

NOV 12 2019

IN THE UTAH COURT OF APPEALS

ANGELA SEGOTA,

Plaintiff / Appellant,

v.

YOUNG 180 CO, dba YOUNG
CHRYSLER JEEP DODGE RAM,
NATIONWIDE MUTUAL INSURANCE
COMPANY, DOES 1-100.

Defendants / Appellees.

PUBLIC

Case No. 20190253-SC

Brief of Appellees

Appeal from the Second District Court, Davis County, from a granting of summary judgment in favor of the Defendants before the Honorable Michael S. Edwards

Brian W. Steffensen
Steffensen Law
PO Box 2279
Salt Lake City, Utah 84110
Telephone: (801) 927-809
brianwsteffensen@gmail.com
Counsel for Appellant

Nicholas K. Hart
YOUNG 180 CO.
645 N. Main Street.
Layton, Utah 84041
Telephone: (801) 927-1809
nhart@youngauto.net
Counsel for Appellees

LIST OF ALL THE PARTIES

PARTIES PARTICIPATING IN THE APPEAL

Angela Segota, Appellant

Brian Steffensen, attorney for Appellant

Young 180 Co., Appellee

Nationwide Mutual Insurance Company, Appellee

Nicholas Hart, attorney for Appellees.

NOT PARTICIPATING IN THE APPEAL

Spencer W. Young

Seldon Olsen Young

Spencer W. Young Jr.

Lesli Goble Barker

Plaintiff/Appellant dismissed the alleged claims against these named individually named defendants on May 25, 2019.

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TABLE OF AUTHORITIES

RULES:

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Rule 26(a)(1)(C) 10, 11

Rule 26(d)(4) 6, 9, 11, 12, 13, 15

URCP 37

Rule 37(c)(1) 12

CASES:

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HGG Platinum, LLC v. Preferred Prod. Placement Corp., 873 F.3d 1191, 1206 (10th Cir. 2017). 12

Keystone Ins. Agency, LLC v. Inside Ins., LLC, 2019 UT 20 (2019) 12, 13

I. INTRODUCTION

The trial court granted Defendant/Appellee, Nationwide Mutual Insurance Company's (hereinafter "Nationwide") motion for summary judgment and Defendant/Appellee, Young 180 Co.'s (hereinafter "Young") motion for summary judgment based on the Plaintiff/Appellant, Angela Segota (hereinafter "Segota") failing to provide initial disclosures to the defendants during fact discovery. As such, the following paragraphs in the introduction will provide background information on the case.

On August 21, 2018, Nationwide filed a motion for summary judgment. Segota filed three motions to enlarge time to respond to Nationwide's summary judgment motion and on September 26, 2018, Segota filed an opposition to Nationwide's motion for summary judgment, a motion to amend the scheduling order and certificate of service of Plaintiff's initial disclosures.

Subsequently, Young served their initial disclosures and on December 7, 2018, Young filed a motion for summary judgment. On December 24, 2018, Young filed a notice to submit on their motion for summary judgment after Segota failed to respond to their motion for summary judgment. On December 24, 2018, Segota objected to Young's notice to submit and asked the trial court for an extension to respond to Young's motion for summary judgment.

On December 28, 2018, the trial court sent notice of the scheduled oral arguments for both Nationwide's and Young's motions for summary judgment and the hearing was

set for March 4, 2019. On the same day as oral arguments, on March 4, 2019, Segota filed her opposition to Young's motion for summary judgment and request for an award of attorney's fees, and notice to submit on Segota's motion to amend scheduling order. At the March 4, 2019 hearing, the trial court granted Nationwide's and Young's motions for summary judgment and denied Segota's motion to amend the scheduling order.

II. STATEMENT OF ISSUES

A. Did the trial court error in Denying Appellant's Unopposed motion to amend and the 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).

B. Did the trial court error in denying Appellant's motions for enlargement of time to oppose each Appellee's motions for summary judgment. 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).

C. Did the trial court error in ruling the Appellant's opposition to both Appellee's 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).

D. Did the trial court error in granting both Appellee's motions for summary judgment based on Appellants belated 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).

F. Was the trial court's ruling biased due to Appellant's use of the word "Feckless." Standard of Review: this is an issue of fact and law. Fact determinations are given deference, while legal determinations are reviewed for correctness. *State v. Pena*, 869 P. 2d 932,935 (Utah 1994).

III. STATEMENT OF CASE

A. STATEMENT OF RELEVANT FACTS

1. On February 7, 2018, Segota filed her Complaint. *R. at 1*.
2. On March 23, 2018, Nationwide filed and served its Answer. *R. at 11*.
3. On March 23, 2018, the notice of event due dates was filed with the trial court, and Pursuant to Rule 26 URCP, required Segota's initial disclosures were to be provided by April 6, 2018. *R.at 22*.
4. On March 23, 2018, the notice of event due dates was filed with the trial court, and Pursuant to Rule 26 URCP, required Young and Nationwide to file their Initial Disclosures on or before May 4, 2018. *Id*.
5. On May 7, 2018, Nationwide served their initial disclosures on the plaintiff. *R.at 22*.
6. On May 8, 2018, Segota filed a return of service for Young, however the date of service, January 29, 2018, was prior to the complaint being filed and proper service was

not performed on Young. *R. at 26.*

7. On May 10, 2018, Segota withdrew her motions for default judgment and default certificate and stipulated to allow Young until May 23, 2018 to file their answer. *R. at 35.*

8. On May 23, 2018, Young filed and served its Answer. *R. at 39.*

9. On May 25, 2018, Segota filed a notice of dismissal of claims against the individuals named as defendants in the case, but Segota did not dismiss claims against Young or Nationwide. *R. at 52-54.*

10. Notice of event due dates, filed with the Court on March 23, 2018, and the Second Notice of Event Due Dates, filed on May 9, 2018, listed the fact discovery completion date as September 1, 2018. *R. at 22 and 29.*

11. On August 21, 2018, Nationwide filed a motion for summary judgment. *R.at 55-57.*

12. On September 4, 2018, Segota filed a motion for enlargement of time to respond to Nationwide's motion for summary judgment. *R.at 66.*

13. On September 17, 2018, Segota filed a second motion for enlargement of time to respond to Nationwide's motion for summary judgment. *R. at 68.*

14. On September 24, 2018, Segota filed a third motion for enlargement of time to respond to Nationwide's motion for summary judgment. *R. at 70.*

15. On September 26, 2018, Segota filed an opposition to Nationwide's motion for summary judgment, motion to amend scheduling order and certificate of service of serving Plaintiff's initial disclosures. *R. at 72, 74, and 84.*

16. On October 2, 2018, Nationwide filed a reply memorandum in support of Nationwide's Motion for summary judgment. *R. at 88.*
17. On September 30, 2018, Young filed a substitution of counsel and on October 17, 2018, Young served their initial disclosures. *R. at 85 and 103.*
18. On December 5, 2018, due to a conflict, Judge David Connors recused himself from the case. *R.at 104-106.*
19. On December 7, 2018, Young filed their Motion for Summary Judgment. *R. at 107-112.*
20. On December 24, 2018, based on the unopposed motion, Young filed notice to submit on Young's motion for summary judgment. *R. at 114.*
21. On December 24, 2018, Segota filed an objection to Young's notice to submit on the motion for summary judgement and requested an extension to oppose the motion. *R. at 116.*
22. On December 28, 2018, the court sent notice of the oral argument that was scheduled for March 4, 2019 before Judge Michael Edwards. *R. at 117 and 119.*
23. On March 4, 2018, just prior to the oral argument hearing, Segota filed a request to submit on Segota's motion to amend the scheduling order and opposition to Young's motion for summary judgment. *R. at 121 and 126.*
24. The trial court granted Nationwide's and Young's Motions for summary judgment. *R. at 138 and 148; see also Addendum A, Order Granting Nationwide Mutual Insurance*

Company's Motion for Summary Judgment and Addendum B, Order Granting Young 180 Co.'s Motion for Summary Judgment.

