

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GEORGETOWN)	CASE NO: 2019-CP-22-00507
)	
Evelyn Mccray,)	
)	
Plaintiff,)	
)	
-vs-)	<u>MOTION FOR SANCTIONS AGAINST</u>
)	<u>DEFENDANT WALMART</u>
)	
Walmart, Inc. a/k/a Wal-mart Stores East,)	
LP, and Southern Companies of South)	
Carolina, Inc., d/b/a "Southco";)	
)	
Defendant.)	
)	
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TO: ATTORNEY FOR DEFENDANT WALMART, INC.		

Plaintiff Evelyn Mccray, by and through her undersigned counsel, brings this Motion for Sanctions before this Court to address Defendant Walmart's blatant abuse of discovery and nondisclosure of documents that Plaintiff has requested throughout discovery and is entitled to obtain. Defendant Walmart has abused the discovery process in the following particulars: (1) in willful failure to promptly produce documents and relevant information that the Plaintiff has requested and that Plaintiff is entitled to; (2) in redacting portions of documents that are directly relevant to the issues at the heart of Plaintiff's case; and (3) in arbitrarily designating documents as confidential despite the documents containing no trade secrets, sensitive or proprietary information.

Facts of the Case

On August 16, 2018, Plaintiff fell in the parking lot of the Walmart store located at 1310 N. Fraser St. in Georgetown, South Carolina. There is no dispute that the Plaintiff fell and sustained bodily injury while on Defendant Walmart's property. The cause of Plaintiff's fall was loose gravel, pebbles, and river rocks, which were products that Defendant Walmart offered for sale in

the portion of Defendant Walmart's parking lot located in front of the garden and lawncare section of Defendant Walmart's store (the same side of the parking lot where Plaintiff fell). Defendant Walmart disputes this fact and maintains that it did not display rock-like products on pallets out in the parking lot area in front of the lawn and garden section of the Georgetown store. Despite this position, Charlene Orlowski (Walmart's manager on duty at the time of Plaintiff's fall) acknowledges that the Georgetown store did in fact display these types of products for sale within their parking lot (See Exhibit A – portions of the deposition transcript of Charlene Orlowski).

Conduct Throughout Discovery

Plaintiff requested production of all documents pertaining to inventory that could be reasonably classified as “rock like” product that Defendant Walmart was selling at the time of Plaintiff's injury. Defendant Walmart submitted redacted versions of documents marked as “Confidential” that describe bagged river rock and paverstone that were sold within and/or around the lawn and garden department around the times relevant to this litigation. **Approximately 95% of the information contained within those documents had been redacted.** (Exhibit B). When Plaintiff requested unredacted versions of those particular documents, Defendant Walmart's initial response was that “the information was irrelevant/unresponsive” to Plaintiff's discovery requests. However, Defendant Walmart refused to provide any particulars as to the type of information that was redacted. Plaintiff demanded unredacted copies of the documents. Interestingly, the unredacted versions of the documents show that the portions that were previously redacted related directly to Defendant Walmart's instructions and policies pertaining to merchandise display, marketing and cross-selling of the stones, rocks and pebble like products **in the parking lot areas.** (The redacted and unredacted versions will be introduced *in cam* as Exhibits B and C). Plaintiff

requests that this Court issue an Order that these documents were improperly designated as “Confidential” by Defendant Walmart.

Defendant Walmart also delayed producing documents concerning the parking lot cleaning and maintenance to the Plaintiff. Plaintiff’s counsel requested that Defendant Walmart produce certain records pertaining to the maintenance, cleaning, and upkeep of the parking lot area. Defendant Walmart responded that they would subpoena certain records from their third-party hired to perform said work, Defendant Southern Companies of South Carolina, Inc. d/b/a “Southco.” Defendant Walmart served a subpoena for records on Southco (who was not a named Defendant to this action at the time) on March 27, 2020. On July 28, 2020, Plaintiff’s counsel reached out to Southco for a status update on whether Southco complied with Defendant Walmart’s subpoena. Defendant Southco promptly responded that they had responded to Defendant Walmart on or about April 8, 2020. Defendant Walmart failed to submit the documents received by Southco to Plaintiff until July 31, 2020. Plaintiff’s requests for production and interrogatories to Defendant Walmart were expressly ongoing and continuing, as to require Defendant Walmart to produce the documents obtained from Defendant Southco to Plaintiff in a timely fashion. Defendant Walmart failed to produce the documents to Plaintiff for Ninety plus (90+) days.

Conclusion

The discovery shenanigans described above plague our justice system and should not be tolerated. **It is without question that Defendant Walmart has the power, motive and means to act unethically in order to prevent injured parties from effectively prosecuting these types of cases against Defendant Walmart.** It is also clear that Defendant Walmart has the resources and ability to destroy and wrongfully withhold documents and other tangible items of evidence that

are within Defendant Walmart's sole control. The acts described above should be admonished by the Court and Defendant Walmart should be penalized accordingly. Plaintiff requests that this Court issue an order striking Defendant Walmart's affirmative defenses and prohibiting Defendant Walmart from introducing any of its own evidence at trial as a penalty in order to deter Defendant Walmart from committing similar acts in future litigation. It is clear that Defendant Walmart has the capability and motive to continue committing similar evasive discovery tactics unless and until a sufficient penalty is imposed in order to deter this behavior.

Respectfully submitted,

s/Victoria N. Smith
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Plaintiff's Motion for Sanctions has been served upon opposing counsel listed below, by depositing the same in the USPS First Class mail with sufficient prepaid postage on this 28th day of October, 2020, to the following addresses for counsel of record:

Amy Lohr Gaffney, Esq./Christina M. Summer, Esq.
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s/Victoria N. Smith
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