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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 RICHARD CHUDACOFF,)

9 Plaintiff,)

10 vs.)

11 UNIVERSITY MEDICAL CENTER, *et al.*,)

12 Defendants.)
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Case No. 2:08-cv-00863-RCJ-GWF

ORDER

Motion for Sanctions (#373)

14 This matter comes before the Court on Plaintiff's Motion for Sanctions (#373), filed on
15 March 2, 2012. Defendants filed a timely Opposition (#404) on March 16, 2012. Plaintiff filed a
16 timely Reply (#425) on March 26, 2012.

17 Plaintiff seeks sanctions against Defendants Ellerton, Carrison, Bernstein, Roberts, and
18 Medical Staff of UMC ("Defendants") for untimely noticing the deposition of the person most
19 knowledgeable of third-party Delphi Healthcare Partners, Inc. The previous district judge in this
20 case extended discovery until February 21, 2012. *See Doc. #340* at 7:10-11. Defendants moved for
21 an additional extension on February 10, 2012. *See Doc. #355*. Defendants represent that on
22 February 21, Plaintiff served his twenty-third Supplement to his Initial Disclosures wherein he
23 identified the Person Most Knowledgeable of Delphi as a witness. Plaintiff represents that
24 Defendants noticed Delphi's deposition on March 1, 2012. The previous district judge, noting
25 Plaintiff's "last minute disclosures," *see Doc. #493* at 5:5, granted Defendants' Motion (#355) on
26 July 6, 2012 and extended discovery "for a period of sixty days following the filing of Plaintiff's
27 fifth amended complaint[.]" *Id.* at 13:11-12. This Court granted Defendants' Motion to Stay
28 Discovery (#517) pending ruling on Defendants' Motion to Dismiss (#545) on January 17, 2013.

1 *See Minutes of Proceedings, Doc. #603.* This Court denied Plaintiff’s Motion for Protective Order
2 (#372) regarding the subject subpoena on January 17, 2013. *See Doc. #604.*

3 Courts have “wide latitude” to exercise discretion in sanctioning parties under Federal Rule
4 of Civil Procedure 37. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th
5 Cir.2001). “Implicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to prove
6 harmless.” *Id.* at 1107. In determining whether a violation of a discovery deadline is justified
7 or harmless, courts may consider (1) prejudice or surprise to the other party; (2) the ability of that
8 party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad faith or
9 willfulness involved in not timely disclosing the evidence. *Lanard Toys, Ltd. v. Novelty, Inc.*, 375
10 Fed.Appx. 705, 713 (9th Cir. 2010) (citing *David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th
11 Cir.2003)). The Court finds that Defendants’ subpoena for Delphi did not prejudice Plaintiff, did
12 not disrupt trial, and was not issued in bad faith. Furthermore, in light of the stay the Court
13 imposed in this case and the discovery extension granted by the district judge, *see Doc. # 493*,
14 sanctions are not warranted. Accordingly,

15 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Sanctions (#373) is **denied**.

16 DATED this 19th day of February, 2013.

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19 GEORGE FOLEY, JR.
United States Magistrate Judge