

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jason Mulligan,)	C/A: 3:12-2899-JFA
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
Brushy Mountain Bee Farm, Inc.;)	
Dadant & Sons, Inc.)	
)	
Defendant.)	
_____)	

This matter is before the court upon motion of both defendants to strike Dr. W. Michael Hood, one of plaintiff’s proposed experts in this case, because the plaintiff failed to provide a report with the designation pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

Plaintiff responds by contending that Dr. Hood is a fact witness, not an expert witness, and that his designation is therefore governed by Fed. R. Civ. P. 26(a)(2)(C).

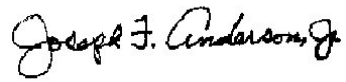
The court agrees with the defendants that Dr. Hood is an expert witness and that an expert report should have been included with his designation. Rather than striking him as a witness, however, the better course of action appears to be to require the report to be filed forthwith and then amend the scheduling order. This procedure is a fallback position taken by both defendants in this case.

For the foregoing reasons, it is hereby ordered that the plaintiff shall, within 21 days from the date of this order, furnish the report required by Fed. R. Civ. P. 26(a)(2)(B). The defendants shall have 60 days from the date of the filing of plaintiff’s report within which to designate any additional

defense experts, and the defendants' designation must also be accompanied by the report.

IT IS SO ORDERED.

September 9, 2013
Columbia, South Carolina

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge