

**IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MARY CUMMINS
Plaintiff

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vs.

Civil Action No.: 4:12-CV-560-Y

**AMANDA LOLLAR, DENISE TOMLINSON,
DOROTHY HYATT, MICHELLE
MCCAULLEY, KATE RUDROGEN, LESLIE
STURGES, BAT WORLD SANCTUARY,
JOHN DOES 1-10**
Defendants

**DEFENDANT, AMANDA LOLLAR’S MOTION TO COMPEL
PLAINTIFF TO RESPOND TO DEFENDANT’S INTERROGATORIES
AND PRODUCE DOCUMENTS AND BRIEF IN SUPPORT**

COMES NOW AMANDA LOLLAR (“Defendant”) and files this motion pursuant to FED.R.CIV.PROC. 33(b)(5), 34(b), 37(a)(2)(b) and Local Rules for the Northern District of Texas 7.1, 7.2, and 10.1 asking the Court to compel MARY CUMMINS (“Plaintiff”) to respond to Defendant’s Interrogatories and Request for Production. In support thereof, Defendant would show as follows:

I.
Procedural History

1. On August 29, 2013, Defendant propounded *Defendant, Amanda Lollar’s First Set of Interrogatories To Plaintiff* and *Defendant’s First Request for Production of Documents to Plaintiff* pursuant to FED.R.CIV.PROC. 33 and 34. (See Exhibits “A” and “B”.) On October 7, 2013, Defendant received “*Plaintiff’s Response to First Set of Interrogatories to Defendant’s Bat World Sanctuary, Amanda Lollar*”(sic) and “*Plaintiff’s Response to First Request for Production to Defendant’s Amanda Lollar, Bat World Sanctuary*” (sic). (See Exhibits “C” and “D”.)

2. In her preambles to her written responses to discovery, Plaintiff states that the information is provided “under seal” to Defendants’ attorneys and may not be shared with Defendants.

3. Plaintiff filed unsworn responses to Interrogatories 2, 4, 5, 16, and 21, stating that they would be answered “at a later date through an attorney.” Plaintiff failed to fully respond under oath to Interrogatories No. 12, 13, and 15. Plaintiff objected to Interrogatory No. 11.

4. It has been five months since the Request for Production was propounded and Plaintiff failed to produce any of the requested documents. Plaintiff made boilerplate objections to Defendants’ Request for Production Nos. 6, 9, 11, 12, and 13.

II. **Standard of Discovery**

5. The Federal Discovery rules are to be interpreted broadly and liberally. *See* FED. R. CIV. P. 26(b)(1); *Trevino v. Celanese Corp.*, 701 F.2d 397, 405 (5th Cir.(Tex.) 1983), citing to *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S.Ct. 385 (1947); *MQS Inspection, Inc. v. Bielecki*, 963 F.Supp. 771 (E.D. Wis. 1995).

6. Where objections are raised, it is the burden of the objecting party to substantiate its objections. *See B&S Drilling Company, Inc. v. Halliburton Oil Well Cementing Co.*, 24 F.R.D. 1, 4 (S.D. Tex. 1959); *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997). Merely stating that an interrogatory or document request is “overly broad and burdensome,” “oppressive,” or “not reasonably calculated to lead to the discovery of admissible evidence,” is not sufficient and the resisting party risks waiving his objections entirely. *See McLeod, Alexander, Powel & Appfel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. (Tex.), 1990), citing to *Roseberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. Pa. 1980). Objections must be specific and supported by a reasonably detailed explanation why the particular discovery request may be improper, and the responding party still must answer to the extent the request is

not objectionable. *See* FED. R. CIV. P. 33, 33(a); *Harding v. Dana Transport, Inc.*, 914 F.Supp 1084, 1101-02 (D.N.J., 1996); *United States v. 58.16 Acres of Land*, 66 F.R.D. 570, 572 (E.D. Ill.1975); 8C Wright & A. Miller, *Federal Practice and Procedure: Civil* § 2173 (1970; 1993 Suppl.).

7. Federal Courts have consistently held that instructions, definitions, and discovery requests are sufficiently definite as long as they are clear enough to adequately advise the interrogated party of the information requested. *See Struthers Scientific and International Corporation v. General Foods Corporation*, 45 F.R.D. 375, 379 (S.D. Tex. 1968); *Capacchione v. Charlotte-Mecklenburg Schools et al*, 182 F.R.D. 486, 491 (W.D.N.C. 1998). Where otherwise vague or ambiguous, the responding party still has a burden to answer by “exercising reason and common sense to attribute ordinary definitions to terms and phrases” utilized in discovery. *See* FED. R. CIV. P. 26(b)(1); *Pulsecard, Inc. v. Discover Card Services, Inc.*, 168 F.R.D. 295, 310 (D. Kan. 1996).

III.

The Disputed Objections and Failure to Respond to Plaintiff’s Interrogatories

A. Plaintiff’s statement that her responses are provided to Defendants’ attorneys “under seal” and may not be shared Defendants is improper

8. In the preambles to Plaintiff’s responses to interrogatories and request for production, she states:

Plaintiff provides this private and confidential information under seal to Defendants’ attorneys only. Plaintiff does not allow this information and/or any information produced in discovery, through interrogatories or in deposition video to be shared publicly, or with anyone other than Defendant’s attorneys or experts. Plaintiff does not allow Defendants’ attorneys to share this information with Defendants because Defendants have a long history of using and abusing discovery for harassment purposes.

See Exhibit “C” and “D.”

9. Rule 26(c) provides that the Court may, for good cause shown, issue a protective order forbidding discovery, specifying terms for discovery, or designating persons who may be present while discovery is conducted. However, the rule does not allow a party to unilaterally limit discovery as Plaintiff attempts to do in her discovery responses. Defendants request that Plaintiff's attempted restrictions or limitations on discovery responses be denied.

B. Plaintiff's answers to interrogatories were unsworn

10. Plaintiff's answers to interrogatories were not made under oath as required by FED. R. CIV. P. 33(b). Plaintiff should be ordered to provide sworn answers to the interrogatories propounded to her.

C. Interrogatories 2, 4, 5, 16, and 21

11. Plaintiff's unsworn answers to Defendant's Interrogatories 2, 4, 5, and 21 state that "Plaintiff is an individual and not an attorney. This information will be provided at a later date by an attorney." (See Exhibit "C"). Five months have passed since Plaintiff served her answers to interrogatories. As a pro se party Plaintiff is required to follow the local civil rules of this court and the Federal Rules of Civil Procedure. See LR 83.14. The Federal Rules of Civil Procedure require a party to answer each interrogatory separately and fully in writing under oath within 30 days after being served with the interrogatories. See FED. R. CIV. P. 33(b). Plaintiff should be ordered to provide sworn answers to Interrogatories 2, 4, 5, and 21.

C. Interrogatories 11, 12, 13, and 15

12. Defendant's Interrogatory No. 11 asked for the name of the each hospital that examined treated Plaintiff before the incident and the reason for the examination or treatment. Plaintiff objected on the ground that the "information sought is not reasonably calculated to lead to the discovery of admissible evidence" and that the "scope if over broad as to time and subject

matter.” (See Exhibit “C”). First, the requested discovery is certainly relevant, as it goes to the question of whether Defendant suffered from any pre-existing conditions or ailments which may have in fact been a cause of the damages being alleged in this suit against Defendants.¹ As to Plaintiff’s objection that the request is overly broad, it should be noted that she offers nothing to this Court other than this bare statement. As noted previously, merely stating that an interrogatory or document request is “overly broad” is not sufficient. See *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) citing *Roseberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D.Pa. 1980). Rather, such objection must be specific and supported by a reasonably detailed explanation why the particular discovery request may be improper, and the responding party still must answer to the extent the request is not objectionable. See FED. R. CIV. P. 33, 33(a); *Harding v. Dana Transport, Inc.*, 914 F.Supp 1084, 1101-02 (D.N.J. 1996); *United States v. 58.16 Acres of Land*, 66 F.R.D. 570, 572 (E.D.Ill. 1975); 8C Wright & A. Miller, *Federal Practice and Procedure: Civil* § 2173 (1970; 1993 Suppl.). Plaintiff has failed to do this.

