

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

ALMINTY T. REYNOLDS,

Plaintiff,

CIVIL ACTION

v.

No.: 14-2009-DDC-TJJ

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendant United States of America's Motion to Compel Responses to Defendant's First Set of Interrogatories, First Request for Production of Documents, and Expert Disclosures (ECF No. 15). Defendant seeks an order compelling Plaintiff to produce her discovery responses to Defendant's First Set of Interrogatories and First Request for Production of Documents and, to the extent that Plaintiff intends to rely on expert testimony at trial, her expert disclosures and reports. The Assistant United States Attorney states in support of the motion that Plaintiff's counsel informed him on August 8, 2014, that Plaintiff would not be disclosing experts. Consistent with counsel's statement, Plaintiff has made no expert disclosures or filed expert reports, and has not sought to do so out of time. Similarly, Plaintiff has not responded or objected to Defendant's discovery requests, nor has she sought an extension of time to do so.

After conferring with Plaintiff's counsel on several occasions to inquire as to counsel's ability to reach Plaintiff to try to resolve the issue without court action, as required by Fed. R. Civ. P. 37(a)(1) and D. Kan. Rule 37.2, Defendant timely filed the instant Motion to Compel.<sup>1</sup> Defendant

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<sup>1</sup>Defendant served its opening discovery on July 11, 2014 (ECF No. 14), making Plaintiff's responses and objections due on August 11, 2014. Pursuant to the Scheduling Order, Plaintiff's

asks the Court to set a reasonable deadline for Plaintiff to respond to Defendant's opening discovery and to disclose expert witnesses and produce their reports.

Plaintiff has not filed a response to Defendant's motion. In the absence of such a response, the Court will consider and decide the motion as an uncontested motion pursuant to D. Kan. Rule 7.4. Plaintiff's complete failure to respond to Defendant's discovery requests, without any explanation, or to seek leave for her failure causes the Court to conclude that the motion should be granted.

Defendant does not request that the Court award it the costs and attorney's fees associated with filing this Motion to Compel. Because the Court is granting the motion, the Court must award reasonable expenses, unless the Court finds that Defendant failed to make a good faith effort to obtain the reasonable discovery without court action or that other circumstances make an award of expenses unjust.<sup>2</sup> The Court finds that, under the circumstances to date (Plaintiff's counsel have filed a Motion to Withdraw (ECF No. 16), stating that they have been unable to contact Plaintiff), an award of expenses would be unjust. The Court will likely have a different view if Plaintiff does not comply with this order, and the Court cautions that failure to do so is not conducive to avoiding sanctions.

**IT IS THEREFORE ORDERED THAT** Defendant United States of America's Motion to Compel Responses to Defendant's First Set of Interrogatories, First Request for Production of

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expert witness designations were due on August 8, 2014 (ECF No. 11). Defendant filed the instant motion on September 4, 2014, which is fewer than 30 days from the date of default. *See* D. Kan. R. 37.1(b).

<sup>2</sup>Fed. R. Civ. P. 37(a)(5)(A). A third category, that objections are substantially justified, does not apply with respect to this motion because Plaintiff made no objections.

Documents, and Expert Disclosures (ECF No. 15) is **GRANTED**. Plaintiff Alminty T. Reynolds shall (1) serve, without objection, her answers to Defendant's First Set of Interrogatories and her responses to Defendant's First Request for Production of Documents, and (2) disclose any expert witnesses whose testimony she intends to rely on at trial, along with their reports, within **ten (10) days** of the date of this Order.

Dated this 8th day of October, 2014 in Kansas City, Kansas.

s/ Teresa J. James  
Teresa J. James  
United States Magistrate Judge