

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**RALPH REGINALD CAIN,**

**Plaintiff,**

**v.**

**CASE NO. 4:13-cv-77-MW/CAS**

**SHELL OIL CO. and  
CIRCLE K STORES, INC.,**

**Defendants.**

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**ORDER DENYING MOTION TO STRIKE**

This Court has considered Defendant's motion to strike Plaintiff's expert witness, ECF No. 45, filed on November 13, 2013, and heard argument from the parties at a hearing on November 19, 2013.

At the hearing, Defendant acknowledged that the untimely and insufficient disclosures would be harmless due to a prior order of this Court permitting the use of depositions from a related state court case in this matter and Defendant's pending receipt of additional information from Plaintiff's expert, Howard Wood, at his deposition. *See* Fed. R. Civ. P. 37(c) ("If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence . . . at a trial, *unless the failure was . . . harmless.*" (emphasis added)). This is particularly true considering that

Defendant now has leave of court to conduct a supplemental deposition of Howard Wood for the limited purpose of questioning Mr. Wood regarding information which should have been provided as part of Rule 26 disclosures but was not disclosed until Mr. Wood's original deposition.

For the reasons stated on the record and summarized above, the motion is DENIED with qualifications.

**SO ORDERED on November 20, 2013.**

**s/Mark E. Walker**  
**United States District Judge**