

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
MAMBU BAYOH, :
:
Plaintiff, :
:
-v- :
:
AFROPUNK LLC, MATTHEW MORGAN and :
JOCELYN COOPER, individually, :
:
Defendants. :
:
-----X

18cv5820 (DLC)
ORDER

DENISE COTE, District Judge:

The final pretrial telephone conference in this case was held on October 22, 2020. At the conference, counsel for the plaintiff stated that he intends to call witnesses to testify at trial who were not previously disclosed to defense counsel during discovery.

Under Federal Rule of Civil Procedure 37(c)(1), a "party that without substantial justification fails to disclose information required by Rule 26(a) . . . is not, unless such failure is harmless, permitted to use as evidence at a trial . . . any witness...not so disclosed." Fed. R. Civ. P. 37(c)(1).

In determining whether to exclude a witness under Rule 37(c)(1), a court must consider "(1) the party's explanation for the failure to comply with the [disclosure requirement]; (2) the importance of the testimony of the precluded witness[es]; (3)

the prejudice suffered by the opposing party as a result of having to prepare to meet the new testimony; and (4) the possibility of a continuance." Patterson v. Balsamico, 440 F.3d 104, 117 (2006) (citation omitted). It is hereby

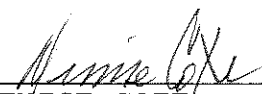
ORDERED that if the Court determines that the plaintiff's expert testimony is admissible, the parties shall submit briefs by **Thursday, October 29** that address whether the plaintiff's witnesses should be excluded under Federal Rule of Civil Procedure 37(c)(1).

IT IS FURTHER ORDERED that a telephone conference will be held on **Friday, October 23** at **4:00 p.m.** The dial-in credentials for the telephone conference are the following:

Dial-in: 888-363-4749
Access code: 4324948

IT IS FURTHER ORDERED that the parties shall use a landline if one is available.

Dated: New York, New York
October 22, 2020



DEMISE COTE
United States District Judge