

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CUNNINGHAM CHARTER CORP.,

Plaintiff,

v.

LEARJET INC.,

Defendant.

No.07-233-DRH

ORDER

HERNDON, Chief Judge:

Before the Court is plaintiff Cunningham Charter Corporation's motion to strike the declaration of Charles Kitchens (Doc. 221). Plaintiff argues that because Kitchens was untimely disclosed in violation of Federal Rule of Civil Procedure 26(a) and 37(c), the Court should strike his declaration. The Court finds, however, that Kitchens' disclosure was not untimely as it is clear from Kitchens' deposition testimony that defendant Learjet, Inc. put plaintiff on notice of Kitchens as soon as it was first able to contact him. Furthermore, given what Kitchens knows, it is clear why plaintiff did not disclose him. The only question is whether it is the proper subject of a sanction or merely the proper subject of cross-examination and impeachment. Accordingly, plaintiff's motion strike (Doc. 221) is denied.

IT IS SO ORDERED.

Signed this 12th day of July, 2012.

David R. Herndon



David R. Herndon

2012.07.12

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**Chief Judge
United States District Court**