B. Procedural History

The trial court granted Nationwide's and Young's motions for summary judgment and denied Segota's motion to amend the scheduling order. *R. at 127*. Based on the findings in Nationwide's Order, the district court made the following conclusions:

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. *R. at 138; See also Addendum A.*
2. Plaintiff's Initial Disclosures, served approximately five and a half (5.5) 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. *Id.*
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. *Id.*
4. The Court further concludes that the Rule must be enforced as written, and as discussed in the Advisory Committee Notes. *Id.*

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. *Id.*
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. *Id.*

In the Order Granting Young's Motion for Summary Judgment, the court made the following findings:

7. Plaintiff's Opposition to Defendant Young's Motion for Summary Judgment was not timely, and on that basis alone the Motion can be granted. *R. at 148; See also Addendum B.*
8. No Initial Disclosures were served by Plaintiff on or before the April 16, 2018 deadline. *Id.*
9. Plaintiff's Initial Disclosures, served approximately five and a half (5.5) 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. *Id.*
10. 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. *Id.*

11. 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. *Id.*
12. On December 7, 2018, the Defendant, Young 180 Co., filed a Motion and Memorandum for Summary Judgment. *Id.*
13. 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 180's Motion for Summary Judgment and Request for an Award of Attorney's Fees. *Id.*

Based on the findings in Young's Order, the District Court made the following conclusions:

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

16. 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. *Id.*
17. The Court further concludes that the Rule must be enforced as written, and as discussed in the Advisory Committee Notes. *Id.*
18. 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. *Id.*

C. DISPOSITION IN THE TRIAL COURT

The trial court granted Nationwide's and Young's motions for summary judgment and dismissed plaintiff's complaint with prejudice.

III. SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in following Rule 26(d)(4) of the Utah Rules of Civil Procedure by barring the Plaintiff/Appellant from using the evidence and witnesses that were not disclosed in Plaintiff's initial disclosures until after the close of fact discovery. The trial court did not abuse its discretion in finding the belated

disclosures were not harmless and without good cause. In addition, the trial court did not abuse its discretion in ruling against the Plaintiff's/Appellant's motions that were not properly submitted or filed timely. Also, the trial court did not error in reminding the Plaintiff/Appellant of the rules of professionalism and civility and how the use of the word "feckless" describing the opposing parties work is not courteous.

IV. ARGUMENT

Rule 26(a)(1)(C) of the Utah Rules of Civil Procedure requires that the parties in a case provide Initial Disclosures, and specifically requires that, at the outset of the case (within 14 days of the first filed Answer), plaintiffs provide information on witnesses, documents, or other materials that will be relied upon to support the claims being asserted. The Rule also specifies a direct and simple consequence for failing to timely disclose:

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witnesses, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failures.

The Advisory Committee comment expounded upon this, and guides the Court in this case:

The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to enforce them unless the failure is harmless or the party shows good cause for the failure.

Advisory Notes, Rule 26(a)(1).

Therefore, this analysis will address each of Segota's arguments in showing that

the trial court did not abuse its discretion or error in granting both Nationwide's and Young's Motions for summary judgment and deny Segota's motion to amend the scheduling order.

A. The Court did not abuse its discretion in denying Segota's Motion to Amend the Scheduling Order.

The trial court correctly ruled on this issue because the motion to amend the scheduling order was not timely or with merit. Rule 26 (d)(4) of Utah Rules of Civil Procedure requires that "if a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witnesses, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failures. Further, the advisory notes explain the rationale is to promote meaningful disclosures and avoid sandbagging. Advisory Notes, Rule 26(a)(1).

Here, the trial court correctly ruled that a motion to amend the scheduling order that is made after the close of fact discovery deadline is not timely and without merit. Further, at the time the motion to amend the scheduling order was filed by Segota on September 26, 2018, Nationwide had previously filed their motion for summary judgment and Segota was replying to Nationwide's motion for Summary Judgment. Not only did this motion to amend the scheduling order come after the close of fact discovery, on September 26, 2018, but the motion to amend the scheduling order was filed after Segota filed three motions to enlarge time to respond to Nationwide's motion for summary judgment and was filed on the same day as Segota's reply in Opposition to Nationwide's motion for summary judgment. Segota did not appropriately bring her motion to amend the scheduling order to

the trial court's attention by filing a request to submit hours before an oral argument relating to Nationwide's request to submit on their motion for summary judgment and Young's request to submit on their motion for summary judgment. Therefore, the trial court did not abuse its discretion by denying Segota's motion to amend the scheduling order based on its merits and timeliness.

It is important to note, Segota did not make a harmlessness or good cause argument for the justification of the belated disclosures, but argues that under Rule 37(c)(1) courts should be cautious and only use the sanction of dismissal for cases involving "bad faith or willfulness." *HGG Platinum, LLC v. Preferred Prod. Placement Corp.*, 873 F.3d 1191, 1206 (10th Cir. 2017). Segota does not explain how not serving initial disclosures or following the trial court's scheduling order is not acting in bad faith or willfulness. The trial court noted that Segota, as the plaintiff, had the burden of proof to bring forth the evidence in her case. *R. at 198, lines 15-25*. Importantly, Segota should have been alerting that she did not produce her initial disclosures when Nationwide served their initial disclosures on Segota. By not having this evidence or disclosures, Nationwide and Young were harmed. Specifically, Nationwide and Young were harmed by not knowing how to prepare their cases or what evidence Segota planned to use. Therefore, Segota did not establish good cause for this delay and it was harmful to both Nationwide and Young.

In *Keystone Ins. Agency, LLC v. Inside Ins., LLC*, 2019 UT 20, 445 P.3d 434 (2019), the Supreme Court of Utah held that the trial court did not abuse its discretion by excluding evidence under URCP 26(d)(4) when a party did not adequately make a damages calculation in their initial disclosures or during fact discovery. Further, in *Keystone*, the

Supreme Court held that the trial court did not abuse its discretion in excluding evidence under Rule 26(d)(4) after determining the disclosing party did not show good cause or show harmlessness. *Id.* at ¶18 and ¶19. Similar to *Keystone*, where the trial court did not abuse its discretion in excluding the evidence when the party did not have good cause or show harmlessness, here, Segota does not have a good cause for the delayed disclosures and the failure to provide initial disclosures during fact discovery harmed Nationwide and Young.

Therefore, the trial court did not abuse its discretion in granting Nationwide's and Young's motion for summary judgment and denying Segota's motion to amend the scheduling order because Segota did not establish a good cause or harmlessness in failing to produce their initial disclosures until after fact discovery.

B. The Court did not abuse its discretion in denying Plaintiff's Motions for Enlargement of Time to Oppose each Defendant's Motion for Summary Judgment

Segota did not provide full context as to why the trial court ruled against Segota's motions for enlargement of time to oppose each defendant's motions. The trial court provided the following justification as to why they did not grant Segota's motion:

I would say that plaintiff's counsel had good cause, perhaps, for requesting extensions for his filing a response to the motion, but that was never brought forward to the Court's attention. It was never ruled on by the Court. That -- that was on plaintiff's counsel to push that through to fruition if it was to be done, and it didn't happen.

R. at 198, lines 8-13. In context, the trial court explains because Segota did not bring the matter to the trial court's attention, the trial court could not rule on Segota's motions for

enlargement of time to oppose each defendant's motion for summary judgment. Further, the trial court explained that Segota may have had a good cause "perhaps," but Segota did not timely request to submit on the motions, so it was never brought to the trial courts attention. Further, on December 24, 2018, Segota filed her motion to enlarge her time to respond to Young's motion for summary judgment, however, Segota's opposition to Young's motion for summary judgment was not filed until the day of oral argument, on March 4, 2019. *R. at 121*.

Therefore, the trial court did not abuse its discretion in denying Segota's motion to enlarge time to respond to Young's and Nationwide's motions for summary judgment because the motions were not timely, without merit and not properly submitted to the trial court.

C. The trial court did not abuse its discretion by granting Nationwide's and Young's motion for summary judgment because Segota did not file her motions in opposition to the motions for summary judgment timely.

Here, in both Nationwide's and Young's motions for summary judgment, Segota requested an enlargement of time and the trial court did not rule on the motions. Therefore, the trial court did not abuse its discretion in granting Nationwide's and Young's motions for summary judgment because both of the motions for summary judgment were unopposed when Segota did not get the trial court's permission to enlarge the time to respond.