13. Defendant’s Interrogatory No. 12 asked Plaintiff for a list of medical expenses which resulted from the incident in question. Plaintiff’s unsworn answer states that she “will be providing this at a later date” and “Plaintiff has already provided some of this information.” (See Exhibit “C”). Five months have passed since Plaintiff served her answers to interrogatories. Plaintiff was required to provide the information requested under oath and within 30 days after being served with interrogatories. See FED. R. CIV. P. 33(b).

14. Defendant’s Interrogatory No. 13 asked Plaintiff for information concerning lost time and money caused by the incident. Plaintiff responded that “Plaintiff will provide the time and

¹ Pre-existing conditions (the exclusionary instruction for which can be found in Texas Pattern Jury Charge 15.8) are relevant because under Texas law, recovery for injuries is limited to “medical expenses specifically shown to result from treatment made necessary by the negligent acts or omissions of the defendant...” *Texarkana Mem. Hosp. v. Murdock*, 946 S.W.2d 836, 840 (Tex. 1997).

money lost at a later date.” (See Exhibit “C”). Five months have passed since Plaintiff served her answers to interrogatories. Plaintiff was required to provide the information requested within 30 days after being served with interrogatories. See FED.R.CIV.PROC. 33(b).

15. Defendant’s Interrogatory No. 15 asked Plaintiff about her self-employment. Plaintiff responded that “Plaintiff will not be providing income information to Defendant” and “Plaintiff will state this at a later date through an attorney.” (See Exhibit “C”). Plaintiff did not object to this interrogatory and asserted no privilege. Five months have passed since Plaintiff served her answers to interrogatories. Plaintiff was required to provide the information requested within 30 days after being served with interrogatories. See FED.R.CIV.PROC. 33(b).

IV.

The Disputed Objections and Failure to Produce Documents

A. Plaintiff’s Objections to Request for Production

16. Defendant’s Request for Production No. 6 asked for any and all correspondence and documents evidencing communications between Plaintiff and any Defendant in this case. Plaintiff responded that she “previously supplied all such correspondence and documents evidencing communications between Plaintiff and Defendants in this case; Defendants also have copies of all said communications.” (See Exhibit “C”). To the extent that Plaintiff is claiming that the requested documents were produced in the instant case this is simply not true. To the extent that Plaintiff is claiming the documents were produced in one of the other various lawsuits filed by Plaintiff against Defendants in Texas and California she has not properly complied with the request for documents.

17. Defendant also filed a plethora of unsubstantiated boilerplate objections to this request, stating that is “not reasonably calculated to lead to the discovery of admissible evidence,” “the scope of the documents sought is overbroad,” it is an “unwarranted annoyance and under (*sic*)

burden,” “the burden and intrusiveness of the request outweighs the likelihood that the documents sought will lead to the discovery of admissible evidence,” and “the documents sought violate the right of privacy of third parties.” (*See* Exhibit “C”). But Plaintiff offers nothing to substantiate these objections. Further, as the documents requested have been produced by her in the past (per her own response), there should be nothing about production in this case that should make the request any more objectionable.

18. Defendant’s Request No. 7 asked for “copies of all medical bills and other bills of any nature which you claim to be recoverable because of the injuries you claim you received in the incident in question.” Plaintiff did not object and responded that the requested documents “will be provided at a later date; because of Plaintiff’s back injury it has been difficult to physically gather the documents at this time.” While Defendants are uncertain why the collection of medical records – a task capable of being undertaken through written requests and receipt of records by mail, is allegedly so physically tasking. Nevertheless, Plaintiff has engaged these Defendants in litigation and must expect some level of inconvenience associated with this fact. Given she has not objected, the Court should Order these documents produced.

19. Defendant’s Request No. 8 asked for “Photographs, diagrams, drawings, models and other physical evidence which you have preserved or produced which relate to the occurrence in question or the damages being claimed.” Plaintiff did not object and responded that “Plaintiff’s doctor has MRI and x-rays.” (*See* Exhibit “C”). While Defendants appreciate the recitation of these documents’ location, this was a request for production. If the intent of such response was to suggest that Defendants should get the records from her doctor, it should be noted that it is “not usually a ground for objection that the information is equally available to the interrogator or is a matter of public record.” *Petruska v. Johns-Manville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979) citing

8 Wright and Miller, *Federal Practice and Procedure*, Civil § 2014 at 111. This is especially true where, as here, the responding party would have less trouble obtaining the documents from the third party in question. *Id. See also Carlson v. Geneva City Sch. Dist.*, 277 F.R.D. 90, 96 (W.D.N.Y. 2011) ("If the producing party has the legal right or the practical ability to obtain the documents, then it is deemed to have 'control,' even if the documents are actually in possession of a non-party. This holding extends to medical and counseling records.").

20. Defendant's Request No. 9 asked for "Any written, taped or transcribed statements of any Defendant in this case or any agent or representative of any Defendant." Plaintiff responded that "Defendants have copies of any written, taped, or transcribed statements of Defendant Amanda Lollar and Bat World Sanctuary." Plaintiff further made the same boilerplate objections that she made in response to Request No. 6. (*See* Exhibit "C"). But, again, she fails to in any way seek to substantiate these objections as required under the Rules.

21. Defendant's Request No. 10 asked for "A copy of the front and back of Plaintiff's driver's license." Plaintiff did not object and responded that she "previously provided the front of Plaintiff's drivers license to attorney Randy Turner to inspect at a deposition; the only thing on the back of the license is a magnetic strip and bar code which are not reasonably calculated to lead to the discovery of admissible evidence." (*See* Exhibit "C"). As noted previously, prior production of an item, in an unrelated case in no way satisfies her discovery obligations in the present litigation. In any event, having failed to object, an adequate response should be provided.

22. Defendant's Request No. 11 asked for "All income tax returns with W-2 and 1099 forms attached for the period of time beginning 5 years prior to the incident in question up through the present time." Plaintiff stated that she has no W-2 forms and "will not be providing 1099 forms

to Defendant because Defendant has a long history of abusing discovery to harass and harm Plaintiff.” Plaintiff further made the same boilerplate objections that she made in response to Request No. 6. (*See* Exhibit “C”). It should be noted, however, that Plaintiff has alleged that injuries claimed in this suit resulted in a loss of wages. *See e.g.* Doc. No. 46, p. 5. “Tax returns are relevant to actions in which a party asserts that it is entitled to lost wages.” *Reed v. Tokio Marine & Nichido Fire Ins. Co., Ltd.*, 2010 U.S. Dist. LEXIS 13994, 4 (W.D. La. Feb. 1, 2010). As can be seen from the present Motion, Defendants have tried to obtain information in this regard from multiple sources, but Plaintiff has either objected or simply refused to produce any such information. The Court should, therefore, compel the production of Plaintiff’s tax returns.

23. Defendant’s Request No. 12 asked for “A current medical authorization signed by Plaintiff, a form of which is attached hereto, to enable Defendant to obtain copies of Plaintiff’s medical records.” Plaintiff responded that she “will not be giving a blank signed medical authorization form to Defendants because Defendants have a long history of abusing discovery to harass and harm Plaintiff; Plaintiff will provide all medical records which relate to this injury and the part of the body injured.” Plaintiff further made the same boilerplate objections that she made in response to Request No. 6. (*See* Exhibit “C”). Interestingly, Plaintiff refused to provide medical records because it is too physically tasking, and in fact in response to some requests, simply refers Defendants to her doctor (*See* *Supra* ¶ 19), but refuses to provide an authorization to allow Defendants to obtain these records themselves. Regardless of the circular logic inherent in these arguments, the simple fact is the Plaintiff does not get to be the gatekeeper to her medical records, picking and choosing which such records she will provide (which at this point is simply nothing). Defendants are entitled to these records to seek to defend this lawsuit, and Plaintiff should be compelled to provide an authorization. *See e.g. McKnight v. Blanchard*, 667

F.2d 477, 481-82 (5th Cir. 1982) (when a party puts his or her physical condition at issue that a court can, upon proper motion, order him or her to sign a medical authorization).

24. Defendant's Request No. 13 asked for "A current employment authorization signed by Plaintiff, a form of which is attached hereto, to enable Defendant to obtain copies of Plaintiff's employment records." Plaintiff responded that she "will not be giving a blank signed employment authorization form to Defendants because Defendants have a long history of abusing discovery to harass and harm Plaintiff." Plaintiff further made the same boilerplate objections that she made in response to Request No. 6. (See Exhibit "C"). Unsubstantiated accusations do not form the basis of a valid objection to discovery. Plaintiff has alleged that the injuries which are the subject of this suit resulted in lost wages. *See* Doc. No. 46, p. 5. Defendants are entitled to explore her employment records to test the veracity of this claim.

25. Defendant's Request No. 14 asked for "All employment and payroll records pertaining to Plaintiff's current employment and any other employment which Plaintiff has had in the past five (5) years." Plaintiff responded that "Plaintiff will not be providing employment records for the last five years because Defendant has a long history of abusing discovery to harass and harm Plaintiff." Plaintiff further made the same boilerplate objections that she made in response to Request No. 6. (*See* Exhibit "C"). Having failed to present any substantiated objection to this discovery, and in the face of its relevance to the issue of lost wages, the Court should compel this information. *See e.g. Scheffler v. County of Dunn*, 2009 U.S. Dist. LEXIS 56481, 2 (W.D. Wis. May 6, 2009) ("Plaintiff's employment records are relevant to his claim for lost wages.").

26. Defendant's Request No. 18 asked for "All canceled checks, charge card receipts and any other receipts or documents reflecting payment of any medical or psychological bills or expenses alleged to be recoverable in this lawsuit." Plaintiff responded that she "will provide all receipts

for medical bills and expenses alleged to be recoverable in this case.” (*See* Exhibit “C”). It has been five months since Plaintiff agreed to produce these documents and they have not been provided. The Court should therefore compel such production.

27. Defendant’s Request No. 19 asked for “All documents and materials relating to investigations or inquiries into the matters which form the basis of this case. This request for production of materials seeks the production of documents created by or on behalf of Plaintiff prior to the date this suit was filed and seeks the production of documents created by third parties at any time.” Plaintiff responded that she “will be providing medical bills, MRI report to Defendant.” (*See* Exhibit “C”). It has been five months since Plaintiff agreed to produce these documents and they have not been provided. The Court should therefore compel such production.

28. Defendant’s Request No. 21 asked for “A copy of each ordinance, statute, code, and other law or regulation which you claim Defendant Amanda Lollar violated with regard to the incident in question.” Plaintiff responded that “An attorney for Plaintiff will be providing the legal ordinances, statutes, codes or other regulations Defendant Amanda Lollar violated at a later date; Plaintiff has already included some in her complaint; Plaintiff is not an attorney and therefore not able to provide this information.” (*See* Exhibit “C”). Since Plaintiff did not object to this request the Court should compel such production.

WHEREFORE, Plaintiff respectfully requests that the Court order Defendant to provide sworn answers to the interrogatories as requested herein and produce the requested document as set forth herein. A proposed order is attached.

/S/ Randall E. Turner
State Bar No. 20328310

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served this 11th day of March 2014 to each of the following via CM/ECF System:

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