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8	UNITED STAT	ES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA		
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11	JULIAN III FLORES and	Case No.: 1:17-cv-00427 JLT	
12	ALEJANDRA FLORES , Plaintiffs,	ORDER GRANTING REQUEST TO AMEND THE WITNESS LIST SET FORTH IN THE PRETRIAL	
13	v.	ORDER	
14	FCA US LLC,		
15	Defendant.		
16	Depending the Court issued the protriel of	nden in this case (Dec. 18). In the order the Court for	
17	Recently, the Court issued the pretrial order in this case. (Doc. 48). In the order, the Court, <u>for</u> the third time, took exception to plaintiffs' counsel failure to identify witnesses by name. Id. at The		
18 19	Court noted,	iser failure to identify writesses by failue. <u>id</u> . at the	
20		Most Knowledgeable" and "Lampe Chrysler	
21	Dodge Jeep Ram's Person Most Qualifi CA" as witnesses, and this is now the th	ed, Lampe CDJR, 3460 Naglee Road, Tracy, ird time counsel has failed to identify the	
22	No. 2:17-cv-00596 JLT [Doc. 53 at 17];	by name. (See Durham v. FCA US LLC, Case Celestine v. FCA US LLC, Case No.: 2:17-cv-	
23	if he again failed to identify this witness	he Court admonished the plaintiff's counsel that by name, "the Court will strike the witness	
24	know the person's name." (Celestine, D	or there is a showing that the plaintiff does not oc. 54 at 9, n.1) Once again, Plaintiffs' counsel	
25	report. Doubling down, now plaintiff's of	s name was not included in the joint pretrial counsel fails to identity who the "FCA's Person is not comply with the Court's Local Pules	
26	most Knowledgeable." Not only does this not comply with the Court's Local Rules, trial is not a deposition and, even if it were, plaintiff's counsel would have been obligated to identify the categories about which the witness would testify to allow FCA		
27	to determine who the proper witness wo	buld be. Accordingly, the Court accepts this as y substantive information to add to the trial	
28		estify at trial absent a showing of manifest	
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1	Id. at 10. The order continued in relevant part,		
2	2. The court does not allow undisclosed witnesses to be called for any purpose, including impeachment or rebuttal, unless they meet the following criteria:		
3	[¶] b. The witness was discovered after the pretrial conference and the		
4	proffering party makes the showing required in paragraph 3, below 3. Upon the post pretrial discovery of any witness a party wishes to present at trial, the party shall promptly inform the court and opposing parties of the existence of		
5 6	the unlisted witness, so the court may consider whether the witness will be permitted to testify at trial. The witness will not be permitted unless:		
7	a. The witness could not reasonably have been discovered prior to the discovery cutoff;		
8	b. The court and opposing parties were promptly notified upon discovery of the witness;		
9	c. If time permitted, the party proffered the witness for deposition; and d. If time did not permit, a reasonable summary of the witness's		
	testimony was provided to opposing parties.		
10			
11	Id.		
12	Without acknowledging the standards needed to amend the pretrial order and without		
13	attempting to meet those standards, plaintiff's counsel filed "objections" to the pretrial order		
14	identifying the specific people associated with the descriptors previously provided and stating,		
15 16	1. Lampe Chrysler Dodge Jeep Ram's Person Most Qualified- James Steelman, Lampe CDJR, 3460 Naglee Road, Tracy, CA: Plaintiffs had not taken the deposition of the Lampe Chrysler Dodge Jeep Ram and were unable to identify Lampe CDJR's PMQ until it was just recently disclosed to Plaintiffs.		
17	2. FCA US LLC's Person Most Knowledgeable: Plaintiffs identified Mike		
18	McDowell in its Joint Pretrial Statement that was filed in November 2018. The day the		
19	Joint Pretrial Statement was filed with the Court on June 10, 2019, Defendants removed Mike McDowell's name from the Pretrial Statement as they intended to produce someone other than Mr. McDowell for trial. Defendants never added another witnesses		
20	name to replace Mr. McDowell. After the Pretrial Trial Conference, FCA notified Plaintiffs that FCA's Person Most Knowledgeable ("PMK") would be Tina Dietrich.		
21	FCA's PMK was not deposed in this matter so Plaintiffs were unable to confirm who FCA's Person Most Knowledgeable was without identification from the Defendant.		
22	Plaintiffs and its counsel will be substantially prejudiced if they are unable to		
23	call FCA's PMK in its case in chief.		
24	Missing from this statement is an explanation why counsel failed to identify the Lampe employee		
25	earlier in the litigation, given the fact that plaintiffs' counsel has identified the "person most qualified"		
26	at the specific dealer at issue in each of the other two cases cited above. Seemingly, calling a person of		
27	this ilk is standard in every case. Thus, it boggles the mind that counsel waits until after the pretrial		
28	conference to attempt to identify this key witness.		

This is true also as to FCA's corporate witness. Plaintiffs' counsel has listed "FCA's Person 1 Most Knowledgeable" in each of the earlier two cases noted here, though counsel has identified the 2 specific person who would testify before. When counsel met and conferred to develop the joint pretrial 3 statement, this would have been an ideal time to inquire who FCA would produce. Nevertheless, 4 5 plaintiffs' counsel fails to offer any explanation why this did not occur or, if it did, FCA's response. In short, the Court finds the plaintiffs counsel has failed utterly to demonstrate that the failure to 6 list the witnesses was due to any inability to identify them; rather the Court has little doubt that it was 7 due to purposeful action. Likewise, concluding that "Plaintiffs and its [sic] counsel1" would be 8 prejudiced if the witnesses are not allowed doesn't even attempt to meet the standard of "manifest 9 10 injustice." Despite this, the Court **ORDERS**: The witness list set forth in the pretrial order is amended to include James Steelman, 1. 11 12 Lampe Chrysler Dodge Keep Ram's Person Most Qualified, Lampe CDJR, 3460 Naglee Road, Tracy, CA and Tina Dietrich, FCA's Person Most Knowledgeable. This is absolutely the last time the Court 13 14 will "bail out" counsel. In future, if counsel truly is unable, despite diligence, to identify a witness by name, they SHALL describe in detail the efforts made to do so in the joint pretrial order. 15 16 Failure to name the witness or to explain the inability to do so, will result in the Court refusing to allow the witness and to summarily strike the subsequent "objection" to the pretrial order; 17 2. The pretrial order is amended to add as a disputed fact that, "Plaintiffs claim that they 18 were harmed because FCA US LLC failed to repair the 2012 Dodge Ram 1500 within 30 days." 19 20 IT IS SO ORDERED. 21 22 June 27, 2019 /s/ Jennifer L. Thurston Dated: UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 ¹ The Court has absolutely no understanding how "counsel" would be prejudiced by the exclusion of the witnesses. The 28 attorneys are not parties to the action. If counsel somehow would suffer prejudice as a result, it would be prejudice of their own making.