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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWARD E. ANDERSON,

No. C 08-04195 WHA

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

**ORDER GRANTING
MOTION TO EXCLUDE
PLAINTIFF'S EXPERT
WITNESS TESTIMONY
AND IMPOSING FINE**

On January 14, 2011, defendant filed a letter brief requesting “an Order (1) enforcing the terms set forth in the Second Case Management Order [regarding expert disclosures], (2) deeming Plaintiff’s Disclosure of Expert Witnesses and subsequently produced written reports untimely, and (3) barring Plaintiff’s expert(s) from testifying or introducing any evidence in this matter” (Dkt. No. 82). That afternoon, an order was issued setting a hearing on the discovery dispute for 2:00 p.m. on January 19, and also setting a meet-and-confer session “starting from 10:00 a.m. and ending at 2:00 p.m.” on January 19. (Dkt. No. 83). Frederick C. Roesti, plaintiff’s counsel, filed an opposition to defendant’s letter brief on January 18 but did not show up for the meet-and-confer session on January 19. With both parties present at the January 19 hearing, argument was heard regarding Attorney Roesti’s failure to attend the meet-and-confer session and on the merits of the discovery dispute.

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Regarding Attorney Roesti's failure to attend the meet-and-confer session, Attorney Roesti is at fault for failing to discharge his duty of opening, reading, and complying with court orders. To partially compensate defendant for the time wasted by defense counsel as a result of this failure, Attorney Roesti must pay defendant the sum of \$800 by **JANUARY 31, 2011**. This payment must be made by Attorney Roesti personally; it may not be charged to his client.

Regarding the discovery dispute, defendant's motion is **GRANTED**. Plaintiff's failure to make expert disclosures is inexcusable, and the normal consequence for failure to make timely expert disclosures pursuant to FRCP 26 — preclusion — is appropriate. Plaintiff will not be allowed to offer any expert testimony in this action. As noted at the hearing, plaintiff, of course, remains free to offer fact testimony and lay opinion testimony to prove his case.

Plaintiff's requests for leave to file an untimely motion to compel document production and for a further hearing on this request are **DENIED**. Plaintiff's first set of document requests was so broad and overburdensome as to be abusive; this set of discovery requests transparently was calculated to impose on defendants a burden significant enough to extract a settlement payment. Plaintiff's second set of document requests was somewhat more narrowly drawn, but it was served only eleven days before the close of fact discovery, *i.e.*, too late (and was still overly burdensome). These were plaintiff's only two sets of document requests, and neither of them merits enforcement.

IT IS SO ORDERED.

Dated: January 20, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE