

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

MELVIN JACKSON,

Plaintiff,

v.

Case No: 5:18-cv-53-Oc-PRL

UNITED STATES OF AMERICA,

Defendant.

ORDER

Defendant moves the court to strike Plaintiff's untimely expert witness designation and report of Dr. John Kirby, M.D. (Doc. 26). Plaintiff filed a response (Doc. 27), and on October 8, 2019, the Court heard argument on the motion.

Pursuant to the Court's Case Management and Scheduling Order, Plaintiff was required to disclose his expert reports by June 3, 2019. (Doc. 17). Without seeking leave of court, Plaintiff disclosed his expert witness almost three months late, on August 30, 2018, and provided the expert report on September 4, 2019. Plaintiff has failed to offer substantial justification for his failure to timely disclose his expert witness. Indeed, counsel's proffered explanations were unpersuasive at best. Nevertheless, the Court is disinclined to strike the expert witness designation and report because lesser (though still significant) sanctions will suffice.

The United States rightly notes that Plaintiff's late expert disclosure has prejudiced its defense. In efforts to cure this prejudice, the Court will extend the following case deadlines. First, the discovery deadline is extended until **November 8, 2019** for the limited purpose of deposing Dr. Kirby, *with Plaintiff bearing all expenses of the deposition*. The United States' deadline to


disclose rebuttal expert witnesses is extended until **December 6, 2019**; and the United States' deadline to file *Daubert* and dispositive motions is extended until **January 10, 2020**.

The United States' motion for summary judgment (Doc. 29) is **denied without prejudice** to renewal after the expert discovery is completed, within the timeframe stated above.

The Final Pretrial Conference is reset for **March 24, 2020 at 10:00 a.m.** and the bench trial is reset for **April 7, 2020 at 9:00 a.m.**

Finally, *Plaintiff shall pay to the United States the reasonable expenses and attorney's fees incurred in preparing and filing the instant motion.* The United States shall submit within **ten (10) days** of the date of this Order an affidavit detailing the reasonable expenses and fees incurred in preparing and filing the instant motion. To the extent that Plaintiff objects to the amount of expenses and fees claimed by United States, Plaintiff shall file a response within **ten (10) days** of service of the United States' affidavit. Upon receipt of the affidavit and any objections by Plaintiff, the Court will enter an appropriate award or, if necessary, set the matter for an evidentiary hearing.

DONE and ORDERED in Ocala, Florida on October 9, 2019.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties