

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES BAIRD, et al.,
Plaintiffs,
v.
BLACKROCK INSTITUTIONAL TRUST
COMPANY, N.A., et al.,
Defendants.

Case No. 17-cv-01892-HSG (KAW)

**ORDER REGARDING JOINT
DISCOVERY LETTERS**

Re: Dkt. Nos. 238, 240

Plaintiffs filed the instant putative class action against Defendants, alleging violations of the Employee Retirement Income Security Act's ("ERISA") fiduciary duty and prohibited transaction provisions. (Second Amended Compl. ("SAC") ¶ 1, Dkt. No. 154.) On January 31, 2019 and February 1, 2019, the parties filed two discovery letters concerning BlackRock's¹ second supplemental disclosures. (Jan. 31, 2019 Letter, Dkt. No. 238; Feb. 1, 2019 Letter, Dkt. No. 240.)

Upon consideration of the parties' filings, as well as the arguments presented at the February 21, 2019 hearing, the Court GRANTS IN PART AND DENIES IN PART Plaintiffs' request for relief.

I. BACKGROUND

On July 5, 2017, the parties exchanged initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). (Jan. 31, 2019 Letter at 1; Feb. 1, 2019 Letter at 1.) In their initial disclosures, Plaintiffs identified, among other individuals, Mr. Jeffrey Kirsh. (Jan. 31, 2019 Letter, Exh. 1 at 3.) BlackRock identified four individuals, including Plaintiff Baird. (Jan. 31, 2019 Letter, Exh. 2 at 3.) BlackRock also incorporated by reference any individual disclosed by

¹ BlackRock refers to all of the BlackRock-related Defendants.

1 another party in the case. (Id. at 2.)

2 On December 7, 2018, the parties filed a stipulation to modify the case schedule, including
3 continuing the discovery deadlines. (Dkt. No. 202 at 4-5.) The parties agreed that if the extension
4 was granted, they would not issue any further written discovery requests on one another. (Id. at
5 5.) Plaintiffs also agreed not to seek to depose any current or former BlackRock employee, other
6 than Mr. Schnadt or Ms. Fung, prior to the class certification hearing. (Id.)

7 On December 21, 2018, BlackRock served a Supplemental Disclosure, which identified
8 twenty-nine individuals likely to have discoverable information. (Jan. 31, 2019 Letter at 1.) After
9 Plaintiffs objected, BlackRock provided a Second Supplemental Disclosure on January 17, 2019,
10 less than three weeks prior to the close of fact discovery. (Id.) The Second Supplemental
11 Disclosure provided greater detail as to what the individuals would be testifying to. (See Feb. 1,
12 2019 Letter, Exh. 5.)

13 The parties then filed joint letters concerning ten of the individuals identified by
14 BlackRock's Supplemental Disclosures. On February 21, 2019, the Court held a discovery hearing
15 on the parties' joint discovery letters. (Dkt. No. 252.) At the hearing, BlackRock noted that Ms.
16 Jeanne Belanger and Ms. Irene Ashkenazy would be testifying as BlackRock's 30(b)(6) witnesses.
17 BlackRock also emphasized that except for Mr. Kirsh, Ms. Belanger, and Ms. Ashkenazy, the
18 other seven individuals at issue were identified in the event that Plaintiffs raised foundation
19 objections at trial.

20 II. LEGAL STANDARD

21 Federal Rule of Civil Procedure 26(a) requires that a party provide "the name . . . of each
22 individual likely to have discoverable information -- along with the subjects of that information --
23 that the disclosing party may use to support its claims or defenses, unless the use would be solely
24 for impeachment." Rule 26(e) requires that disclosures be supplemented "in a timely manner."
25 The purpose of these "disclosures is to identify those witnesses that a party intends to use at trial."
26 *Vieste, LLC v. Hill Redwood Dev.*, Case No. 09-cv-4024-JSW (DMR), 2011 WL 2181200, at *3
27 (N.D. Cal. June 3, 2011). Rule 37(c)(1), in turn, states: "If a party fails to provide information or
28 identify a witness as required by Rule 26(a) or (e) the party is not allowed to use that information

1 or witness to supply evidence on a motion, at a hearing, or at a trial" Thus, "Rule 37(c)(1)
2 gives teeth to [Rule 26's] requirements by forbidding the use at trial of any information required to
3 be disclosed by Rule 36(a) that is not properly disclosed." *Yeti by Molly, Ltd. v. Deckers Outdoor*
4 *Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

5 "The Advisory Committee Notes to the 1993 amendments to Rule 37 describe subsection
6 (c)(1) as a 'self-executing,' 'automatic' sanction to 'provide a strong inducement for disclosure of
7 material' that must be disclosed pursuant to Rule 26." *Tristrata, Inc. v. Microsoft Corp.*, Case No.
8 11-cv-3797-JST, 2013 WL 12172909, at *2 (N.D. Cal. May 13, 2013). "Two express exceptions
9 ameliorate the harshness of Rule 37(c)(1): The information may be introduced if the parties'
10 failure to disclose the required information is substantially justified or harmless." *Yeti by Molly,*
11 *Ltd.*, 259 F.3d at 1106. "[T]he burden," however, "is on the party facing sanctions to prove
12 harmless." *Id.* at 1107.

13 III. DISCUSSION

14 Plaintiffs seek to strike ten individuals that BlackRock did not disclose until December 21,
15 2018. (Jan. 31, 2019 Letter at 1; Feb. 1, 2019 Letter at 1.) BlackRock responds that its
16 disclosures were not late, and that if they were, any delay was harmless or justifiable.

17 A. Previous Disclosures

18 BlackRock primarily argues that its supplemental disclosures were "for the purely
19 ministerial purpose of memorializing individuals known to Plaintiffs for months" (Feb. 1,
20 2019 Letter at 4; see also Jan. 31, 2019 Letter at 4.) In other words, BlackRock contends that the
21 disclosure was not late because the ten individuals were already previously disclosed in discovery.
22 The Court addresses each of the individuals.

23 i. Jeffrey Kirsh (Managing Director and Senior Counsel)

24 On December 21, 2018, BlackRock disclosed Mr. Kirsh on the topic of "Fiduciary process
25 and decisions for the plan." (See Jan. 31, 2019 Letter, Exh. 3 at 3.) On January 17, 2019,
26 BlackRock supplemented its disclosure, stating that Mr. Kirsh "advised the Retirement Committee
27 and Investment Committee regarding fiduciary processes," and that he "routinely attended
28 meetings of the Investment Committee, and is familiar with its decisionmaking processes." (Feb.

1 1, 2019 Letter, Exh. A at 4.) Prior to being disclosed by BlackRock, Plaintiffs had identified Mr.
2 Kirsh in their initial disclosures. (Jan. 31, 2019 Letter, Exh. 1 at 3.)

3 BlackRock contends that it has always identified Mr. Kirsh as a potential trial witness
4 because its initial disclosures incorporated Plaintiffs' initial disclosures. (Jan. 31, 2019 Letter at
5 4.) BlackRock also explains it produced hundreds of documents showing that Mr. Kirsh regularly
6 attended meetings of the fiduciary committees, as well as hundreds of communications with Mr.
7 Kirsh. (Id.) Further, BlackRock argues that during the deposition of Katie Nedl, "Plaintiffs
8 probed Mr. Kirsh's involvement and role in the Plan fiduciaries' deliberative process." (Id.)

9 Plaintiff responds that Mr. Kirsh being copied on documents involving the Investment
10 Committee does not constitute a sufficient disclosure. (Jan. 31, 2019 Letter at 2.) Plaintiff also
11 argues that BlackRock is now identifying Mr. Kirsh as the only individual with discoverable
12 information about the Investment Committee's decisionmaking process after previously
13 identifying Mr. Joe Feliciani, and that Mr. Feliciani has now been removed from the supplemental
14 disclosures. (Id. at 3.) Based on this representation, Plaintiffs deposed Mr. Feliciani rather than
15 deposing Mr. Kirsh. (Id.)

16 The Court finds that Mr. Kirsh was not sufficiently disclosed. With respect to BlackRock's
17 initial disclosures, the Court notes that despite incorporating Plaintiffs' initial disclosures,
18 BlackRock still separately identified four individuals who were also identified by Plaintiffs' initial
19 disclosures. Specifically, Plaintiffs identified Plaintiff Baird and the individual members of the
20 Retirement Committee, Investment Committee, and Administrative Committee in their initial
21 disclosures. (Jan. 31, 2019 Letter, Exh. 1 at 1-2.) BlackRock, in turn, identified Plaintiff Baird,
22 Mr. Feliciani (a member of the three committees), Ms. Nedl (a member of the Administrative
23 Committee), and Mr. Herman (the secretary of the Retirement Committee). (Jan. 31, 2019 Letter,
24 Exh. 2 at 3.) Under these circumstances, where BlackRock specifically identified individuals who
25 were already "incorporated" from Plaintiffs' initial disclosures, BlackRock cannot rely on the
26 incorporation of Plaintiffs' initial disclosures to satisfy its Rule 26 disclosure obligations.

27 This is particularly the case where, in response to Plaintiffs' interrogatories requesting the
28 identification of all individuals involved in the choosing of funds, BlackRock did not identify Mr.

1 Kirsh. At the hearing, BlackRock argued that Mr. Kirsh did not himself choose the funds. Yet, as
2 Plaintiffs point out, BlackRock chose to identify Mr. Kirsh as a trial witness for the purpose of
3 explaining the Investment Committee's decisionmaking process.

4 As to Ms. Nedl's deposition, it is not clear how much information was provided regarding
5 Mr. Kirsh's role in the deliberative process, including whether it was sufficient to put Plaintiffs on
6 notice that BlackRock would be relying on Mr. Kirsh as a trial witness. More significantly,
7 Plaintiffs correctly identify the substantial harm to them from BlackRock replacing Mr. Feliciani
8 with Mr. Kirsh after Plaintiffs had deposed Mr. Feliciani on the same topics on which Mr. Kirsh is
9 now expected to testify. Plaintiffs were not given the opportunity to depose Mr. Kirsh instead, or
10 to determine what non-privileged information Mr. Kirsh would have. While BlackRock explained
11 at the hearing that Mr. Feliciani was removed from the initial disclosure because he has retired,
12 Mr. Feliciani's retirement does not preclude him from being a witness. Given these circumstances,
13 the Court finds that Mr. Kirsh was not adequately disclosed.

14 **ii. Jeanne Belanger (Managing Director, Legal & Compliance)**

15 On December 21, 2018, Ms. Belanger was disclosed on the topic of "CTF governing
16 documents." (Jan. 31, 2019 Letter, Exh. 3 at 2.) On January 17, 2019, BlackRock identified Ms.
17 Belanger as having "assisted with preparing Jason Strofs and Mr. Henige for their 30(b)(6)
18 depositions." Ms. Belanger is also "familiar with the drafting of the collective trust ('CTI') plan
19 documents . . . and related client disclosures and agreements, as well as the processes for
20 reviewing and revising these documents . . . , and will be prepared to explain those processes."
21 (Feb. 1, 2019 Letter, Exh. A at 3.)

22 BlackRock contends Plaintiff should have known of Ms. Belanger because Ms. Belanger
23 signed four declarations in support of motions to file under seal, which stated that she was
24 "familiar with the confidential information and documents . . . that are created in connection with
25 the management, governance, and administration of BlackRock CTIs." (Jan. 31, 2019 Letter at 4;
26 e.g., Dkt. No. 141 ¶ 4.) BlackRock also argues that two deposition witnesses identified Ms.
27 Belanger as helping them prepare for their 30(b)(6) testimony, which included the meaning and
28 purpose of certain language in the CTI plan documents. (Jan. 31, 2019 Letter at 4.) At the

1 hearing, BlackRock stated that the deposition witnesses did not go into detail as to how Ms.
2 Belanger helped them prepare for their 30(b)(6) testimony. BlackRock did, however, state that
3 Ms. Belanger would soon be testifying as a 30(b)(6) witness.

4 The Court finds that, to the extent BlackRock intends to rely on Ms. Belanger in her
5 individual capacity, rather than as a 30(b)(6) witness, Ms. Belanger was not sufficiently disclosed.
6 The declarations in support of the motions to file under seal did not indicate that Ms. Belanger was
7 familiar with drafting the CTI plan documents, or the processes for reviewing and revising these
8 documents. Instead, the declaration only states that she is familiar with the documents themselves.
9 Further, as Plaintiffs point out, the declarations do not indicate that Ms. Belanger has non-
10 privileged information regarding these documents, such that she would be able to testify about
11 them. (See Jan. 31, 2019 Letter at 3.) Finally, the fact that two deposition witnesses identified
12 Ms. Belanger as helping them prepare for their 30(b)(6) testimony does not put Plaintiffs on notice
13 that she could or would serve as a witness in this case. While BlackRock faults Plaintiffs for not
14 asking more questions of the deposition witnesses regarding Ms. Belanger's role in helping them
15 prepare their 30(b)(6) testimony, Plaintiffs' failure to ask such questions does not absolve
16 BlackRock of its Rule 26 disclosure obligations.

17 **iii. Irene Ashkenazy (Managing Director, Head of Business Economics), Rajiv**
18 **Khurana (Director, Corporate Financial Planning & Analysis), Sara Lo**
19 **(Managing Director, Global Chief Operating; Officer, Trading & Liquidity**
Strategies)

20 In the December 21, 2018 supplemental disclosure, Ms. Ashkenazy was disclosed on the
21 topic of "BlackRock, Inc. business reviews." (Jan. 31, 2019 Letter, Exh. 3 at 2.) In the January
22 17, 2019 second supplemental disclosure, Ms. Ashkenazy was identified as being "familiar with
23 the processes surrounding BlackRock's financial planning and analysis, including how costs and
24 revenues to BlackRock are allocated among BlackRock's business units." (Feb. 1, 2019 Letter,
25 Exh. A at 2.)

26 In the January 17, 2019 second supplemental disclosure, Mr. Khurana was identified as
27 preparing Mr. Jason Strofs for his 30(b)(6) deposition, and is involved in preparing quarterly
28 business reviews ("QBRs"). (Feb. 1, 2019 Letter, Exh. A at 5.) Mr. Khurana can "explain

1 changes in the categories to which particular costs have been allocated over time," and "is familiar
2 with costs that . . . are not reflected in the QBRs." (Id.)

3 In the January 17, 2019 second supplemental disclosure, Ms. Lo is identified as preparing
4 Mr. Strofs for his 30(b)(6) deposition, and having "oversee[n] securities lending operations . . .
5 which includes analysis of the type of cost and revenue information included in the QBRs for the
6 securities lending business." (Feb. 1, 2019 Letter, Exh. A at 5.)

7 Plaintiffs state that Ms. Ashkenazy and Mr. Khurana "cannot be found anywhere in
8 discovery to date," and that Ms. Lo was only referred to in a few documents. (Jan. 31, 2019 Letter
9 at 2.) BlackRock does not dispute this. At the hearing, BlackRock stated that Ms. Ashkenazy
10 would be providing 30(b)(6) deposition testimony on QBRs, and that Mr. Khurana and Ms. Lo
11 would likely assist Ms. Ashkenazy in preparing for the deposition.

12 With respect to Ms. Ashkenazy, the Court finds that to the extent BlackRock intends to
13 rely on Ms. Ashkenazy in her individual capacity, rather than as a 30(b)(6) witness on QBRs, she
14 was not sufficiently disclosed. As noted above, BlackRock does not dispute that Ms. Ashkenazy
15 could not be found in any discovery to date. As to Mr. Khurana and Ms. Lo, the Court likewise
16 finds that these witnesses were not sufficiently disclosed.

17 **iv. Chris Christensen (Managing Director, BlackRock Services & Operations),**
18 **Ianthus Martin (Director, Securities Lending Operations), Joel Munoz (Vice**
President)

19 In the December 21, 2018 supplemental disclosure, Ms. Christensen was disclosed on the
20 topic of "BTC processes related to securities lending and cash collateral management." (Jan. 31,
21 2019 Letter, Exh. 3 at 3.) In the January 17, 2019 second supplemental disclosure, BlackRock
22 further explained that Ms. Christensen "serves on BTC's strategic initiatives team," "assisted with
23 preparing Ryan Henige for his 30(b)(6) deposition," and "was involved in oversight and
24 management decisions regarding the STIFs that hold securities lending cash collateral during the
25 period applicable to Plaintiffs' STIF claims. Ms. Christensen is familiar with operational
26 processes in place during this period." (Feb. 1, 2019 Letter, Exh. A at 3.)

27 In the January 17, 2019 second supplemental disclosure, BlackRock identified Mr. Martin
28 as helping prepare Mr. Strofs and Mr. Henige for their 30(b)(6) depositions. (Feb. 1, 2019 Letter,

1 Exh. A at 5.) Mr. Martin is also "familiar with operational processes surrounding securities
2 lending costs and fees," and "with how these costs are allocated among different financial
3 products, how securities lending income is distributed, and how BlackRock' securities lending fees
4 are paid." (Id.)

5 In the January 17, 2019 second supplemental disclosure, BlackRock also identified Mr.
6 Munoz as helping prepare Mr. Henige for his 30(b)(6) deposition. (Feb. 1, 2019 Letter, Exh. A at
7 6.) Mr. Munoz is also "familiar with the funding accounting mechanisms by which BlackRock
8 effectuates administrative expense caps and fee waivers applicable to CTIs, and can explain how
9 these apply across the various layers in the fund-of-fund structure utilized by the BlackRock
10 CTIs." (Id.)

11 BlackRock contends that Ms. Christensen, Mr. Martin, and Mr. Munoz helped Mr. Henige
12 with his 30(b)(6) testimony on fund accounting issues in a January 2019 deposition. (Feb. 1, 2019
13 Discovery Letter at 4.) BlackRock asserts that it is therefore reasonable for it "to supplement its
14 disclosures to confirm the individuals with personal knowledge on Plaintiffs' 30(b)(6) topics to
15 ensure that there would be no foundational objections to testimony on those topics at trial." (Id. at
16 5.) Further, BlackRock argues generally that this case is similar to Vieste, where the district court
17 found that the defendants' duty to supplement was sufficiently discharged where a deponent
18 testified that the two individuals at issue were present at a meeting with a defendant regarding
19 potential financing for the projects at issue in the case. (Id.; see Vieste, 2011 WL 2181200, at *3.)

20 At the hearing, however, BlackRock stated that only Mr. Kirsh was identified as providing
21 assistance in preparing a 30(b)(6) witness on a specific topic. The other disputed individuals,
22 including Ms. Christensen, Mr. Martin, and Mr. Munoz, were identified, but without further
23 information on how they helped prepare the 30(b)(6) witnesses' deposition topic. Simply
24 identifying the individual by name is insufficient; there must be sufficient information to show
25 that "these individuals possessed discoverable information that supported BlackRock's case," such
26 that Plaintiffs "could have made educated choices about how to best use their discovery
27 resources." Vieste, 2011 WL 2181200, at *3. Again, although BlackRock faults Plaintiffs for not
28 asking more questions, BlackRock had an independent duty to disclose all individuals it intended

1 to rely upon at trial. Therefore, the Court concludes that these individuals were not sufficiently
2 disclosed in prior discovery.

3 **v. Elizabeth Kent (Managing Director; Former Global Chief Operating**
4 **Officer, Trading & Liquidity Strategies), Eric Hiatt (Director, Cash**
5 **Portfolio Manager)**

6 In the December 21, 2018 supplemental disclosure, Ms. Kent was disclosed on the topic of
7 "management and operation of securities lending program." (Jan. 31, 2019 Letter, Exh. 3 at 3.) In
8 the January 17, 2019 second supplemental disclosure, Ms. Kent was identified as having been
9 "responsible for overseeing securities lending operations, which included analysis of the type of
10 cost and revenue information included in the Quarterly Business Reviews ('QBRs') for the
11 securities lending business." (Feb. 1, 2019 Letter, Exh. A at 4.)

12 In both the December 21, 2018 and January 17, 2019 supplemental disclosures, Mr. Hiatt
13 was disclosed on the topic of "[m]anagement of STIFs used to hold securities lending cash
14 collateral." (Jan. 31, 2019 Letter, Exh. 3 at 3; Feb. 1, 2019 Letter, Exh. A at 4.)

15 BlackRock argues that Ms. Kent and Mr. Hiatt were sufficiently "identified in a one-page
16 organization chart that BlackRock produced to Plaintiffs on March 9, 2018," which Plaintiffs then
17 used to craft discovery requests. (Feb. 1, 2019 Letter at 4.) Mr. Stofs also identified Mr. Hiatt as
18 helping him prepare his 30(b)(6) testimony. (Id.)

19 The Court finds that Ms. Kent and Mr. Hiatt were not sufficiently disclosed prior to the
20 supplemental disclosures. The fact that Ms. Kent and Mr. Hiatt were listed on an organization
21 chart does not alone suggest that they would be witnesses in this case. Plaintiffs should not be put
22 in the position of having to prepare for the possibility of facing every individual on an
23 organization chart as a potential witness. Similarly, Mr. Stofs's identification of Mr. Hiatt as
24 assisting him in preparing for his deposition is insufficient to satisfy Rule 26.

25 **B. Lack of Harm**

26 In the alternative, BlackRock argues that there is no harm from the late disclosures because
27 Plaintiffs could conduct further discovery after the class certification motion is decided. (Jan. 31,
28 2019 Letter at 5; Feb. 1, 2019 Letter at 5.) As Plaintiffs point out, however, the late-identified
witnesses could have information relevant to class issues. (Feb. 1, 2019 Letter at 3.) Thus, the

1 ability to do discovery after class certification does not render BlackRock's late disclosure
2 harmless, particularly if BlackRock relies on declarations from these witnesses to oppose class
3 certification.

4 BlackRock also contends that Plaintiffs do not identify any prejudice from the
5 supplemented disclosures, such as whether they would have conducted discovery differently.
6 (Feb. 1, 2019 Letter at 5.) Specifically, BlackRock argues that Plaintiff cannot show that it would
7 have conducted discovery differently, pointing to a December 7, 2018 stipulation where Plaintiffs
8 agreed not to propound new discovery in exchange for an extension of the discovery request. (Id.)
9 The Court disagrees. As an initial matter, it is not Plaintiffs' burden to demonstrate harm, but
10 BlackRock's burden to prove harmlessness. Yeti by Molly, Ltd., 259 F.3d at 1107. Further, the
11 December 7, 2018 stipulation only highlights the harm as Plaintiffs agreed not to propound new
12 discovery prior to BlackRock disclosing twenty-nine new individuals in their December 21, 2018
13 supplemental disclosures. It is not clear Plaintiffs would have agreed to limit future discovery
14 requests if they had known there BlackRock intended to supplement its Rule 26 disclosures with
15 so many individuals. Thus, the Court finds that BlackRock has not satisfied its burden to prove
16 harmlessness from its late disclosures.

17 **C. Justifiable Delay**

18 Finally, BlackRock argues that Plaintiffs "complain[t] that BlackRock should have
19 formally revised its disclosures earlier . . . is misplaced" because Plaintiffs only filed their Second
20 Amended Complaint in August 2018. (Feb. 1, 2019 Letter at 5.) BlackRock further contends that
21 the discovery demands in connection with the amended pleading "evolved well past the
22 amendment itself," arguing that Plaintiffs "compounded their demands for discovery" on the issue
23 of cost and profitability by requesting information on QBRs. (Id.)

24 As Plaintiffs point out, however, the presiding judge found that the amended complaint
25 "d[id] not fundamentally alter the nature of their claims." (Dkt. No. 151 at 3.) Moreover, even if
26 the amended complaint had changed the scope of discovery, the complaint was amended in
27 August 2018 whereas BlackRock waited until December 21, 2018 -- the Friday before the
28 Christmas holidays -- to supplement its disclosures, and then again on January 17, 2019. While

1 BlackRock also points to additional discovery related to Mr. Strofs's deposition, that deposition
2 occurred on September 17, 2018; BlackRock does not explain why it could not have timely
3 amended its disclosures before December 21, 2018. Accordingly, the Court finds that the delay in
4 supplementing the initial disclosures was not justifiable.

5 Thus, with the exception of Ms. Belanger in her capacity as a 30(b)(6) witness and Ms.
6 Ashkenazy as a 30(b)(6) witness on QBRs, the Court concludes that BlackRock has not shown
7 that the late disclosures were harmless or justified. The Court concludes that the remaining
8 witnesses must be stricken -- including Ms. Belanger and Ms. Ashkenazy in their individual
9 capacities -- such that BlackRock "is not allowed to use that information or witness to supply
10 evidence on a motion, at a hearing, or at a trial." Fed. R. Civ. P. 37(c)(1).

11 This ruling, however, is without prejudice to call these witnesses at proceedings if a
12 foundation objection is made as to the corporate testimony that these individuals assisted the
13 30(b)(6) witnesses in preparing. At the hearing, BlackRock emphasized that the individuals at
14 issue in the February 1, 2019 discovery letter were only listed in the event that Plaintiffs were to
15 raise -- and the presiding judge was to sustain -- a foundation objection as to the 30(b)(6)
16 testimony. The fact that BlackRock may need these individuals as witnesses to handle foundation
17 objections, however, does not warrant requiring Plaintiffs to have to prepare for all of these
18 individuals as witnesses for any purpose.

19 **IV. CONCLUSION**

20 For the reasons stated above, the Court strikes the individuals at issue in the joint letters
21 except for Ms. Belanger and Ms. Ashkenazy in their capacity as 30(b)(6) witnesses only. The
22 stricken individuals may not supply evidence on a motion, at a hearing, or at trial. Again, this
23 ruling is without prejudice to foundation objections to 30(b)(6) testimony that the individuals
24 assisted in preparing.

25 IT IS SO ORDERED.

26 Dated: February 27, 2019

27 
KANDIS A. WESTMORE
28 United States Magistrate Judge