

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

JOHN JEREMY HARMON

PLAINTIFF

vs.

CIVIL ACTION NO. 3:19-CV-823-CRS

JACOB HARPER

DEFENDANT

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Plaintiff John Jeremy Harmon’s partial objection to Defendant Jacob Harper’s supplemental witness list (DN 89). DN 93. Defendant filed a response. DN 95. The matter is ripe for decision, and for the reasons stated below the objection will be sustained in part and overruled in part.

This case was tried in December 2022 and resulted in a mistrial. DN 76. A pretrial conference was held on March 1, 2023, to discuss the scheduling of a second trial. *See* DN 79. At the pretrial conference, the parties agreed that the pretrial compliance from the “December 2022 trial will stand as filed for the July 2023 trial.” *Id.* On May 18, 2023, Defendant submitted a supplemental witness list identifying several additional witnesses. DN 89. Plaintiff filed a partial objection to the supplemental witness list. DN 93.

Plaintiff objects to the following individuals identified in the supplemental witness list: Emma Thompson, Mia Monroe, Julie May Mattingly, Sarah Lanham, Jane Cox Curtis, Daniel Haydon, Nanette Palmer, Steven B. Grover, MD; Jennifer Peterson; Lisa Spaulding; Adam Nelson; Tony Mann; and Brian South. *Id.* at PageID # 917–18. Plaintiff argues these individuals were “not identified by the defense in discovery, or in Defendants’ prior pre-trial disclosures, including their original witness list, or at any time during the first trial.” *Id.* at 917. Plaintiff states

that “the parties agreed in Court as reflected in the Court’s Order that they would present the same witnesses at the second trial, subject only to supplementation by the Plaintiff of One additional witness.” *Id.* Plaintiff also argues that these witnesses have not been deposed. *Id.* at 918.

The Court has reviewed the representations and agreements made by the parties as memorialized in the pretrial conference order. DN 79. The parties agreed that “the pretrial compliance submitted to the Court for the December 2022 trial will stand as filed for the July 2023 trial with the possible addition of (1) a previously disclosed witness for the plaintiff, and (2) a number of additional documents offered by each party.” *Id.* Neither party has requested leave from the Court to call additional witnesses who did not testify at the December 2022 trial and who were not disclosed in pretrial compliance before the December 2022 trial. Therefore, the Court has not given leave for either party to call undisclosed witnesses at the second trial.

The Court ruled at the December 2022 pretrial conference that Defendant would be permitted to call Emma Thompson and Mia Monroe as witnesses at trial. *See* DN 65 (December 2022 pretrial conference order); *see also* DN 61, at PageID # 333 (“The Court Ordered that . . . the Defense would be allowed to call these two witnesses at trial live.”). Prior to the December 2022 trial, Plaintiff listed Jennifer Marie Peterson and Lisa Spaulding on his witness list (DN 41), and Defendant’s witness list (DN 45) included “witnesses on Plaintiff’s Witness List.” *Id.* These four witnesses have either testified at the previous trial or were listed in pretrial disclosures. Therefore, the Court will overrule Plaintiff’s objection as to Emma Thompson, Mia Monroe, Jennifer Peterson, and Lisa Spaulding.

The remaining individuals identified in Plaintiff’s objection did not testify at the December 2022 trial and were not listed in any pretrial disclosures before the December 2022 trial. Therefore,

the objection will be sustained as to: Julie May Mattingly; Sarah Lanham; Jane Cox Curtis; Daniel Haydon; Nanette Palmer; Steven B. Grover, MD; Adam Nelson; Tony Mann; and Brian South.

For the reasons set forth above, **IT IS HEREBY ORDERED** that the Plaintiff's objection to Defendant's witness list (DN 93) is **SUSTAINED IN PART AND OVERRULED IN PART** consistent with this opinion.

June 28, 2023



**Charles R. Simpson III, Senior Judge
United States District Court**