IN THE UTAH COURT OF APPEALS

Angela Segota **Plaintiff/ Appellant** **vs.** **Young 180 Co.** **Nationwide Mutual Insurance Co.** **Defendants/ Appellees**	**Case No. 20190253-CA** **An Appeal of the Decisions of The Honorable Michael Edwards** **Second District Court** **Civil No. 180700133 CN**

Appellant's Opening Brief

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List of Current and Former Parties

A. Participating in This Appeal

1.	Angela Segota	Appellant/ Plaintiff
	Brian W. Steffensen	
2.	Young 180 Co	Appellee/ Defendant
	Nicholas Hart	
3.	Nationwide Mutual Insurance Co.	Appellee/ Defendant
	Nicholas Hart	

B. Not Participating in This Appeal

1.	Spencer W. Young Seldon Olsen Y oung Spencer W. Young Jr. Lesli Goble Barker	Defendants (Dismissed w/o Prejudice)
	Nicholas Hart	

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Rules

Cases

I. Introduction

There is no question that Appellant filed her initial disclosures late. Appellant's counsel outlined various factors which led to that late filing. However, because she filed them late, Appellant filed a Motion to Amend scheduling order which modified dates to (a) give the parties time to file their disclosures[1] and (b) gave the parties more time to then undertake discovery.

The bond company, National, filed a motion for summary judgment asking for dismissal based mainly on an argument that because the Appellant's initial disclosures were late, she should be barred from using any of that information at trial, and without that information, she would not be able meet her burden of proof at trial.

Appellant filed motions for enlargement of time to oppose Nationwide's Motion for Summary Judgment - which showed good cause and were unopposed.

When Appellant filed her opposition she argued that she had shown good cause for the delay but emphasized that there was no harm – especially in light of the fact that her Motion to Amend Scheduling Order was unopposed and entirely eliminated any harm. Appellant also pointed out that Young 180 had not as of

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[1]Defendant Young 180 – the automobile dealership – had not yet filed its initial disclosures. The amendments sought gave time for Young 180 to file its disclosures.

then filed its initial disclosures.

Young 180 finally served its initial disclosures and filed its own Motion for Summary Judgment – making essentially the same arguments.

At the hearing on the motions, Young 180's counsel admitted that his client's initial disclosures were "identical" to those of Appellant. They each disclosed the documents related to the sale of the automobile – which were the same; and disclosed the same witnesses (the Appellant and her husband, and representatives of the automobile dealership).

Appellant then argued that since Young 180 had admitted that its belated initial disclosures were "identical" to those of the Appellant, Young 180 could not claim that it was harmed in any way by the belated disclosure of those documents by Appellant.

Appellant also argued that the bond company was almost certainly provided the same bundle of documents, etc., that Young 180 had disclosed – such that it also had all of those documents.

The purpose of imposing a bar for failure to disclose is to protect a party from late disclosure of previously unknown documents, witnesses or damage calculations.

By definition, if the defendants already have in their possession all of the

same documents possessed by Plaintiff, those defendants could not have suffered any harm by a belated disclosure of a second set of those same documents, etc.

The Federal Courts, construing the exact same language in the Federal Rules, have articulated the following factors to guide a trial court in its exercising its discretion:

> "[T]he court should consider the following factors: (1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability of the party to cure the prejudice; (3) the extent to which introducing such testimony would disrupt the trial; and (4) the [proffering] party's bad faith or willfulness.' *Jacobsen v. Deseret Book Co.*, 287 F.3d at 953 (quoting *Woodworker's Supply Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d at 993).

Furthermore,

> "where the exclusion of evidence under Rule 37(c)(1) has the necessary effect of a dismissal, . . . , district courts should, in conjunction with the traditional *Woodworker*'s inquiry, carefully explore and consider the efficacy of less drastic alternatives, ordinarily reserving the extreme sanction of dismissal for cases involving bad faith or willfulness or instances where less severe sanctions would obviously prove futile." *HCG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017).

In this case:

1) **There was no surprise** to the Defendants when they received the Appellant's belated disclosures – the Defendants already had all of those documents and knew about all of those witnesses;

2) **All possible prejudice** arising from the belated disclosure **could easily have been completely eliminated** by simply granting the Appellant's unopposed Motion to Amend the Scheduling Order;

3) **There was no disruption to the "trial"** – nor would there be to the case as a whole at all – as long as the unopposed Motion to Amend Scheduling Order were granted so as to ameliorate any prejudice; and

4) There was **no evidence of wilfulness or bad faith** on the Appellant's part whatsoever.

Because none of these factors are met, the imposition of the ultimate sanction – dismissal – was not warranted under the circumstances and was legally incorrect and a clear abuse of discretion.

The Court deliberately:

a) Refused to grant the unopposed Motion to Amend Scheduling Order;

b) Refused to grant Plaintiff/ Appellant's unopposed Motions for Enlargement to file memoranda in opposition to the Defendants' motions for summary judgment (even though it noted that Appellant's counsel's motions for enlargement showed "good cause" for the requested enlargements);

c) Ruled, based upon the decision to deny the unopposed motions for enlargement, that the Plaintiff/ Appellant's opposing memoranda were "late" and would not be considered; and

d) Granted the "unopposed" motions for summary judgment.

These actions were legally incorrect and an abuse of discretion taken solely in order to frustrate the Appellant's efforts to ameliorate any harm to the Defendants from the belated initial disclosures.

Why did the Trial Court want so badly to dismiss Plaintiff/ Appellant's claims in this case?

Appellant wonders if it was as a result of improper bias against the Appellant and/or her counsel as evidenced by the Trial Court taking Appellant's counsel to task at the end of the hearing for using the term "feckless" in some of Appellant's papers.

II. Statement of Issues

A. Was It Reversible Error to Deny Appellant's Unopposed Motion to Amend and Modify Scheduling Order

Standard of Review: This is an issue involving the Trial Court's exercise of its discretion and is to be reviewed under an abuse of discretion standard. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994)
Preserved for Appeal: Appellant's Memoranda in Opposition to the Defendants' Motion for Summary Judgment, R. 74, 121 and during Oral Argument R. 163, 170-180

B. Was it Reversible Error to Deny Appellant's Various Unopposed Motions for Enlargement of Time to Oppose the Defendants' Motions for Summary Judgment When the Grounds for Said Motions Showed Good Faith And Compelling Reasons for Granting Those Extensions

Standard of Review: This is an issue involving the Trial Court's

exercise of its discretion and is to be reviewed under an abuse of discretion standard. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994) **Preserved for Appeal**: Appellant's Memoranda in Opposition to the Defendants' Motion for Summary Judgment, R. 74, 121 and during Oral Argument R. 163, 170-180

C. Was it Reversible Error for the Trial Court to Rule That the Appellant's Memoranda in Opposition to the Defendants' Motions for Summary Judgment Were Untimely and Stricken

Standard of Review: This is an issue involving the Trial Court's exercise of its discretion and is to be reviewed under an abuse of discretion standard. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994) **Preserved for Appeal**: Appellant's Memoranda in Opposition to the Defendants' Motion for Summary Judgment, R. 74, 121 and during Oral Argument R. 163, 170-180

D. Was it Reversible Error for the Court to Rule That the Appellant Should be Barred From Presenting Any Written or Oral Testimony Based Upon Late Initial Disclosures

Standard of Review: This is an issue involving the Trial Court's exercise of its discretion and is to be reviewed under an abuse of discretion standard. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994) **Preserved for Appeal**: Appellant's Memoranda in Opposition to the Defendants' Motion for Summary Judgment, R. 74, 121 and during Oral Argument R. 163, 170-180

E. Was it Reversible Error to Grant the Defendants' Motions for Summary Judgment and Dismiss Plaintiffs' Claims

Standard of Review: This is an issue of law to be reviewed for correctness. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994) **Preserved for Appeal**: Appellant's Memoranda in Opposition to the Defendants' Motion for Summary Judgment, R. 74, 121 and during Oral Argument R. 163, 170-180

F. Were the Court's Rulings Tainted by Bias Given the Trial Court's Incorrect Admonishment to Appellant's Counsel Over the Use of the Word "Feckless"

Standard of Review: This is an issue of fact and law. Fact determinations are given deference, while legal determination are reviewed for correctness. *State v. Pena*, 869 P. 2d 932, 935 (Utah 1994)

Preserved for Appeal: The Trial Court berated Appellant's counsel after the hearing ended. It is not on the transcript. Unusual circumstances require allowing the Appellant to raise it during this appeal.

III. Statement of the Case

A. Relevant Facts

1. Plaintiff/ Appellant filed her complaint on February 2, 2018. R. 1

2. Young 180 filed an Answer on May 23, 2018. R. 39

3. Nationwide filed a Motion for Summary Judgment on August 21, 2018. R. 55

4. Plaintiff/ Appellant filed three unopposed motions for enlargement. R. 66, 68 & 70

5. Plaintiff/ Appellant opposed Nationwide's motion on September 26, 2018. R. 74

6. Plaintiff/ Appellant served her initial disclosures on September 26, 2018. R. 84

7. Plaintiff/ Appellant filed her Motion to Amend Scheduling Order also on September 26, 2018. R. 72

8. Neither Young 180 nor Nationwide opposed the Motion to Amend Scheduling Order. Docket; Admitted at Oral Argument, R. 163

9. Plaintiff/ Appellant filed a Request to Submit with respect to her unopposed Motion to Amend Scheduling Order on March 4, 2018 – before oral argument on the motions. R. 126

10. Young 180 finally filed its initial disclosures on October 17, 2018. R. 103

11. Young 180 filed its own motion for summary judgment on December 17, 2018. R. 112

12. Plaintiff/ Appellant made a motion for enlargement to oppose Young 180's Motion for Summary Judgment. R. 116

13. Plaintiff/ Appellant filed her opposition to Young 180's Motion for Summary Judgment on March 4, 2019. R. 121

14. A hearing on the motions was held on March 4, 2019. R. 117, 127

15. As of the hearing:

    a. Plaintiff/ Appellant's Motion to Amend Scheduling Order was unopposed and it had been submitted for decision.

    b. The Defendants/ Appellees had acquiesced in Plaintiff/ Appellant's

motions for enlargement as evidenced by their non-opposition to them.

c. The Plaintiff/ Appellant's 9/26/18 initial disclosures were "identical" to Young 180's 10/17/18 initial disclosures. R. 192

d. If the unopposed Motion to Amend Scheduling Order were to be granted, all motions would be rendered moot, all prejudice to the defendants would have been eliminated, and the case would have been ready to proceed in the ordinary course through a short period of discovery and then trial setting. R. 170

B. Procedural History

1. The foregoing is incorporated herein.

2. At the March 4, 2019 hearing, the Trial Court:

   a. Denied the unopposed Motion to Amend Scheduling Order,

   b. Denied the unopposed Motions for Enlargement of Time to oppose the Defendants' motions for summary judgment;

   c. Found that the Defendants' motions for summary judgment were unopposed;

   d. Ruled that since discovery had ended, the defendants would suffer harm as a result of Plaintiff/ Appellant's belated initial

disclosures;

e. Implicitly ruled that the "good cause" for the late disclosures shown by the Plaintiff/ Appellants was not in fact "good cause;"

f. Granted the defendants' motions for summary judgment; and

g. Dismissed Plaintiff's complaint against the defendants with prejudice as the ultimate sanction for failing to timely serve initial disclosures. R. 196-203; 138, 148

h. After the hearing, the Trial Court castigated the Plaintiff/ Appellant's counsel for using the term "feckless" in describing the defendants' arguments and papers – declaring that the use of that term was "uncivil," and "offensive" – and had "no place" in the Trial Court's courtroom.

C. Disposition in the Trial Court

Dismissal of Plaintiff's complaint with prejudice.

IV. Summary of Argument

As quoted above (and will be again below):

"where the exclusion of evidence under Rule 37(c)(1) has the necessary effect of a dismissal, . . . , *district courts should*, in conjunction with the traditional *Woodworker*'s inquiry, *carefully explore and consider the*

> *efficacy of less drastic alternatives, ordinarily reserving* ***the extreme sanction of dismissal for cases involving bad faith or willfulness*** *or instances where less severe sanctions would obviously prove futile.*" *HCG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017).

This case does not involve any bad faith or wilfulness. Therefore, rather than entering a series of orders which deliberately failed to ameliorate any prejudice to the Defendants from the Appellant's belated initial disclosures, the Trial Court should have simply granted the Motion to Amend Scheduling Order and denied the motions for summary judgment as moot. That would have been fair and equitable. The failure to do so was an abuse of discretion and in some regards, legally incorrect.

V. Argument

A. It Was an Abuse of Discretion For the Court to Deny the Unopposed Motion to Amend Scheduling Order

The Motion to Amend Scheduling Order was unopposed. The Appellees/ Defendants signaled their acquiescence to that motion by not opposing it.

The Court sua sponte ruled that the Motion to Amend Scheduling Order was filed "too late" because it was filed after discovery had ended. But, the motion was filed a mere 8 months after the case was filed and proposed very reasonable amendments which would have given all parties a reasonable and fair opportunity

to conduct discovery and prepare for trial.

Consequently, this "too late" justification was not a "reasonable basis" for denying the motion.

To the contrary, granting the motion would clearly have furthered the policy in this State of having matters decided on their merits and not by way of technicalities.

As quoted above:

> "where the exclusion of evidence under Rule 37(c)(1) has the necessary effect of a dismissal, . . . , *district courts should*, in conjunction with the traditional *Woodworker*'s inquiry, *carefully explore and consider the efficacy of less drastic alternatives, ordinarily reserving* ***the extreme sanction of dismissal for cases involving bad faith or willfulness*** *or instances where less severe sanctions would obviously prove futile.*" *HCG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017).

This case does not involve any bad faith or wilfulness.

It seems clear that the Court sua sponte denied the unopposed Motion to Amend Scheduling Order so that the prejudice to the Defendants would NOT be ameliorated so that the Court could justify imposing the ultimate – but not favored – sanction of dismissal.

This was an abuse of discretion.

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B. It was an Abuse of Discretion for the Court to Deny the Appellant's Unopposed Motions for Enlargement of Time To Oppose the Defendants' Motion for Summary Judgment

The Court admitted in his Oral Ruling:

"I would say that plaintiff's counsel had good cause, perhaps, for requesting extensions for his filing a response to the motions ...." R. 198

But then denied those motions for enlargement.

There was no "reasonable basis" for those denials. The Court clearly wanted to "clear the road" for his ultimate ruling that Plaintiff's complaint should be dismissed. By denying those unopposed, good-cause-shown motions for enlargement, the Court then justified finding that the Defendants' motions for summary judgment were not timely opposed.

This was legally incorrect and an abuse of discretion that should be reversed.

C. It was an Abuse of Discretion for the Court to Rule that The Appellant's Memoranda in Opposition to the Defendant's Motions for Summary Judgment Were Untimely and Should Not be Considered

The Plaintiff/ Appellant did in fact file oppositions to the Defendants' motions for summary judgment. The Plaintiff/ Appellant's motions for enlargement were all based upon "good cause" –as admitted by the Court.

There was not only "no reasonable basis" to deny sua sponte the Appellant's motions for enlargement, but similarly there was "no reasonable basis" to rule that the Appellant's opposing memoranda were therefore late and would not be considered.

The Trial Court abused its discretion in making these rulings.

D. It was an Abuse of Discretion for the Court to Rule that Appellant Should be Barred From Presenting Any Oral or Written Evidence at Trial Herein Due to Late Initial Disclosures

1. The Sanction of Dismissal is Harsh And Should Not be Imposed If Lesser Sanctions Can be Imposed and/or the Alleged Harm Can be Ameliorated

With respect to the "harmless" qualifier in the Rule, as indicated above, the Federal Courts have articulated the following helpful factors to guide a trial court in exercising its discretion:

> "[T]he court should consider the following factors: (1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability of the party to cure the prejudice; (3) the extent to which introducing such testimony would disrupt the trial; and (4) the [proffering] party's bad faith or willfulness.' *Jacobsen v. Deseret Book Co.*, 287 F.3d at 953 (quoting *Woodworker's Supply Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d at 993).

Furthermore,

> "where the exclusion of evidence under Rule 37(c)(1) has the necessary effect of a dismissal, . . . , district courts should, in conjunction with the traditional *Woodworker*'s inquiry, carefully explore and consider the

efficacy of less drastic alternatives, ordinarily reserving the extreme sanction of dismissal for cases involving bad faith or willfulness or instances where less severe sanctions would obviously prove futile." *HCG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017).

In this case:

1) **There was no surprise** to the Defendants when they received the Appellant's belated disclosures – the Defendants already had all of those documents and knew about all of those witnesses;

2) **All possible prejudice** arising from the belated disclosure **could easily have been completely eliminated** by simply granting the Appellant's unopposed Motion to Amend the Scheduling Order;

3) **There was no disruption to the "trial"** – nor would there be to the case as a whole at all – as long as the unopposed Motion to Amend Scheduling Order were granted so as to ameliorate any prejudice; and

4) There was **no evidence of wilfulness or bad faith** on the Appellant's part whatsoever.

Because none of these factors are met, the imposition of the ultimate sanction – dismissal – was not warranted under the circumstances and was legally incorrect and a clear abuse of discretion.

2. Defendant Young 180 Essentially Admitted That It Suffered No Harm From the Late Disclosures

Young 180's counsel, Nicholas Hart, made the following critical admission during oral argument:

"No, your Honor. **The initial disclosures that were provided by both**

parties are identical. I mean, it's -- it's -- as mentioned, it's not a terribly document-extensive case, with one contract, with other information that's provided in these initial disclosures." R. 192, lines 14-18

The Defendants already had in their possession all of the information that the Appellant provided in her initial disclosures. Young 180's own initial disclosures were "identical" to the Appellant's.

Why? Because, this is "not a terribly document-extensive case, with one contract ...."

There can be no harm to the Defendants from belated initial disclosures if the Defendants already had all of that information in their possession.

No harm. It was legally incorrect for the Trial Court to conclude, under these facts, that there was harm.

It was an abuse of discretion to ignore this admission that the Defendants already had the documents – and therefore did not suffer any harm as a result of the Appellant's belated initial disclosures.

3. Defendant Young 180 Filed Its Own Disclosures More Late Than the Appellant and Should Have Been Estopped From Asking For Sanctions Against Appellant

Young 180 served its "identical" initial disclosures **even later than Appellant.**

The Appellant argued that due to Young 180's own belated initial

disclosures, its hands were not clean and it was estopped from requesting that Appellant be barred from using Appellant's belated disclosures.

It was legally incorrect for the Trial Court to rule otherwise.

E. It was an Abuse of Discretion to Impose the Ultimate Sanction of Dismissal

Pursuant to the authorities and argument set forth in D.1 above, which are incorporated herein, there was not in fact a reasonable basis for the Trial Court to impose the ultimate sanction of dismissal of Appellant's claims herein.

Further, the Appellant did show "good cause" for the delay.

The Trial Court therefore abused its discretion in so deciding and should be reversed.

F. The Trial Court's Unusual Criticism of Plaintiff's Counsel for Using the Term "Feckless" Was Not Only Inaccurate and Unfair, But Strongly Suggested an Impermissible Bias Against Appellant And/or Her Counsel

After announcing his rulings and while the parties' counsel were gathering their materials and preparing to leave the court, the Trial Court addressed Segota's counsel and stated that the Court had previously never heard of the term "feckless" and had looked it up on line. The Trial Court stated that he had found definitions of "feckless" which were offensive and ... with some ill-concealed anger toward Segota's counsel ... stated that the

use of the term "feckless" was "uncivil," unprofessional and unwelcome in his courtroom.[2]

Segota's counsel was stunned because he had first seen attorney Craig Johnson, from Packard Packard & Johnson, use this term in papers filed in a major False Claims Act case against Hercules which resulted in a $65 million settlement.[3] Steffensen worked closely with Mr. Johnson for almost ten years. Mr. Johnson is the personification of the descriptor "a scholar and a gentlemen." No one ever objected to Mr. Johnson's use of "feckless" at any time during that major Federal litigation.

Segota's counsel told the Court that it was Steffensen's understanding that the term essentially meant "without merit," and was not meant to be offensive but merely descriptive. (See definitions of "feckless" in Exhibit A attached hereto)

Clearly the Trial Court became offended by the use of this term and was angry and upset with Segota's attorney – unfairly so. Perhaps this anger affected the Court's rulings.

VI. Conclusion

For the reasons set forth above, this Court should:

1. Reverse the order denying Appellant's Motion to Amend Scheduling Order and direct the Trial Court to set a new, equitable schedule for this case;

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[2]Without the benefit of the hearing transcript, this is Segota's counsel's best recollection of the Court's statements in this regard.

[3]*Colunga ex rel USA v. Hercules*

2. Reverse the order denying the Appellant's various motions for enlargement to oppose the Defendants' motions for summary judgment;

3. Reverse the ruling that the Appellant's opposing memoranda were late and would not be considered;

4. Reverse the ruling that the Defendants' motions for summary judgment were unopposed, were not defective and should be granted – and upon remand direct the Trial Court to deny said motions for summary judgment;

5. Reverse the Order dismissing Plaintiff/ Appellant's claims and complaint herein against the Defendants – thereby reinstating this case.

DATED this 11th day of October, 2019.

/s/ Brian W. Steffensen

Certificate of Compliance

This brief complies with the page and words limits of URAP 24(g). It contains 3,366 words.

This brief complies with the requirements of URAP 21 governing public and private records.

This brief complies with typeface limitations of URAP 27. It is printed in Times New Roman 14 pt font.

/s/ Brian W. Steffensen

Addendum

A- Definitions of Feckless
B- Order Granting Nationwide's Motion for Summary Judgment
C- Order Granting Young 180's Motion for Summary Judgment

I hereby certify that on this 11th day of October, 2019, I caused a true and correct copy of Appellant's Opening Brief to be served via email, and two hard copies to be mailed, to Nicholas Hart, attorney for Young 180 and Nationwide Insurance.

/s/ Brian W. Steffensen

Addenda

A- Definitions of Feckless
B- Order Granting Nationwide's Motion for Summary Judgment
C- Order Granting Young 180's Motion for Summary Judgment

A- Definitions of Feckless

Definitions of "Feckless"

Miriam Webster

feckless adjective
feck·?less | \ 'fek-l?s \
Definition of feckless
1 : WEAK, INEFFECTIVE
She can't rely on her feckless son.
2 : WORTHLESS, IRRESPONSIBLE
a feckless maneuver that could only serve to strengthen the enemy
— Simon Schama

Dictionary. Com

feckless[fek-lis]

adjective

ineffective; incompetent; futile:
feckless attempts to repair the plumbing.

having no sense of responsibility; indifferent; lazy.

Vocabulary.Com

feckless
If a newspaper editorial describes a politician as feckless, you might wonder, "What is feck, and why doesn't he have any?" In fact, the columnist is accusing the politician of being irresponsible and incompetent.

Vocabulary Shout-Out

Did you know that most varieties of English are in fact "feck"-less? They don't contain a word feck, only the negative counterpart feckless. The "feck" in feckless began as a short form of effect used in the Scots dialect. So feckless essentially means "ineffective," but is also used to describe someone who is irresponsible, incompetent, inept, or without purpose in life.

Usage examples:

It is a truth universally acknowledged that millennials are a feckless bunch who can't get on the housing ladder because they spend all their money on avocado toast.
The GuardianFeb 28, 2019

The odds are that, with an entirely feckless Republican Party serving in the U.S.
Salon Feb 22, 2019

This film isn't particularly kind to Queen Anne, the feckless monarch at its core, but history hasn't been, either.
New York Times Feb 20, 2019

After almost two years of disputes between school administrators and government officials, multiple rounds of student-led protests, and one feckless U.S. ambassador, the announcement was made: Our school was leaving the country.
Slate Feb 19, 2019

Could it be that Trump's reckless spending and his feckless Republican enablers will doom Democratic firebrands to live in the real world?
Washington Post Feb 7, 2019

Responding to Ms Allan's comments, Labour councillor Lee Carter accused her of delivering "12 minutes of fact-free and feckless words about a process that means so much to so many courageous people".
BBC Feb 5, 2019

Europe is feckless in the face of U.S. pressure, they say, and Iran is wasting its time with negotiations.
Washington Post Feb 1, 2019

That suggests the value of a public pension system that is insulated, and that insulates beneficiaries, from cyclical turbulence, feckless employers and poor individual choices.
Washington Post Jan 30, 201

Vocabulary. Com Shoutout:

"Feckless Weakling" is Last Night's Republican Debate Stand-Out Phrase
"Now that's some good vocabulary!" a Vocabulary.com user writes in.

December 16, 2015

A Vocabulary.com user reported on a vocab-in-the-news moment today: He woke up to his clock-radio alarm in mid-Republican-presidential-debate recap, just in time to hear Governor Chris Christie calling President Barack Obama a "feckless weakling."

"Now that's some good vocabulary!" our user wrote in.

He is not wrong. Feckless is a wonderful piece of vocabulary. It means "generally incompetent" and "unfit." It's derived from feck, a Scottish shortened form of effect, so it literally means

"effectless." Think of it as a word you might use to dismiss your good-for-nothing son-in-law.

Based on last night's spike in feckless look-ups reported by Merriam-Webster, we can infer that our user wasn't the only one struck by this word's dismissive, twist-the-knife quality. The word is in fact part of a mini-meme. (For other relevant vocabulary from last night's debate see our "Relevant Words from the Fifth Republican Presidential Debate" vocabulary list.)

Christie himself had used feckless in the undercard round of the last Republican debate, referring to "an absolutely weak and feckless foreign policy that was engineered by Hillary Clinton and Barack Obama." And back in 2012, following the storming of the U.S. embassy in Benghazi, Sen. John McCain suggested that "the feckless foreign policy as conducted by this president...is such that the president of the United Stated will not even set deadlines [with Iran]."

Earlier that year, when then presidential candidate Mitt Romney compared Obama's foreign policy to President Jimmy Carter's during the 1977 Iran hostage crisis in a Washington Post op-ed, he used feckless as well.

Beginning Nov. 4, 1979 , dozens of U.S. diplomats were held hostage by Iranian Islamic revolutionaries for 444 days while America's feckless president, Jimmy Carter, fretted in the White House. ...The same Islamic fanatics who took our diplomats hostage are racing to build a nuclear bomb. Barack Obama, America's most feckless president since Carter, has declared such an outcome unacceptable, but his rhetoric has not been matched by an effective policy. While Obama frets in the White House, the Iranians are making rapid progress toward obtaining the most destructive weapons in the history of the world.

After Romney's op-ed appeared, Sen. John Kerry defended Obama on the Senate floor. Kerry urged his audience to not only recall the killing of Osama bin Laden as a foreign policy achievement demonstrating Obama's effectiveness, but to consult the feckless entry in their dictionaries.

"George W. Bush may have said 'wanted dead or alive' but it was President Obama who delivered it," Kerry said. "I don't know if Governor Romney has checked the definition of the word 'feckless' lately, but that raid ain't it."

Romney was hardly the first to call Obama feckless. In 2011, Jim Garrison used the word to describe Obama's domestic policy in a Huffington Post piece, "Obama the Feckless."

Obama will certainly go down as the first black American president, and this is how he will probably be remembered in the history books. But in terms of the actual significance of his leadership and what he substantively has done during his tenure, 'feckless' — which means "unable or unwilling to do anything," or "lacking the organization necessary to succeed" — is the only apt word.

Finally, there's this: According to Edward Klein's juicy Blood Feud, a tell-all chronicle of what Klein characterizes as a simmering feud between the Clintons and the Obamas, even Hillary

Clinton has called the president "incompetent and feckless" in a "boozy" conversation with friends.

Whether President Obama is in fact feckless is something that only history will tell us, but the fact that it has become a mini-meme has at least allowed this highly specific vocabulary word to get some air.

B- Order Granting Nationwide's Motion for Summary Judgment

The Order of the Court is stated below:
Dated: March 21, 2019 05:16:38 PM
/s/ MICHAEL S. EDWARDS
District Court Judge

Clifford J. Payne (USB No. 5533)
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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF UTAH

ANGELA SEGOTA, Plaintiff, v. SPENCER W YOUNG, SELDON OLSEN YOUNG, SPENCER W YOUNG JR., LESLI GOBLE BARKER, YOUNG 180 CO, dba YOUNG CHRYSLER JEEP DODGE RAM, NATIONWIDE MUTUAL INSURANCE COMPANY, DOES 1-100, Defendants.	**ORDER GRANTING DEFENDANT NATIONWIDE'S MOTION FOR SUMMARY JUDGMENT (PROPOSED)** **Civil No.: 180700133** **Judge: David Connors**

This matter came before the Court on March 4, 2019, on Defendant Nationwide Mutual Insurance Company's (Nationwide's) Motion of Summary Judgment. Present at the hearing were counsel for all parties in this matter. After reviewing the pleadings filed in this matter, including but not limited to all submitted memoranda and referenced attachments thereto, hearing oral argument on behalf of the parties, and analyzing the applicable rules and cited authorities, the Court finds as follows:

1. Defendant Nationwide filed its Answer to Plaintiff's Complaint on March 23, 2018,

and that same day the Court sent to all counsel the Notice of Event Due Dates, noting that Plaintiff's Initial Disclosures were due April 16, 2018, and that the Fact Discovery deadline was September 1, 2018.

2. No Initial Disclosures were served by Plaintiff on or before the April 16, 2018 deadline.

3. Defendant Nationwide served its Initial Disclosures on May 7, 2018, and that same day the Court sent to all counsel a Second Notice of Event Due Dates, noting that the time for completing Initial Disclosures had expired, and restating that the Fact Discovery deadline was September 1, 2018.

4. By August 21, 2018, Plaintiff had still never provided any Initial Disclosures or any request for extension, and on that date, Defendant Nationwide filed the Motion for Summary Judgment and supporting Memorandum.

5. Thereafter, Plaintiff filed a series of three Motions for Enlargement of Time to Respond to Nationwide's Motion for Summary Judgment, but never submitted or obtained an Order from the Court granting any of the proposed extensions.

6. On September 1, 2018, Fact Discovery closed in accordance with the date set forth in Rule 26 of the Utah Rules of Civil Procedure and the Notices of Event Due Dates sent to counsel by the Court on March 23, 2018 and May 7, 2018.

7. Eventually, on September 26, 2018, Plaintiff provided an Opposition to Defendant Nationwide's Motion for Summary Judgment, and on that same date served Plaintiff's Initial

Disclosures and filed a Motion to Amend Scheduling Order and Request for Scheduling Conference.

Based on these findings, as supported by the record in this case, the Court concludes as follows:

1. Plaintiff's Opposition to Defendant Nationwide's Motion for Summary Judgment was not timely, and on that basis alone the Motion can be granted.

2. Plaintiff's Initial Disclosures, served approximately 5 ½ months after the April 6, 2018 deadline, were provided too late to allow for meaningful discovery prior to the September 1, 2018 Fact Discovery deadline, especially considering that the burden of proof is on Plaintiff.

3. That Rule 26 (d)(4) URCP, dealing with the consequences to a party for its failure to provide Initial Disclosures, is applicable to Plaintiff in this instance, and that an exception for good cause or harmlessness is not applicable since no good cause has been demonstrated and the delay of not providing Initial Disclosures until after the Fact Discovery deadline is not without harm.

4. The Court further concludes that the Rule must be enforced as written, and as discussed in the Advisory Committee Notes.

5. Additionally, the Court concludes that, where no documents were timely provided in support of Plaintiff's fraud claims, and there is no evidence that the dealership would be unwilling or unable to indemnify Plaintiff in the event that such fraud claims could be supported and established, there is no claim that has accrued under the dealership bond issued by Defendant

Nationwide.

6. The Court also concludes that Plaintiff's Motion to Amend Scheduling Order, filed after the Fact Discovery Deadline, is also untimely and therefore without merit.

Therefore, based on the foregoing findings and conclusions, the Court grants Defendant Nationwide's Motion for Summary Judgment, and orders as follows:

IT IS HEREBY ORDERED that Defendant Nationwide's Motion for Summary Judgment is GRANTED, and Plaintiff's Complaint against it in this case is hereby dismissed, with prejudice, each of the parties to bear their own expenses and costs.

**** Executed and entered by the Court as indicated by the date and seal at the top of pg 1****

Approving as to form:

_____
Brian Steffensen
Attorney for Plaintiff

/s/ Nicholas Hart
(Signed by Clifford J. Payne with permission of Nicholas Hart)

_____
Nicholas Hart
Attorney for Defendant Young 180

C- Order Granting Young 180's Motion for Summary Judgment

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Attorney for Young 180 Co.

IN THE SECOND DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF UTAH

ANGELA SEGOTA, Plaintiff, v. YOUNG 180 CO, dba YOUNG CHRYSLER JEEP DODGE RAM, NATIONWIDE MUTUAL INSURANCE COMPANY, DOES 1-100. Defendants.	**ORDER GRANTING DEFENDANT YOUNG 180 CO.'s MOTION FOR SUMMARY JUDGMENT** Civil No. 180700133 Judge: David Connors

This matter came before the Court on March 4, 2019, on Defendant YOUNG 180 CO. (Young's) Motion of Summary Judgment. Present at the hearing were counsel for all parties in this matter. After reviewing the pleadings filed in this matter, including but not limited to all submitted memoranda and referenced attachments thereto, hearing oral argument on behalf of the parties, and analyzing the applicable rules and cited authorities, the Court finds as follows:

1. Plaintiff's Opposition to Defendant Young's Motion for Summary Judgment was not timely, and on that basis alone the Motion can be granted.

2. No Initial Disclosures were served by Plaintiff on or before the April 16, 2018 deadline.

3. Plaintiff's Initial Disclosures, served approximately five and a half (5 ½) months after

the April 6, 2018 deadline, were provided too late to allow for meaningful discovery prior to the September 1, 2018 Fact Discovery deadline, especially considering that the burden of proof is on Plaintiff.

4. On September 1, 2018, Fact Discovery closed in accordance with the date set forth in Rule 26 of the Utah Rules of Civil Procedure and the Notices of Event Due Dates sent to counsel by the Court on March 23, 2018 and May 7, 2018.

5. On September 26, 2018, Plaintiff provided an Opposition to Defendant Nationwide's Motion for Summary Judgment, and on that same date served Plaintiff's Initial Disclosures and filed a Motion to Amend Scheduling Order and Request for Scheduling Conference.

6. On December 7, 2018, the Defendant, Young 180 Co., filed a Motion and Memorandum for Summary Judgment.

7. On December 24, 2018, Plaintiff filed an Objection to Young 180 Notice to Submit and Motion for Extension to Oppose Motion for Summary Judgment and on March 4, 2019, Plaintiff filed an Opposition to Young 180s Motion for Summary Judgment and Request for an Award of Attorneys Fees.

Based on these findings, as supported by the record in this case, the Court concludes as follows:

1. Plaintiff's Opposition to Defendant Young's Motion for Summary Judgment was not timely, and on that basis alone the Motion can be granted.

2. Plaintiff's Initial Disclosures, served approximately five and a half (5 ½) months after the April 6, 2018 deadline, were provided too late to allow for meaningful discovery prior to the September 1, 2018 Fact Discovery deadline, especially considering that the burden of proof is on Plaintiff.

3. That Rule 26 (d)(4) URCP, dealing with the consequences to a party for its failure to

provide Initial Disclosures, is applicable to Plaintiff in this instance, and that an exception for good cause or harmlessness is not applicable since no good cause has been demonstrated and the delay of not providing Initial Disclosures until after the Fact Discovery deadline is not without harm.

4. The Court further concludes that the Rule must be enforced as written, and as discussed in the Advisory Committee Notes.

5. The Court also concludes that Plaintiff's Motion to Amend Scheduling Order, filed after the Fact Discovery Deadline, is also untimely and therefore without merit.

Therefore, based on the foregoing findings and conclusions, the Court grants Defendant Young's Motion for Summary Judgment, and orders as follows:

IT IS HEREBY ORDERED that Defendant Young 180 Co.'s Motion for Summary Judgment is GRANTED, and Plaintiff's Complaint against it in this case is hereby dismissed, with prejudice, each of the parties to bear their own expenses and costs.

Executed and entered by the Court as indicated by the date and seal at the top of page one (1)

Approving as to form:

_____
Brian Steffensen
Attorney for Plaintiff

/s/ Clifford Payne (signed with permission of Mr. Payne by Nicholas K. Hart)
Clifford Payne
Attorney for Defendant Nationwide Mutual Insurance Company