

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Caputo v. Amazon.com Services, LLC, et al.

Caputo · No. 1:23-cv-01346-KES-CDB · Decided April 8, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Amazon.com Services, LLC’s motion to exclude Plaintiff Patricia Caputo’s retained and non-retained expert witnesses under Federal Rules of Civil Procedure 26 and 37. The court found that the expert disclosures were untimely and deficient, and that permitting the experts would be prejudicial and disruptive to the case schedule. The court denied Defendant’s request to continue the pretrial conference and trial dates.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 8, 2025
DOCKET	1:23-cv-01346-KES-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Amazon.com Services, LLC moved under Federal Rules of Civil Procedure 26(a)(2) and 37 to exclude plaintiff's retained and non-retained expert witnesses and requested a continuance of the pretrial and trial dates. The court resolved the motion without oral argument.
STANDARD OF REVIEW	The court exercised discretion under Rule 37(c)(1) to determine whether exclusion was warranted, considering substantial justification, harmlessness, prejudice or surprise, the ability to cure prejudice, disruption of trial, and bad faith or willfulness. A request to continue the trial required a showing of good cause.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Patricia Caputo v. Amazon.com Services, LLC, Sedgwick Claims Management Services, Inc.

TOPICS

- discovery dispute
- sanctions
- civil procedure
- employment discrimination
- ada / disability

PRACTICE AREAS

civil procedure

employment law

disability discrimination

civil rights

QUESTIONS PRESENTED

1. Whether plaintiff's retained-expert disclosure complied with Federal Rule of Civil Procedure 26(a)(2)(B).
2. Whether plaintiff's non-retained-expert disclosures complied with Federal Rule of Civil Procedure 26(a)(2)(C).
3. Whether plaintiff's disclosure failures were substantially justified or harmless such that exclusion under Rule 37(c)(1) was unwarranted.
4. Whether good cause supported defendant's requested continuance of the pretrial conference and trial.

HOLDINGS

1. Plaintiff's disclosure of Dr. Nolan did not comply with Rule 26(a)(2)(B) because it omitted all required information concerning the expert's opinions, bases and reasons, relied-upon facts and data, qualifications, publications, prior testimony, and compensation until after the expert-discovery deadline.
2. Plaintiff's disclosures for the non-retained treating providers did not comply with Rule 26(a)(2)(C) because they identified the subject matter of testimony but failed to summarize the facts and opinions to which the witnesses were expected to testify.
3. Exclusion of plaintiff's retained and non-retained expert witnesses was warranted because plaintiff's disclosure failures were neither substantially justified nor harmless.
4. Defendant failed to demonstrate good cause for continuing the pretrial conference and trial dates, so the request for a continuance was denied.

KEY QUOTATIONS

“Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed.” (Discussion § B)

“Plaintiff shall be precluded from presenting the testimony of the retained and non-retained experts identified in her initial and supplemental Rule 26(a)(2) disclosures” (Conclusion and Order)

FACTUAL BACKGROUND

Plaintiff disclosed a retained expert, Dr. Jacqueline Nolan, on the initial expert-disclosure deadline but expressly withheld the information required by Rule 26(a)(2)(B), including opinions, bases, qualifications, publications, prior testimony, and compensation. Plaintiff also identified eight non-retained treating medical providers but supplied only generalized descriptions of their anticipated testimony, without the required summary of facts and opinions. Dr. Nolan did not examine plaintiff until January 15, 2025, and the required report was not produced until nine days after expert discovery closed. Allowing the late disclosures would have required reopening expert discovery and altering non-dispositive and dispositive-motion deadlines.

PROCEDURAL HISTORY

Plaintiff commenced the action in the Kern County Superior Court asserting California FEHA disability-discrimination, interactive-process, reasonable-accommodation, and retaliation claims. The action was removed to federal court, and plaintiff later filed an amended complaint adding Sedgwick Claims Management Services, Inc. The federal court entered amended scheduling deadlines for expert disclosures and discovery. Plaintiff's disclosures were timely as to witness identities but deficient as to required content, and her retained expert's required materials were not produced until after expert discovery closed. The court granted the exclusion request but denied the request to continue the pretrial and trial dates.

DISPOSITION

other

CASES CITED

- Gorrell v. Sneath, No. 1:12-cv-0554-JLT, 2013 WL 4517902, at *1 (E.D. Cal. Aug. 26, 2013)
- Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)
- Lanard Toys Ltd. v. Novelty, Inc., 375 Fed. Appx. 705, 713 (9th Cir. 2010)
- David v. Caterpillar, Inc., 324 F.3d 851, 857 (7th Cir. 2003)
- R & R Sails, Inc. v. Ins. Co. of Pa., 673 F.3d 1240, 1246 (9th Cir. 2012)
- Bonzani v. Shinseki, No. 2:11-CV-0007-EFB, 2014 WL 66529, at *3 (E.D. Cal. Jan. 8, 2014)
- Green v. Qatar Airways Co., No. 2:19-cv-07950-SVW-MAA (C.D Cal. Nov. 13, 2020)
- Alfaro v. D. Las Vegas, Inc., No. 2:15-cv-02190-MMD-PAL (D. Nev. Aug. 24, 2016), 2016 WL 4473421, at *13
- Pineda v. City and Cnty. of San Francisco, 280 F.R.D. 517, 523 (N.D. Cal. 2012)
- Yeager v. Yeager, No. 2:06-cv-001196-JAM-EFB, 2009 WL 1159175, at *2 (E.D. Cal. Apr. 29, 2009)
- Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962)
- Capers v. One Beacon Ins. Co., No. CV 07-95-M-DWM-JCL, 2008 WL 11347926, at *2 (D. Mont. June 30, 2008)
- Voyager Indemnity Ins. Co. v. Zalman N., Inc., 668 F. Supp. 3d 990, 998-99 (C.D. Cal. 2023)
- Paulissen v. U.S. Life Ins. Co., 205 F. Supp. 2d 1120, 1125-26 (C.D. Cal. 2002)
- Wong v. Regents of Univ. of Cal., 410 F.3d 1052, 1062 (9th Cir. 2005)
- Jarritos, Inc. v. Reyes, 345 Fed. Appx. 215, 217 (9th Cir. 2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 PATRICIA CAPUTO, Case No. 1:23-cv-01346-KES-CDB 12 Plaintiff,
ORDER GRANTING DEFENDANT’S MOTION TO EXCLUDE PLAINTIFF’S 13 v. EXPERT
WITNESSES PURSUANT TO RULES 26 AND 37, FED. R. CIV. P. 14 AMAZON.COM

SERVICES LLC, et al., ORDER DENYING DEFENDANT'S 15 Defendants. REQUEST TO CONTINUE TRIAL DATES 16 (Doc.

49) 17 18 Before the Court is the motion of Defendant Amazon.com Services, LLC, pursuant to 19 Rules 26(a)(2) and 37 of the Federal Rules of Civil Procedure, to exclude Plaintiff Patricia 20 Caputo from presenting expert testimony from her noticed retained and non-retained expert 21 witnesses, filed February 28, 2025. (Docs. 49, 50). Plaintiff filed an opposition on March 12, 22 2025.

(Doc. 56). Defendant did not file a reply. The Court deemed Defendant's motion 23 suitable for resolution without hearing and oral argument. (Doc. 51); see Local Rule 230(g). 24 Background 25 A. Procedural Posture 26 On August 7, 2023, Plaintiff Patricia Caputo commenced this action in the Superior 27 Court of the State of California, County of Kern. (Doc. 1).

Defendant Amazon.com Services, 1 the following claims against Defendant Amazon.com Services, LLC: (1) Disability 2 Discrimination in violation of the Fair Employment and Housing Act ("FEHA"); (2) Failure to 3 Engage in Good Faith Interactive Process in violation of FEHA; (3) Failure to Provide 4 Reasonable Accommodation in violation of FEHA; and (4) Retaliation in violation of FEHA.

5 Following a scheduling conference, on December 7, 2023, the Court entered the 6 operative scheduling order. (Doc. 11). Plaintiff filed a first amended complaint on April 16, 7 2024, adding Defendant Sedgwick Claims Management Services, Inc. ("Sedgwick"). (Doc. 8 20). Following service on Sedgwick and the Defendants' filing of answers to Plaintiff's first 9 amended complaint (Docs.

29, 32), on May 31, 2024, the parties filed an amended scheduling 10 report proposing an approximate six-month continuance of all case management dates given the 11 recent addition to the action of Sedgwick. (Doc. 33). At the parties' joint request, on June 5, 12 2024, the Court entered the first amended scheduling order that extended all discovery, pretrial 13 motion and trial dates by approximately six months to accommodate continued discovery and 14 litigation in light of the addition of Defendant Sedgwick.

(Doc. 34). Among other things, the 15 amended scheduling order set the following deadlines: initial expert disclosures (December 18, 16 2024); supplemental expert disclosures (January 15, 2025); expert discovery (February 15, 17 2025). Id. at 2.

The pretrial conference and trial were set on dates consistent with the parties' 18 request (e.g., July 21, 2025, and September 16, 2025). Id. 19 In advance of the mid-discovery status conference, on October 29, 2024, the parties filed 20 a joint mid-discovery status report in which they represented an intention to engage in expert 21 discovery. (Doc. 37).

Although previously directed by the Court to identify in the mid- 22 discovery status report any impediments the parties anticipated to completing discovery within 23 the operative deadlines, no party reported to the Court any such obstacles. (Doc. 11); see (Doc. 24 34 at 2) (“All other provisions of the scheduling order (Doc. 11) not otherwise inconsistent with 25 the modified case management dates entered [in the amended scheduling order] remain in full 26 force and effect.”).

27 After the deadlines to exchange initial and expert witness disclosures had passed, the 1 41). The Court denied the parties’ request for failing to demonstrate due diligence and good 2 cause. (Doc. 42). 3 B. Plaintiff’s Expert Witness Disclosures 4 On December 18, 2024, Plaintiff transmitted to Defendants her initial expert witness 5 disclosures pursuant to Rule 26(a)(2).

(Doc. 49-2, Declaration of Jaya B. Narang [“Narang 6 Decl.”] ¶¶ 2-3 & Ex. 1 (Doc. 49-3)). In her disclosures, Plaintiff identified retained expert Dr. 7 Jacqueline Nolan; however, Plaintiff expressly declined to provide in her disclosure information 8 required under Rule 26(a)(2)(B), noting that Dr. Nolan had not yet been retained. Id. Thus, for 9 instance, Plaintiff did not disclose any facts relied upon or opinions rendered by Dr. Nolan, 10 stating in the disclosure that Dr. Nolan had “yet to prepare or maintain any documents.” Id. 11 Similarly, Plaintiff expressly declined to include in the expert witness disclosure Dr. Nolan’s 12 qualifications, publications, prior testimony, or terms of compensation, noting that such 13 information would be produced “[i]f this expert is retained.” Id. 14 Plaintiff’s initial expert witness disclosure pursuant to Rule 26(a)(2) also identified eight 15 non-retained expert witnesses, all of whom are doctors or other medical providers that treated 16 Plaintiff for her injuries.

Id. In general, Plaintiff stated in the disclosure for each witness that 17 the subject matter of the witness’s anticipated testimony was the witness’s treatment of Plaintiff 18 “regarding the extent” of Plaintiff’s injuries. Id. 19 Governing Legal Standard 20 Federal Rule of Civil Procedure 26 provides in relevant part that “[i]n addition to the 21 [initial] disclosures required by Rule 26(a)(1), a party must disclose to the other parties the 22 identity of any [expert] witness it may use at trial.” Fed.

R. Civ. P. 26(a)(2)(A); see *Gorrell v. 23 Sneath*, No. 1:12-cv-0554-JLT, 2013 WL 4517902, at *1 (E.D. Cal. Aug. 26, 2013). Parties are 24 required to make these expert disclosures “at the times and in the sequence that the court 25 orders.” Fed. R. Civ. P. 26(a)(2)(D). “A party must disclose the identity of any expert 26 witnesses, whether retained or non-retained, expected to testify at trial.” *Gorrell*, 2013 WL 27 4517902, at *1.

In connection with retained expert witnesses, the disclosing party must also 1 opinions and basis and reasons therefor, the facts and data the witnesses relied upon, and the 2 witnesses’ qualifications, publications, and terms of compensation. Fed. R. Civ. P. 3 26(a)(2)(B)(i) - (vi).

In contrast, “[d]isclosure of a non-retained expert ‘must state: (i) the subject matter on which the witness is expected to present evidence...; and (ii) a summary of the facts and opinions to which the witness is expected to testify.’” *Gorrell*, 2013 WL 4517902, 6 at *1 (quoting Fed. R. Civ. P. 26(a)(2)(C)). Rule 26(a) disclosures “must be corrected ‘in a timely manner if the party learns that in some material respect the disclosure... is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.’” *Id.* (quoting Fed.

R. Civ. P. 26(e)(1)). Under Rule 37(c), a party that “fails to provide information or identify a witness as required by Rule 26(a) or (e)” may not “use that information or witness to supply evidence... at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). See *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.

2001) (“Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed.”). “The Advisory Committee Notes describe it as a ‘self-executing,’ ‘automatic’ sanction to ‘provide[] a strong inducement for disclosure of material....’” *Id.* (quoting Fed.

R. Civ. P. 37 Advisory Committee’s note (1993)). “Among the factors that may properly guide a district court in determining whether a violation of a discovery deadline is justified or harmless are: (1) prejudice or surprise to the party against whom the evidence is offered; (2) the ability of that party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or willfulness involved in not timely disclosing the evidence.” *Lanard Toys Ltd. v. Novelty, Inc.*, 243 F.3d 375 (9th Cir. 2001).

Appx. 705, 713 (9th Cir. 2010) (citing *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003)). “The party facing sanctions bears the burden of proving that its failure to disclose the required information was substantially justified or harmless.” *R & R Sails, Inc. v. Ins. Co. of Pa.*, 673 F.3d 1240, 1246 (9th Cir. 2012). 1 See *Bonzani v. Shinseki*, No. 2:11-CV-0007-EFB, 2014 WL 66529, at *3 (E.D.

Cal. Jan. 8, 2014) (finding Rule 37(c)(1) exclusion sanctions are not mandatory, even when the insufficient disclosures are not substantially justified or harmless). A court’s decision to exclude evidence is discretionary and the court is given “particularly wide latitude... to issue sanctions under Rule 37(c)(1).” *Id.* Discussion A. Whether Plaintiff’s Expert Disclosures Complied with Rule 26(a)(2) Plaintiff argues her expert witness disclosures complied with Rule 26 and, even if they did not, they were timely supplemented to the extent of “eliminating any possible prejudice.” (Doc.

56 at 3). Plaintiff’s expert witness disclosures unquestionably were untimely and failed to comply with Rule 26. As to Plaintiff’s retained expert witness (Dr. Jacqueline Nolan), although

her 13 identity was timely disclosed to Defendants pursuant to Rule 26(a)(2), none of the information 14 required to be provided in connection with that disclosure pursuant to Rule 26(a)(2)(B)(i) - (vi) 15 was provided until nine days after the period for taking expert discovery had closed.

Although 16 Plaintiff offers various explanations for why the delay was justified and harmless (discussed 17 *infra*), she offers no persuasive argument that the disclosures were timely, compliant with Rule 18 26(a)(2), or that Defendants otherwise had the information required under Rule 26(a)(2) prior to 19 the deadline to complete expert discovery. 20 Similarly, as for Plaintiff's non-retained experts, although their identifies were timely 21 disclosed, Plaintiff's disclosures failed to include the information required under Rule 22 26(a)(2)(C).

In her opposition, Plaintiff does not even acknowledge Defendant's argument that 23 her non-retained expert witness disclosures failed to provide a summary of the facts and 24 opinions to which the witnesses are expected to testify. 25 In *Green v. Qatar Airways Co.* (No. 2:19-cv-07950-SVW-MAA (C.D. Cal. Nov. 13, 26 2020)), similar to Plaintiff here, the plaintiff disclosed several non-retained treating physicians 27 with generalized summaries of anticipated testimony, including the necessity of the treatment 1 summaries were deficient under Rule 26(a)(2).

The Court aptly noted that the disclosures "must 2 be enough information for the opposing party to identify whether it needs a responsive witness 3 and the information that such responsive witness would need to address." *Id.* (internal quotation 4 and citation omitted). 5 Other courts similarly have found that cursory and general disclosures for non-retained 6 experts do not pass muster under Rule 26(a)(2).

For instance, in *Alfaro v. D. Las Vegas, Inc.* (No. 7 2:15-cv-02190-MMD-PAL (D. Nev. Aug. 24, 2016)), the Court concluded that the plaintiff's 8 Rule 26(a)(2)(C) disclosures for non-retained experts were "so generic, unhelpful, and boilerplate 9 they could apply to any [sic] virtually any case." 2016 WL 4473421, at *13. Likewise, in *Pineda 10 v. City and Cnty. of San Francisco*, 280 F.R.D.

517, 523 (N.D. Cal. 2012), the Court, similar to 11 the *Alfaro* Court, found the plaintiffs' Rule 26(a)(2)(C) disclosures for their non-retained treating 12 physicians were inadequate. Specifically, the disclosure broadly noticed anticipated opinion 13 testimony on the subjects of "causation, diagnosis, prognosis, [and] extent of [plaintiff's] 14 disability," without summarizing the facts or further elaborating the nature of the anticipated 15 opinions.

Id. at 523. 16 Like the Courts in *Green*, *Alfaro* and *Pineda*, this Court concludes that Plaintiff's non- 17 retained expert disclosures do not pass muster under Rule 26(a)(2)(C). While the disclosures 18 sufficiently identify the subject matter of the anticipated testimony, they do not provide a 19 summary of the relied-upon facts or actual opinions as required by Rule 26(a)(2)(C).

20 B. Whether Plaintiff's Noncompliance with Rule 26 Warrants Sanctions 21 Plaintiff argues that the sanction of exclusion under Rule 37 is not warranted because any 22 Rule 26 deficiency in her retained expert witness disclosure for Dr. Nolan was both 23 substantially justified and harmless.

As to justification, Plaintiff argues that any delay in 24 complying with Rule 26 is excusable because her expert was tardy in submitting her expert 25 report to Plaintiff -- in other words, Plaintiff argues she satisfies the "substantial justification" 26 prong of the Rule 37 inquiry because the delay in providing her expert report to the defense was 27 "completely beyond her control." (Doc.

56 at 4-5). 1 authority for the novel proposition that a party is substantially justified under Rule 37 in 2 violating discovery orders and rules where a party-agent (here, an expert witness) purportedly is 3 more culpable than the party (including its counsel) for the delay. Cf. *Yeager v. Yeager*, No. 4 2:06-cv-001196-JAM-EFB, 2009 WL 1159175, at *2 (E.D. Cal. Apr.

29, 2009) (noting that 5 parties who voluntarily retain counsel are responsible for and cannot avoid the consequences of 6 their counsel's acts and omissions) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962) 7 ("Petitioner voluntarily chose this attorney as his representative in the action, and he cannot 8 now avoid the consequences of the acts or omissions of this freely selected agent.")).

9 Second, Plaintiff is flat wrong to proclaim that her failure to abide by discovery orders 10 and rules was "completely beyond her control" given her expert witness's tardy provision to her 11 of the discoverable expert report.

To begin with, Plaintiff concedes that Dr. Nolan only 12 examined her on January 15, 2025 (Doc. 56 at 2) -- four weeks after the deadline to disclose 13 expert witnesses. Thus, Dr. Nolan's report was tardy not because she was unreasonably delayed 14 in authoring it, but because Plaintiff unreasonably delayed coordinating or presenting herself for 15 the examination that was the subject of the expert report.

16 Discovery opened when the case was scheduled on December 7, 2023. (Doc. 11). 17 Following the filing of the first amended complaint, the period for taking discovery was 18 extended. (Doc. 34). Relevant here, the date for making initial expert disclosures was 19 continued to December 18, 2024. *Id.* Plaintiff offers no explanation for how or why -- given 20 the Court's provision of a little more than one year for the parties to engage their expert 21 witnesses -- she was unable to timely comply with this deadline.

It was not until more than one 22 month after the deadline to exchange initial expert disclosures that the parties sought relief of 23 Court to resurrect the long-expired expert witness initial and rebuttal disclosure deadlines. See 24 (Doc. 39).

As the Court observed in denying that request for nunc pro tunc relief, such an unexplained delay is the antithesis of diligence (see Doc. 42 at 3-4). For the same reason, it is the antithesis of substantial justification under Rule 37, particularly given this Court's plain and early admonition in the scheduling order that a party's failure to timely comply with expert 1 See (Doc. 11 at 3-4 [exclusion sanction] & Doc. 34 at 2 [incorporating scheduling order's 2 provisions]). See also *Capers v. One Beacon Ins. Co.*, No. CV 07-95-M-DWM-JCL, 2008 WL 3 11347926, at *2 (D. Mont. June 30, 2008) (finding late disclosure of expert witness unjustified, 4 "particularly in the face of clear notice that failure to comply with the expert disclosure rules 5 could result in exclusion.").

6 As to harmlessness, Plaintiff argues this Court should consider whether the opposing 7 party had sufficient opportunity to depose the expert, whether trial preparation was affected, and 8 whether prejudice could have been avoided. (Doc. 56 at 5) (citing *Voyager Indemnity Ins. Co. 9 v. Zalman N., Inc.*, 668 F. Supp. 3d 990, 998-99 (C.D. Cal. 2023)). Plaintiff also points to the 10 fact that Defendant failed to depose her expert witness as a separate basis to deny Defendant's 11 motion to exclude.

Id. (citing *Paulissen v. U.S. Life Ins. Co.*, 205 F. Supp. 2d 1120, 1125-26 12 (C.D. Cal. 2002)). Plaintiff argues that excluding her expert witness would be "ridiculous" 13 given that trial is some six months away, thus yielding Defendant ample opportunity to conduct 14 an expert witness deposition. Plaintiff separately argues that the sanction of exclusion would 15 substantially prejudice her case given the importance of the expert's anticipated testimony 16 concerning Plaintiff's non-economic damages.

Id. at 6. 17 Excusing Plaintiff's late disclosure and permitting her to rely on Dr. Nolan's belatedly 18 produced expert report and testimony would require significant modifications to the existing 19 case management dates, including (1) reopening discovery to facilitate Defendants' deposition 20 of Dr. Nolan and the parties' taking of discovery on any rebuttal expert Defendants would seek 21 to notice; (2) resetting a schedule on non-dispositive motions in anticipation of any issues 22 arising from the recommencement of expert discovery; and (3) resetting a schedule on 23 dispositive motions -- notwithstanding the Court already has expending resources considering 24 the parties' pending, fully-briefed motions for summary judgement -- to account for new expert 25 discovery.

Such disruption to the schedule that was established for this case more than six 26 months prior to the deadline for making expert witness disclosures is not harmless. See *Wong v. 27 Regents of Univ. of Cal.*, 410 F.3d 1052, 1062 (9th Cir. 2005) (affirming exclusion of plaintiff's 1 the Rule 26 failure would have required alteration of the trial schedule; "[d]isruption to the 2 schedule of the court and other parties in that manner is not harmless.").

Accord *Jarritos, Inc. v. Reyes*, 345 Fed. Appx. 215, 217 (9th Cir. 2009) (“Because the deadlines for disclosing 4 experts and conducting expert discovery had passed, the court would have had to reopen 5 discovery and extend the period for submitting rebuttal reports to avoid prejudice to the 6 Restaurant. When the order establishing an expert disclosure deadline also sets a deadline for 7 pretrial motions, we have held that ‘[d]isruption to the schedule of the court and other parties is 8 not harmless,’ even if, as here, ‘the ultimate trial date was still some months away.’”) (quoting 9 *Wong*, 410 F.3d at 1062).

10 Although exclusion of Plaintiff’s late-noticed expert witnesses undoubtedly will make it 11 “more difficult, perhaps almost impossible” for Plaintiff to establish at trial her entitlement to 12 certain damages, such a sanction is less than a dismissal and, thus, within this Court’s “wide 13 latitude” to order notwithstanding the absence of bad faith on Plaintiff’s part.

See *Yeti by Molly*, 14 259 F.3d at 1106. Specifically, Dr. Nolan is noticed to provide testimony only on the issue of 15 noneconomic damages (see Doc. 56 at 6) and, thus, her exclusion will not prejudice Plaintiff in 16 attempting to prove at trial Defendant’s liability. Further, nothing in this order bars Plaintiff 17 from calling the non-retained expert witnesses identified in her Rule 26(a) disclosures as 18 percipient witnesses (albeit, limited to testifying about factual matters).

19 Separately, as noted above, Plaintiff fails to even acknowledge Defendant’s arguments 20 that Plaintiff’s disclosure of her non-retained experts violated Rule 26(a)(2)(C) and she does not 21 advance any independent reason why the disclosure deficiencies are either justified or harmless. 22 Thus, exclusion of Plaintiff’s non-retained expert witnesses is warranted.

See *Green*, 2020 WL 23 9601990, at *3 (excluding improperly noticed non-retained experts where disclosure was 24 neither substantially justified nor harmless); *Pineda*, 280 F.R.D. at 523 (same). 25 C. Whether Good Cause Warrants Continuance of Trial 26 On June 5, 2024, following Plaintiff’s filing of the first amended complaint, the parties 27 filed an amended scheduling report in which they jointly requested a six-month continuance of 1 the parties’ proposal and scheduled trial to commence on September 16, 2025.

(Doc. 34). 2 On February 6, 2025, the parties filed a stipulated request to extend expert discovery and 3 non-dispositive motion deadlines, but did not seek an extension of the pretrial conference or 4 trial commencement dates. (Doc. 41).

The following day, as discussed in more detail above, 5 the Court granted the parties’ request only to the extent of extending the non-dispositive motion 6 deadlines. (Doc. 42). 7 Approximately three weeks later, Defendant filed the instant motion to exclude Plaintiff’s 8 expert witnesses and included therein a request to continue trial for at least 120 days (through 9 and including February 2, 2026).

In support thereof, counsel for Defendant attests that good cause exists for the requested extension of trial dates because (1) he received notice from the Superior Court for San Bernardino County on February 6, 2025, that trial of an unrelated action in which counsel is involved was continued to September 22, 2025 (thus potentially conflicting with trial of this action), and (2) Defendant's witnesses are "universally unavailable to testify from November through January due to their peak retail season business operations." Narang Dec. ¶¶ 8-9.

Plaintiff opposes the requested continuance. See (Doc. 56 at 6-7). The Court will deny Defendant's request to continue the dates set for pretrial conference and trial. The dates adopted by the Court for pretrial conference and trial were set more than nine months ago at the parties' joint request. See (Docs. 33, 34). Counsel for Defendant offers no explanation for why, when he "received an order" on February 6, 2025, that the state court trial in which he is involved was moved to September 22, 2025, he did not make a filing in the state court action noticing that court as to the preexisting trial conflict in this action; counsel likewise fails to explain why he waited approximately three weeks before seeking relief in this Court.

As the requesting party, Defendant has the burden of demonstrating good cause to continue trial and has failed to do so. /// 1 | Conclusion and Order 2 For the foregoing reasons, it is HEREBY ORDERED that Defendant's motion to exclude 3 | Plaintiffs expert witnesses and for trial continuance (Doc. 49) is GRANTED IN PART and 4 | DENIED IN PART to the following extent: 5 1.

Plaintiff shall be precluded from presenting the testimony of the retained and non- 6 | retained experts identified in her initial and supplemental Rule 26(a)(2) disclosures (Docs. 50-1, 7 150-3); and 8 2. The pretrial conference is confirmed for July 21, 2025, and trial is confirmed for 9 |September 16, 2025 (see Doc. 34). 10 [T IS SO ORDERED. Dated: _ April 8, 2025 | ww D bo 12 UNITED STATES MAGISTRATE JUDGE 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28