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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DAVID M. CURLEY, SR.,  
Plaintiff,  
v.  
WELLS FARGO & CO., and others,  
Defendants.

Case No. 13-cv-03805 NC

**ORDER DIRECTING PARTIES TO  
SPECIFIC ARGUMENTS IN  
PREPARATION FOR SUMMARY  
JUDGMENT HEARING**

Re: Dkt. No. 128

The Court provides notice that the parties should be prepared to address two particular arguments raised in plaintiff’s supplemental opposition, Dkt. No. 128.

First, Curley objects to the declaration of Alisha Mulder under Federal Rules of Civil Procedure 26 and 37, asserting that she was not disclosed by Wells Fargo as a witness. Under Rule 37(c), if a party fails to identify a witness as required by the rules, then the party is not allowed to use that witness to provide evidence in a summary judgment motion, “unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c).

Second, Curley cites four state cases on page three that he says stand for the proposition that “one cannot continue to deal with a person and then retroactively assert there was a material breach so as to excuse their performance.”

IT IS SO ORDERED.

Date: July 21, 2015

  
Nathanael M. Cousins  
United States Magistrate Judge