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3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
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6 WILLIAM CARR,
7 Plaintiff,
8 v.
9 COUNTY OF SAN DIEGO, et al.,
10 Defendants.

Case No.: 19cv1139-JLS-MDD

**ORDER GRANTING
DEFENDANTS' EX PARTE
MOTION TO AMEND EXPERT
DISCLOSURES**

[ECF No. 76]

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13 On September 17, 2021 in connection with summary judgment
14 proceedings, the Court granted William Carr's ("Plaintiff") motion to strike
15 the declaration of Lieutenant Criss Cross, finding that Lt. Cross should have
16 been disclosed as a Federal Rule of Civil Procedure 26(a)(2)(B) expert witness
17 accompanied by a written report. (ECF No. 72 at 6-9). The Court specifically
18 found that Defendants' failure to properly disclose Lt. Cross "was neither
19 substantially justified nor harmless" at the summary judgment stage. (*Id.* at
20 9). Now, Defendants move to amend their expert disclosures to designate Lt.
21 Cross pursuant to Rule 26(a)(2)(B). (ECF No. 76). Plaintiff opposes
22 Defendants' motion. (ECF No. 78).

23 "If a party fails to provide information or identify a witness as required
24 in [Federal] Rule [of Civil Procedure] 26(a) . . . , the party is not allowed to
25 use that information or witness to supply evidence on a motion, at a hearing,
26 or at a trial, unless the failure was substantially justified or is harmless."
27 Fed. R. Civ. P. 37(c)(1).

1 The Court finds that Defendants' failure to properly disclose Lt. Cross is
2 not substantially justified for the reasons stated in the Court's order granting
3 Plaintiff's motion to strike Lt. Cross's declaration. (See ECF No. 72 at 6-9).
4 However, the Court now finds that error is harmless. The case is in a
5 different procedural posture than it was when the Court ruled on Defendants'
6 motion for summary judgment. At that stage, the Court would have
7 considered Lt. Cross's declaration without providing Plaintiff an opportunity
8 to properly rebut his statements. The parties now have time to remedy the
9 error prior to the pre-trial conference before United States District Judge
10 Janis L. Sammartino. This permits the Court and a jury at trial to fully
11 consider the case on the merits. Accordingly, the Court **GRANTS**
12 Defendants' motion. (ECF No. 76). **IT IS FURTHER ORDERED** that
13 discovery is re-opened for the following limited purpose:

14 1. Defendants must serve on Plaintiff Lt. Cross's expert report on or
15 before **December 2, 2021**. Any contradictory or rebuttal disclosures to Lt.
16 Cross's expert report by Plaintiff within the meaning of Federal Rule of Civil
17 Procedure 26(a)(2)(D)(ii) shall be disclosed on or before **January 14, 2022**.

18 2. Expert discovery regarding Lt. Cross and any rebuttal expert to
19 Lt. Cross shall be completed by all parties by **February 11, 2022**. Any
20 deposition of Lt. Cross is **ORDERED** to occur at Defendants' expense.

21 All other dates and guidelines remain as previously set. (See ECF No.
22 74).

23 **IT IS SO ORDERED.**

24 Dated: November 18, 2021



25 Hon. Mitchell D. Dembin
26 United States Magistrate Judge
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