D. The trial court did not abuse its discretion in dismissing the case because the trial court did not find good cause or harmlessness in the belated disclosures.

Rule 26 (d)(4) of the Utah Rules of Civil Procedure provides that if a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witnesses, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failures.

Here, the trial court did not find good cause or harmlessness in Segota's delayed disclosures or discovery practices. Further, during oral argument, which is evidenced in the hearing transcript, Young repeatedly told the court that this delay caused harm. *R. at 191, lines 21-25; R. at 192, lines 1-5; and R. at 193, lines 19-24.* Young made the following statement after discussing the similarities between Segota and Young's initial disclosures:

This is in hindsight, after receiving their initial disclosures. I think that's very crucial to plaintiff's argument, that he's saying we had everything. But I said what I said based on already reviewing their initial disclosures and what our initial disclosures were after that. We are harmed in this case based on a seven-month delay of not receiving that information, not knowing what plaintiff was going to give to Young 180, and then receiving that initial disclosure, finding, well, it's the contract, it's other things. But that was in hindsight. I just want to let the Court know that that -- it does harm the plaintiff -- or excuse me -- the defendant, 180, and that's not an admission at all.

R. at 193, lines 12-24. Thus, Young did not make an admission relating to harmlessness, but made affirmative statements indicating that the lack of discovery caused speculation and harm to Young in preparing their case. It is also important that Segota as the plaintiff bore the burden of proof in establishing her case. Here, without Plaintiff's initial

disclosures, the defendants are harmed by speculating on undisclosed information, which harms their case.

Therefore, the trial court did not abuse its discretion in granting Nationwide and Young's Motion for summary judgment because the trial court did not find good cause and there was not an admission of no harm.

E. The trial court did not error or use bias in reminding Segota's counsel that the parties should use civility and professionalism in describing the opposing parties' work.

The trial court did not error or use bias in telling the parties to use professionalism and civility. The context of the use of the word "feckless" came when Segota's counsel made the following statement describing the opposing parties motion: "[t]he Motion is so feckless that this Court should award Mrs. Segota her costs and fees in having to address it." *R. at 125*. Although this may have come as a surprise to Segota's counsel how the trial court interpreted the use of the word "feckless," the trial court was speaking "generally" about courtesy and reminding the parties to be courteous, civil and professional. *R. at 202*. Further, the trial court reminded the parties that this profession is hard enough without disparaging each other. *Id.*

Therefore, the trial court did not error or use bias in speaking generally and reminding the parties to not disparage each other in their motions.

VI. CONCLUSION

Appellees respectfully request this Court to affirm the trial court's Orders granting both Nationwide's and Young's motions for summary judgment and affirm the trial court's rulings on Plaintiff/Appellant's motions.

Dated this 12 day of November, 2019.

/S/ Nicholas K. Hart
Nicholas K. Hart
Attorney for Appellees

CERTIFICATE OF COMPLIANCE

This brief complies with the page and word limits of URAP 24(g). It contains 4088 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 13 pt font.

DATED this 12th Day of November, 2019.

/S/ Nicholas K. Hart
Nicholas K. Hart
Attorney for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on this 12th Day of November, 2019. I caused a true and correct copy of Appellee's Brief to be served via email, and two hard copies to be mailed to Brian Steffensen, attorney for appellant.

/S/ Nicholas K. Hart
Nicholas K. Hart
Attorney for Appellees

ADDENDUM A

Order Granting Nationwide Mutual Insurance Company's Motion for Summary Judgment



Clifford J. Payne (USB No. 5533)
BURT & PAYNE, P.C.
7090 S. Union Park Ave., #450
Midvale, UT 84047
Telephone: (801) 849-8901
Email: cpayne@burtpayne.com

Attorneys for Nationwide Mutual Insurance Company

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

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

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

ADDENDUM B

Order Granting Young 180 Co's Motion for Summary Judgment



NICHOLAS K. HART (#14980)
YOUNG 180 CO.
645 N. Main Street.
Layton, Utah 84041
Telephone: (801) 927-1809
nhart@youngauto.net

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