

1 Rule 26(a)(2)(B). Plaintiff argues that this prejudices him as he cannot verify FNP Kaur's
2 qualifications or disciplinary history with the nursing board or otherwise fully prepare for any
3 necessary rebuttal to her opinion, including preparing any rebuttal witnesses. He requests that the
4 information be provided to him within seven (7) days of this Court's order requiring such, and that his
5 deadline to disclose any rebuttal witnesses pursuant to Rule 26(a)(2)(D)(ii) be extended until thirty
6 (30) days after FNP's Kaur's information is provided to him. Otherwise, he seeks for Defendants'
7 expert disclosures to be stricken.¹

8 Rule 26(a) of the Federal Rules of Civil Procedure requires parties to disclose the identity of
9 any person who may be used as an expert witness. See Fed. R. Civ. P. 26(a)(2)(A). For witnesses who
10 must provide a written report, the report must contain, among other things, the witness's
11 qualifications. Fed. R. Civ. P. 26(a)(2)(B)(iv). Rule 37(c)(1) provides that if a party fails to provide
12 information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that
13 information or witness at trial, unless the failure was substantially justified or is harmless. Fed. R. Civ.
14 P. 37(c)(1). Generally this sanction is "self executing . . . and automatic to provide a strong
15 inducement for disclosure of material." Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101,
16 1106 (9th Cir. 2001) (citations and internal quotation marks omitted). Nevertheless, the Ninth Circuit
17 gives "particularly wide latitude to the district court's discretion to issue sanctions under Rule
18 37(c)(1)." Id. The purpose of these disclosure rules is to encourage timely disclosure of expert
19 witnesses and to curb dilatory litigation tactics. See 7 James Wm. Moore et al., Moore's Federal
20 Practice § 37.60[1] (3d ed.1999).

21 Here, Defendants' appear to have intended to disclose FNP Kaur's curriculum vitae to
22 Plaintiff, but inadvertently failed to do so. The disclosures were otherwise timely provided, and there
23 is no evidence of dilatory delay or other improper tactics. Moreover, Defendants will be ordered to
24 provide Plaintiff a complete copy of FNP Kaur's curriculum vitae and licensing information within

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26 ¹ Plaintiff also seeks for the court to verify whether FNP Kaur's curriculum vitae was provided with the expert
27 disclosure filed with the Court. The Court informs Plaintiff that no disclosure was filed by Defendants with the
28 Court, nor is this required. Rule 26(a)(2) only requires that the disclosures be made to the other parties. Fed. R.
Civ. P. 26(a)(2)(A) ("In addition to the disclosures required by Rule 26(a)(1), a party must **disclose to the other parties** the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702,
703, or 705.") (emphasis added).

1 seven (7) days of the date of service of this order. Plaintiff will also be granted his request to extend
2 his deadline to disclose any rebuttal expert witnesses pursuant to Rule 26(a)(2)(D) until thirty (30)
3 days after service by Defendants of the information to be disclosed pursuant to this order. As a result,
4 Plaintiff will not be harmed by any delay in Defendants' disclosure. Thus, the Court does not find it
5 necessary to sanction Defendants by striking their disclosures or precluding FNP Kaur at this time, on
6 the grounds of any failure to fully disclose in compliance with Rule 26(a)(2).

7 Accordingly, it is HEREBY ORDERED that:

- 8 1. Plaintiff's request to strike Defendants' expert disclosures (ECF No. 247) is DENIED;
- 9 2. Defendants SHALL provide to Plaintiff a complete copy of FNP Kaur's curriculum
10 vitae and licensing information within seven (7) days of the date of service of this order; and
- 11 3. Plaintiff SHALL disclose any rebuttal expert witnesses pursuant to Rule 26(a)(2)(D)
12 within thirty (30) days after the date of service by Defendants of FNP Kaur's curriculum vitae and
13 licensing information.

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15 IT IS SO ORDERED.

16 Dated: July 29, 2016

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE