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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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RICHARD M. CHUDACOFF, M.D.,

Plaintiff,

vs.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA, et. al.

Defendants.

2:08-cv-00863-ECR-RJJ

**ORDER**

This matter is before the Court on the following motions:

- a. Defendants’ Joint Emergency Motion For Protective Order (#312);
- b. Motion for Protective Order (#325); and,
- c. Motion to Strike Plaintiff’s Improper Disclosures (#324).

Additionally, the Court considered the Oppositions (#309 and #314) and Replies (# 317 and #319).

**BACKGROUND**

On November 2, 2011, Defendants file a document (#306) titled “Joint Emergency Motions:

- (1) Motion for Clarification of the Court’s Order (Document #302);
- (2) Motion to Strike Plaintiff’s Third Amended Complaint;
- (3) Motion to Strike Plaintiff’s Improper Disclosures; and,

1 (4) Motion For Protective Order and Request for Periodic Mandatory Meetings with  
2 the Magistrate Judge.

3 Subsequently, the Clerk of Court entered the compound motions as three additional  
4 entries on the court's docket to create a separate entry for each motion. *See*, Notice of Docket  
5 Correction dated November 22, 2011. These motions were designated:

- 6 (1) Motion for Clarification of the Court's Order (#306);
- 7 (2) Motion to Strike Plaintiff's Third Amended Complaint; (#323);
- 8 (3) Motion to Strike Plaintiff's Improper Disclosures (#324); and,
- 9 (4) Motion For Protective Order and Request for Periodic Mandatory Meetings with  
10 the Magistrate Judge (#325).

11 Additionally, the Defendants filed another Emergency Motion for Protective Order (#312)  
12 on November 2, 2011. It appears to be identical to the previous Motion to Compel (#325), except  
13 for an additional argument that the Court's Order (#302) reopening discovery did not allow for  
14 the taking of depositions.

15 While these matters were being briefed by the parties, a settlement conference was set  
16 pursuant to the previous Order of the court (#301). The settlement conference was conducted in  
17 two sessions on November 17, 2011, and December 7, 2011. There was no settlement.

18 **Joint Emergency Motion For Protective Order (#312)**  
19 **Motion for Protective Order and (#325)**

20 Defendants argue that certain deposition requests made by Chudacoff fall outside the  
21 intended scope of the re-opened discovery. Chudacoff states in his Response to Defendants'  
22 motion that he only requests depositions for Shana Tello, and the four individually named  
23 defendants, Drs. Carrison, Ellerton, Bernstein, and Roberts. Chudacoff asserts that he seeks to  
24 depose Ms. Tello for purposes of determining the content proceedings and decisions of the May  
25 27, 2008 MEC, meeting. That information had previously been withheld on the basis of a peer  
26 review privilege. Chudacoff seeks to depose the four named defendants for two reasons. First, he  
27 seeks to determine what went on at the May 27, 2008 MEC meeting, and, moreover, the scope of

1 each defendant's actions at the meeting, which had also been withheld on the basis of peer  
2 review privilege. Second, Chudacoff seeks to discuss with each defendant their net worth, which  
3 will inform his calculation of a punitive damages claim.

4 Chudacoff's requests are within the scope of the re-opened discovery. Discovery was re-  
5 opened in order to allow Chudacoff to present evidence of his damages, and to seek "materials"  
6 withheld under the guise of peer review privilege. The noticed depositions noticed to be targeted  
7 at authorized discovery. The Court's Order (#302) contains no prohibition against the use of  
8 depositions during the re-opened discovery period. Thus, good cause is not shown and no  
9 protective order is necessary. The Court's Orders (#302) and (#340) are sufficient to serve as  
10 guides so that Chudacoff may adhere to the scope of discovery outlined therein.

11 **Motion to Strike Plaintiff's Improper Disclosures (#324)**

12 Following the entry of the Ninth Circuit Opinion (#255) in this case, Chudacoff served  
13 several supplements to his previous discovery disclosures upon counsel for the four individual  
14 doctor defendants. On November 2, 2011, Defendants' Motion to Strike Plaintiff's Improper  
15 Disclosures (#324) was filed.

16 Defendants argue that Chudacoff's supplemental disclosures should be stricken for three  
17 reasons. First, the Defendants argue that the supplements were improper because they were  
18 served at a time when discovery had not yet been reopened. Second, Defendants point out that  
19 the supplements were only served upon counsel for the four individual doctor defendants and not  
20 counsel for University Medical Center (UMC) and the Board of Trustees of UMC (the Board).  
21 Defendants argue that the Court should strike the disclosures and require Chudacoff to re-serve  
22 them on all the defendants. Third, Defendants assert that the disclosures contained the purported  
23 expert report of Stan Smith, who plans to testify regarding Chudacoff's damages. Defendants  
24 argue that Judge Reed's October 21, 2011 Order (#302) reopening discovery does not allow for  
25 new expert witnesses and that Stan Smith should not be allowed to testify. In the alternative,  
26 Defendants argue that, should the Court allow the disclosure of Stan Smith as an expert, his

1 testimony should be limited to Chudacoff’s post-May 2009 damages.

2 **DISCUSSION**

3 **I. Timeliness and Propriety of Chudacoff’s Supplemental Disclosures**

4 Federal Rule of Civil Procedure 26 requires parties to supplement or correct previous  
5 discovery disclosures under certain circumstances. The Rule, however, does not specifically  
6 mandate when such supplements must be made, only that they must be made “in a timely manner  
7 if the party learns that in some material respect the disclosure or response is incomplete or  
8 incorrect, and if the additional or corrective information has not otherwise been made known to  
9 the other parties during the discovery process or in writing; or as ordered by the court.” FED. R.  
10 CIV. P. 26(1).

11 Aside from the expert report of Stan Smith, Defendants do not claim that the disclosures  
12 themselves are inappropriate, only that they were served outside of the discovery time frame.  
13 However, Rule 26(e) does not require that disclosure amendments must be served before the  
14 discovery deadline, only that they must be made “in a timely manner.” *See Dayton Valley*  
15 *Investors, LLC v. Union Pacific R. Co.*, 2010 WL 3829219 (D. Nev. 2010) (“The rule does not  
16 limit the time for supplementation of prior disclosures to the discovery period.”). These  
17 disclosures are supplemental and are not untimely.

18 The supplemental disclosures were only served on counsel for the four individual doctor  
19 defendants. Defendants request that the Court strike Chudacoff’s supplemental disclosures and  
20 require him to re-serve these disclosures on all Defendants. This would be needlessly duplicative.  
21 In his Response (#309) Chudacoff states that, at the time he made these amended disclosures,  
22 counsel for the four doctor defendants was the only counsel in the case. After additional counsel  
23 appeared representing UMC and the Board, counsel for Chudacoff began the process of serving  
24 the disclosures on them. Thus, Chudacoff’s supplemental disclosures appear to be entirely timely  
25 and proper.

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1 **II. New Expert Witness Disclosure**

2 Defendants assert that the disclosures contained the purported expert report of Stan  
3 Smith, who will testify regarding Chudacoff's damages. Defendants originally argue that Judge  
4 Reed's October 21, 2011 Order (#302) reopening discovery does not allow for new expert  
5 witnesses and that Stan Smith should not be allowed to testify. In the alternative, Defendants  
6 argue that Stan Smith's testimony should be limited to Chudacoff's post-May 2009 damages.

7 The Court's December 21, 2011, Order (#340) clarified the previous Order (#302) stating:  
8 "While we did not disallow Plaintiff's inclusion of new experts on the issue of his damages, we  
9 limited discovery on the issue of damages to post-May 2009 damages." Therefore, any expert  
10 testimony from Stan Smith should be limited to Chudacoff's damages since May 2009.

11 **CONCLUSION**

12 Based on the foregoing, and good cause appearing therefore,

13 IT IS HEREBY ORDERED that Defendants' Joint Emergency Motions for Protective  
14 Order (#325) and (#312) are DENIED.

15 IT IS FURTHER ORDERED that Defendants' Motion to Strike Plaintiff's Improper  
16 Disclosures (#324) is **DENIED** in part and **GRANTED** in part. The motion is **GRANTED** as to  
17 the request that Stan Smith's expert testimony be limited to Chudacoff's post-May 2009  
18 damages, and **DENIED** in all other respects.

19 DATED this 1<sup>st</sup> day of March, 2012.

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23 ROBERT J. JOHNSTON  
24 United States Magistrate Judge