

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LUCAS HINKEBEIN, by and through)
his guardian and conservator,)
MARK HINKEBEIN)
))
Plaintiff,)
))
v.)
))
GAVIN HOPLER, et al.,)
))
Defendants.)

Case No. 4:16-CV-1655-SNLJ

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff Lucas Hinkebein’s motion for leave to supplement (#50) his motion for sanctions for spoliation of evidence. In early December 2017, plaintiff filed a motion for sanctions for spoliation of evidence (#23), claiming defendants destroyed nearly all the physical evidence from the shooting at issue in the case. In opposing the motion for sanctions, some of the defendants highlighted that plaintiff had not submitted expert testimony to support his motion. Now, plaintiff seeks leave to supplement his reply brief (#40) with an expert witness report. He asks to file the report under seal (#51), which the defendants have not opposed, and the time for doing so has passed.

Defendants oppose the motion for several reasons. They note that they received the expert report just one day before plaintiff filed his motion for leave, thus they have not had a chance to (1) meaningfully analyze the report, (2) depose the expert, or (3) challenge the expert’s credentials and opinions in a *Daubert* motion. Without first

deposing the expert, defendants claim they cannot fully respond to his opinions. Thus, defendants ask the Court to defer any ruling on plaintiff's motion for sanctions until after it rules on defendants' upcoming *Daubert* motion.

Given the current posture of the case, the motion for sanctions is premature. Of course, the Court will eventually address the motion, but only after defendants have a chance to meaningfully address this expert and his opinions. Defendants plan to do so in a *Daubert* motion, and after ruling on that, it likely will be appropriate to rule on plaintiff's motion for sanctions.

Accordingly,

IT IS HEREBY ORDERED that plaintiff Lucas Hinkebein's motion for leave to supplement (#50) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff Lucas Hinkebein's motion to file the report under seal (#51) is **GRANTED**.

IT IS FURTHER ORDERED that the Court will not rule on plaintiff Lucas Hinkebein's motion for sanctions (#23) until defendants have a chance to meaningfully address this expert and his opinions.

Dated this 16th day of February 2018.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE