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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS E. CASTANEDA,  
  
  Plaintiff,  
  
  v.  
  
CITY OF BAKERSFIELD, *et al.*,  
  
  Defendants.

Case No. 1:23-cv-00068-KES-CDB  
  
ORDER RE: DISCOVERY DISPUTE  
  
(Doc. 24)

Currently before the Court is a discovery dispute that the parties have agreed to submit to the Court for adjudication through the Court’s informal discovery dispute procedure.

**Background**

Plaintiff Luis E. Castaneda commenced this action with the filing of a complaint in state court on or about October 7, 2022. (Doc. 2 Ex. 1). Defendants named in the state court suit removed the action to this Court on January 13, 2023. (Doc. 2). After the case was scheduled and nonexpert discovery extended on the parties’ stipulated request (*see* Doc. 19), on February 9, 2024, Plaintiff filed the operative first amended complaint (“FAC”) asserting claims against Defendants Bakersfield Police Department, Brockett Mueller, and Brendan Thebeau. (Doc. 20). In the FAC, Plaintiff alleges Defendants violated his civil rights under the U.S. Constitution and state law in connection with his arrest and excessive use of force by Defendants during their encounter with Plaintiff on or about October 16, 2021. *Id.* “Introductory Statement.”

1 On the deadline to make expert witness disclosures pursuant to Fed. R. Civ. P. 26(a)(2)  
2 (April 15, 2024), Plaintiff transmitted to Defendants a disclosure identifying one retained and 14  
3 “non-retained” expert witnesses. (Doc. 24). The 14 non-retained experts are described in  
4 Plaintiffs’ disclosures as physicians, nurses and other healthcare providers who treated Plaintiff  
5 on various dates following Plaintiff’s October 2021 encounter with Defendants. *Id.* Following  
6 meet and confer efforts, on April 30, 2024, Plaintiff transmitted amended Rule 26(a)(2)  
7 disclosures to Defendants. *Id.* Those amended disclosures set forth for each non-retained expert  
8 (1) a description of Plaintiff’s injuries that the identified expert treated, and (2) a single-sentence  
9 description of the expert’s anticipated testimony – to with, the “nature and extent” of the injuries  
10 based on some or all of the following bases: examination, treatment, records and interaction with  
11 the Plaintiff. *Id.*

12 Defendants argue that Plaintiff’s disclosure for its non-retained experts do not comply  
13 with Rule 26(a)(2)(C). (Doc. 24 at 4-5). Specifically, Defendants challenge the expert disclosure  
14 for its failure to adequately include a summary of the subject matter and the facts and opinions for  
15 which the non-retained experts are expected to testify. Although not addressed in the parties’  
16 joint discovery dispute letter brief, when questioned by the undersigned during an informal  
17 discovery dispute conference, Defendants requested the Court preclude Plaintiff’s non-retained  
18 experts from testifying at trial as a sanction for Plaintiff’s alleged non-compliance with Rule  
19 26(a)(2)(C).

20 Plaintiff disputes that the expert disclosures are deficient. Specifically, Plaintiff argues  
21 the summaries and facts identified in the disclosure notice “are as specific as can be reasonably  
22 expected without Plaintiff retaining or otherwise communicating with these providers.” *Id.* at 7.  
23 Plaintiff further asserts that because causation purportedly is not in dispute, “Plaintiff’s treating  
24 providers are designated merely as percipient witnesses to his injuries” with “clinical expertise  
25 capable of clarifying the extent of these injuries.” *Id.*

26 On May 9, 2024, the Court held a discovery dispute videoconference via Zoom. (Doc.  
27 28). Cameron Chapman-Pinto appeared on behalf of Plaintiff. Heather Cohen appeared on  
28 behalf of Defendants. At the beginning of the conference, the parties agreed to resolution of the

1 identified discovery disputes outside the Local Rule 251 formal parameters, agreed to proceed  
2 without record, and agreed to abide by an order of the Court after the conference resolving the  
3 dispute. At the Court’s request, immediately following the conference, counsel for Plaintiff filed  
4 Plaintiff’s initial Rule 26(a)(1) disclosures and amended Rule 26(a)(2) expert disclosures. (Doc.  
5 29). Counsel’s filing also included certain medical records produced during discovery that  
6 counsel errantly represented during the informal discovery dispute conference had not previously  
7 been produced. *Id.* ¶¶ 5-7 & Doc. 29-3.

### 8 **Governing Legal Standard**

9 “Under the Federal Rules, “[i]f scientific, technical, or other specialized knowledge will  
10 assist the trier of fact to understand the evidence or to determine a fact in issue, a witness  
11 qualified as an expert by knowledge, skill, experience, training, or education may testify thereto  
12 in the form of an opinion or otherwise.” *Gorrell v. Sneath*, No. 1:12-cv-0554-JLT, 2013 WL  
13 4517902, at \*1 (E.D. Cal. Aug. 16, 2013) (quoting Fed. R. Evid. 702). “A party must disclose the  
14 identity of any expert witnesses, whether retained or non-retained, expected to testify at trial.” *Id.*  
15 “Disclosure of a non-retained expert ‘must state: (i) the subject matter on which the witness is  
16 expected to present evidence ...; and (ii) a summary of the facts and opinions to which the witness  
17 is expected to testify.’” *Id.* (quoting Fed. R. Civ. P. 26(a)(2)(C)). “A disclosure must be  
18 corrected ‘in a timely manner if the party learns that in some material respect the disclosure ... is  
19 incomplete or incorrect, and if the additional or corrective information has not otherwise been  
20 made known to the other parties during the discovery process or in writing.” *Id.* (quoting Fed. R.  
21 Civ. P. 26(e)(1)).

### 22 **Analysis**

23 In their joint letter brief, both parties cite and rely on *Green v. Qatar Airways Co.* (No.  
24 2:19-cv-07950-SVW-MAA, 2020 WL 9601990 (C.D Cal. Nov. 13, 2020)) – as to Plaintiff, for  
25 the proposition that because Rule 26(a) should be applied in a manner that will “satisfy the goals  
26 of ‘increasing efficiency and avoiding prejudicial surprise,’” the summaries of anticipated  
27 testimony he disclosed for the non-retained experts (treating physicians) should be deemed  
28 sufficient. (Doc. 24 at 7) (quoting *Green* at \*2).

1 In *Green*, similar to Plaintiff here, the plaintiff disclosed several non-retained treating  
2 physicians with generalized summaries of anticipated testimony, including the necessity of the  
3 treatment provided and the need for future treatment. *Id.* at \*2. The Court concluded the  
4 summaries were deficient under Rule 26(a)(2). The Court aptly noted that the disclosures “must  
5 be enough information for the opposing party to identify whether it needs a responsive witness  
6 and the information that such responsive witness would need to address.” *Id.* (internal quotation  
7 and citation omitted). The Court further found that the deficient disclosures were not harmless  
8 and that, because trial had been continued three times and was scheduled to commence less than  
9 two months after defendant challenged the disclosures, the appropriate remedy was to preclude  
10 the treating physicians from testifying at trial. *Id.* at \*3.<sup>1</sup>

11 Other courts similarly have found that cursory and general disclosures for non-retained  
12 experts do not pass muster under Rule 26(a)(2). For instance, in *Alfaro v. D. Las Vegas, Inc.*, No.  
13 2:15-cv-02190-MMD-PAL (D. Nev. Aug. 24, 2016), the Court concluded that the plaintiff’s Rule  
14 26(a)(2)(C) disclosures for non-retained experts were “so generic, unhelpful, and boilerplate they  
15 could apply to any [sic] virtually any case.” 2016 WL 4473421, at \*13. The *Alfaro* Defendants  
16 argued (as Defendants argued during the informal discovery dispute conference) that the vague  
17 expert disclosures prejudiced them by undermining their ability to “make an informed decision  
18 about which, if any, of the witnesses to depose.” *Id.* at \*2.

19 Likewise, in *Pineda v. City and Cnty. of San Francisco*, 280 F.R.D. 517, 523 (N.D. Cal.  
20 2012), the Court, similar to the *Alfaro* Court, found the plaintiffs’ Rule 26(a)(2)(C) disclosures for  
21 their non-retained treating physicians were inadequate. Specifically, the disclosure broadly  
22 noticed anticipated opinion testimony on the subjects of “causation, diagnosis, prognosis, [and]  
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24 <sup>1</sup> Although the *Green* court held that all of the plaintiff’s deficiently noticed non-retained  
25 experts were subject to exclusion, in a concession it characterized as “quite charitable,” the court  
26 permitted another treating physician to testify under extremely restrictive conditions because the  
27 plaintiff did disclose that physician’s anticipated opinion testimony regarding causation (*id.* at \*3-  
28 4). Here, the Court will not extend to Plaintiff any similar concession given his failure to remedy  
the substantially deficient disclosures when challenged by Defendants, his wholesale failure to  
identify in the original and amended disclosures *any* expert opinions, and the fact that the  
deadline to notice rebuttal experts is today.

1 extent of [plaintiff’s] disability,” without summarizing the facts or further elaborating the nature  
2 of the anticipated opinions. *Id.* at 523.

3 Like the Courts in *Green, Alfaro* and *Pineda*, this Court concludes that Plaintiff’s non-  
4 retained expert disclosures do not pass muster under Rule 26(a)(2)(C). While the disclosures  
5 sufficiently identify the subject matter of the anticipated testimony, they do not provide a  
6 summary of the relied-upon facts or actual opinions. Plaintiff’s argument that the disclosures  
7 adequately inform Defendants that the non-retained experts will opine generally about their  
8 conclusions regarding the nature and extent of Plaintiff’s injuries they treated and/or diagnosed is  
9 not persuasive. The disclosures run afoul of Rule 26(a)(2)(C) in failing to summarize any  
10 opinions or the facts on which the experts are expected to rely – and Plaintiff cannot meet his  
11 burden here by simply pointing to the disclosed medical records and representing that the relevant  
12 facts are contained therein, as he argued during the informal discovery dispute conference.

13 Based on the arguments of the parties in the joint brief (Doc. 24) and delivered during the  
14 informal discovery dispute conference, the Court finds Plaintiff has not demonstrated that the  
15 Rule 26(a)(2)(C) disclosure deficiencies were either substantially warranted or harmless. As set  
16 forth above, the bare bones disclosures made by Plaintiff provide no notice to Defendants as to  
17 either the experts’ opinions or underlying facts on which they rely in reaching any such opinions.  
18 Plaintiff was not substantially justified in making the deficient expert disclosures because counsel  
19 for Defendants informally identified and requested counsel for Plaintiff to remedy the  
20 deficiencies; yet, the amended disclosures that Plaintiff transmitted to Defendants approximately  
21 two weeks later still fall short of what is required under Rule 26(a)(2)(C). *See Pineda*, 280 F.R.D.  
22 at 523 (finding non-compliance with Rule 26(a)(2)(C) disclosure requirements not “substantially  
23 justified, particularly since Defendant specifically explained to Plaintiffs on January 6, 2012, how  
24 their disclosure of non-retained experts was deficient” and the deficiencies were not remedied).  
25 Moreover, the deficient disclosures were not harmless. Prior to his expert disclosures made on  
26 April 15, 2024, Plaintiff had not disclosed the majority of his non-retained experts in the initial or  
27 any supplemental Rule 26 notice and, without sufficient disclosures, Defendants are unable to  
28 adequately assess the need for and to retain rebuttal experts as necessary – particularly given that

1 the deadline to make rebuttal expert disclosures was the day after the informal discovery dispute  
2 conference (today).

3 However, the Court finds that the relief requested by Defendants (excluding all of the non-  
4 retained experts from testifying at trial) is not warranted at this point. That is because, unlike in  
5 *Alfaro*, here, discovery is not closed and Plaintiff’s Rule 26(a)(2)(C) deficiencies with respect to  
6 at least some of the disclosed non-retained experts may be remediable without a significant  
7 adjustment of case management dates.

8 In *Gorrell*, the Court found that defendants’ Rule 26(a)(2)(C) disclosures for their non-  
9 retained experts did not adequately identify the facts or opinions for which the witnesses were  
10 expected to testify. However, discovery was still open and the Court declined to exclude the  
11 expert testimony as a sanction, finding the disclosure deficiencies were harmless, largely because  
12 “many of the facts and opinions to which [the expert witnesses] expect to testify have been  
13 divulged in the course of discovery.” 2013 WL 4517902 at \*3-4 (distinguishing *Pineda*).  
14 Accord, *F.D.I.C. v. Anderson*, No. 2:11-cv-01061-GEB-EFB, 2012 WL 3728160, at \*4 (E.D. Cal.  
15 Aug. 27, 2012) (noting “deficiencies” in disclosure of non-retained expert but declining to  
16 exclude testimony).

17 As to the three non-retained experts initially noticed in Plaintiff’s Rule 26(a)(1)  
18 disclosures but deficiently noticed in Rule 26(a)(2) disclosures – Dr. Ryan Roleson, Dr. Sage  
19 Wexner, and Maria Lizbeth Mazcorro (AMFT) – like the *Gorrell* Court, the Court here will  
20 permit Plaintiff to belatedly amend his expert disclosures consistent with Rule 26(a)(2)(C) by a  
21 fixed time prior to a modestly expanded period to be granted by the Court for purposes of  
22 undertaking limited expert discovery. The amended disclosures may not expand beyond opinions  
23 the three non-retained experts formed during their respective course of treatment. *See Goodman*  
24 *v. Staples The Office Superstore, LLC*, 644 F.3d 817, 826 (9th Cir. 2011). Further, should any of  
25 Plaintiff’s non-retained experts testify to expert opinions outside the narrow bounds of their  
26 amended Rule 26(a)(2)(C) disclosures, Defendant may seek relief through a motion to exclude  
27 those portions of the deposition testimony that were not sufficiently disclosed in advance. *See*  
28 Fed. R. Civ. P. 37(c)(1) (a party who fails to provide required information “is not allowed to use

1 that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the  
2 failure was substantially justified or is harmless.”). *E.g., Wishtoyo Found. v. United Water*  
3 *Conservation Dist.*, No. CV 16-3869-DOC (PLAx), 2017 WL 6940510, at \*15 (C.D. Cal. Dec. 1,  
4 2017) (excluding portions of non-retained expert witness deposition testimony for party’s failure  
5 to properly disclose pursuant to Rule 26(a)(2)); *Krause v. Hawaiian Airlines, Inc.*, No. 2:18-cv-  
6 00928 JAM AC, 2019 WL 13225251, at \*5-6 (E.D. Cal. June 7, 2019) (declining to strike expert  
7 testimony, notwithstanding deficient Rule 26(a)(2)(C) disclosures, subject to renewal of motion).

8 As to the other treatment providers identified in Plaintiff’s Rule 26(a)(2) disclosures and  
9 who had not previously been disclosed in Plaintiff’s Rule 26(a)(1) disclosures, they will be  
10 excluded from presenting testimony at trial. *See Green*, 2020 WL 9601990, at \*3 (excluding  
11 improperly noticed non-retained experts where disclosure was neither substantially justified nor  
12 harmless); *Pineda*, 280 F.R.D. at 523 (same).

13 **Conclusion and Order**

14 For the foregoing reasons and based on the discussion had during the informal discovery  
15 dispute conference, it is HEREBY ORDERED:

16 1. Plaintiff shall be precluded from presenting the testimony of the non-retained experts  
17 identified in his supplemental Rule 26(a)(2) disclosures (Doc. 29-2), with the exception of Dr.  
18 Ryan Roleson, Dr. Sage Wexner, and Maria Lizbeth Mazcorro (AMFT);

19 2. As to Dr. Ryan Roleson, Dr. Sage Wexner, and Maria Lizbeth Mazcorro (AMFT),  
20 Plaintiff may transmit to Defendants amended disclosures for these non-retained expert witnesses  
21 consistent with Rule 26(a)(2)(C) and the analysis set forth above within ten (10) days of entry of  
22 this order; and

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3. The time for undertaking expert discovery for the limited purpose of facilitating Plaintiff's amended expert disclosures and any rebuttal expert disclosures by Defendants (as set forth above) and for taking depositions of these witnesses only is extended from June 7, 2024, to August 2, 2024.

IT IS SO ORDERED.

Dated: May 10, 2024

  
UNITED STATES MAGISTRATE JUDGE