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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MANISHA PALLA, ) Case No. 2:16-cv-02865-JAM-EFB  
 )  
Plaintiff, )  
 )  
v. ) ORDER GRANTING IN PART AND  
 ) DENYING IN PART PLAINTIFF'S  
 ) REQUEST TO ADD CERTAIN  
L M SPORTS, INC. dba LAKESIDE ) WITNESSES PREVIOUSLY NOT  
MARINA and dba ACTION ) LISTED IN RULE 26 DISCLOSURES  
WATERSPORTS OF TAHOE; L T )  
LEASING, INC.; PAUL GARCIA; and )  
DOES 1-50, inclusive, )  
 )  
Defendants. )  
 )  
AND RELATED ACTIONS. )  
 )

On January 4, 2019, the parties filed a Joint Pre-trial Statement. ECF No. 168. L M Sports, et al. ("L M Sports") argued that the Court should not permit Palla to introduce witnesses at trial that had not previously been disclosed according to Rule 26. Id. at 11. At the Pre-trial Conference a week later, the Court ordered briefing on the issue. Tr. of Proceedings at 45:3-19, ECF No. 176. Plaintiff's brief in support of adding nine previously undisclosed witnesses, ECF No. 179, and LM Sports brief in opposition to Plaintiff's request to add witnesses, ECF No. 186,

1 have been received, read and considered by the Court.

2 Palla argues that four of the disputed witnesses—Mariah  
3 Koeltl, Suvarna “Sue” Palla, Sukender Palla, and Saurav Palla—  
4 should be allowed to testify because their identities were revealed  
5 through the course of discovery. Memo. in Support of Additional  
6 Witnesses (“Plf.’s Memo”) at 4-7, ECF No. 179. She contends that  
7 the remainder of the disputed witnesses should be allowed to  
8 testify because her failure to disclose them was “substantially  
9 justified or harmless.” Id. at 7-10. L M Sports argues in its  
10 opposition that (1) exclusion of witnesses not formally disclosed  
11 is required by Rule 37, (2) the failure to disclose was neither  
12 justified nor harmless, and (3) Palla would not be harmed by the  
13 exclusion of these witnesses. See generally, Opposition by  
14 Defendants to [DKT 179] Brief (“Opp.”), ECF No. 186.

15 The Court GRANTS Plaintiff’s request in part. If the Court  
16 finds against L M Sports in the Limitation Action, Palla may  
17 introduce Sue Palla, along with either Mariah Koeltl or Michelle  
18 Chan as witnesses during the jury trial on damages. Palla must  
19 make these witnesses available to L M Sports for depositions  
20 following the first trial, and pay the cost of the depositions.  
21 The depositions are to occur at a date convenient to L M Sports.

22  
23 I. OPINION

24 A. Legal Standard

25 Federal Rule of Civil Procedure 26(a)(1)(A) requires a party  
26 “without awaiting a discovery request, [to] provide to the other  
27 parties the name and . . . address and telephone number of each  
28 individual . . . that the disclosing party may use to support its

1 claims or defenses . . . .” Rule 26 also includes a duty to  
2 timely supplement initial disclosures when the party learns “that  
3 in some material respect the disclosure or response is incomplete  
4 or incorrect.” Fed. Rule Civ. Proc. 26(e). Rule 37(c) imposes  
5 penalties for a party’s failure to disclose or supplement an  
6 earlier response.

7 B. Analysis

8 Palla was under a duty to supplement her initial disclosures,  
9 apprising L M Sports of the additional witnesses she wanted to  
10 testify at trial. This Court is neither bound by the Advisory  
11 Notes to the Federal Rules of Civil Procedure or the cases cited  
12 to by Plaintiff from other district courts. See Plf.’s Memo at 3.  
13 Furthermore, the Court does not find these sources persuasive  
14 where they suggest a result that is contrary to what a plain  
15 reading of Rule 26 requires. It was not enough under Rule 26 for  
16 Plaintiff to simply make passing references about the individuals  
17 she intended to use at trial. And for the reasons stated in  
18 Defendants’ Opposition, the Court finds that Plaintiff’s failure  
19 to satisfy Rule 26 was not substantially justified or harmless.  
20 See Opp. at 9-12.

21 But L M Sports’ argument that Rule 37 requires the exclusion  
22 of undisclosed witnesses in all circumstances is incorrect. The  
23 text of the rule plainly allows for sanctions “[i]n addition to or  
24 instead of” exclusion. Fed. R. Civ. Proc. 37(c) (emphasis added).  
25 The remedy fashioned by this Court falls within the discretion  
26 afforded by Rule 37. It also adequately protects against the  
27 prejudice that would otherwise flow from Plaintiff’s failure to  
28 disclose. L M Sports will not need to depose Palla’s witnesses

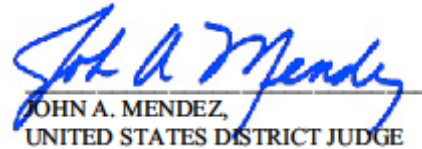
1 until after the conclusion of the Limitation Action, and only upon  
2 a finding in favor of Plaintiff by the Court. Palla will only be  
3 allowed to introduce two of the previously-undisclosed witnesses,  
4 and will be required to pay the costs of the depositions. This  
5 solution is permissible under the Federal Rules, and best protects  
6 the interests of each party.

7  
8 II. ORDER

9 For the reasons set forth above, the Court GRANTS in part and  
10 DENIES in part, Plaintiff's Request to Add Certain Witnesses  
11 Previously Not Listed in Rule 26 Disclosures.

12 IT IS SO ORDERED.

13 Dated: February 5, 2019

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16 JOHN A. MENDEZ,  
17 UNITED STATES DISTRICT JUDGE  
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