. Information about prior "slip
15 and fall" incidents is not proportional to the needs of this action. Fed. R. Civ. P. 26(b)(1). While data
16 about Wal-Mart's prior "slip and fall" incidents may be relevant to Wilson's negligence claim, the
17 burden on Wal-Mart to produce this data outweighs any potential benefit this information may have for
18 Wilson's claim. Wal-Mart's request for a protective order as to Interrogatory 10, RFP 1-16, and RFP 1-
19 17 is granted. Wilson's counter-motion to compel (Doc. #54) as to Interrogatory 10, RFP 1-16, and RFP
20 1-17 is denied.
21
22

23 _____
24 ³ Wal-Mart also seeks a protective order as to Interrogatory 8 on the ground that it seeks information about prior incidents.
25 (Doc. #37 at 15). Interrogatory 8 asks, "[h]as the subject area undergone any repairs or changes since the subject incident."
Here, Interrogatory 8 asks about subsequent remedial measures, not prior incident. Wal-Mart's request for a protective order
on the ground that Interrogatory 8 asks about prior incidents is denied.

1 ACCORDINGLY, and for good cause shown,

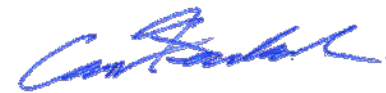
2 IT IS HEREBY ORDERED that Wal-Mart's Motion for Protective Order (Doc. #36) is
3 GRANTED in part and DENIED in part. Wal-Mart's request for a protective order as to Interrogatories
4 1, 4, 8, 11, 12, and 13 is DENIED. Wal-Mart's request for protective order as to RFP 1-8 is GRANTED.
5 Wal-Mart is not required to produce documents responsive to RFP 1-8.

6 IT IS FURTHER ORDERED that Wal-Mart's Motion for Protective Order (Doc. #37) is
7 GRANTED in part and DENIED in part. Wal-Mart's request for a protective order as to Interrogatory 8
8 is DENIED. Wal-Mart's request for a protective order as to Interrogatories 10, RFP 1-16, and RFP 1-17
9 is GRANTED. Wal-Mart is not required to respond to Interrogatory 10, RFP 1-16, or RFP 1-17.

10 IT IS FURTHER ORDERED that Wilson's counter-motion to compel (Doc. #54) is DENIED.

11 IT IS SO ORDERED.

12 DATED this 16th day of March, 2016.

13
14
15 

16 CAM FERENBACH
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25