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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

AUSTEN LACKEY,	§	
Plaintiff,	§ §	SA-17-CV-00514-FB
vs.	§	
AUSTIN DEMENT, CRST EXPEDITED, INC.,	§ § 8	
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Defendants.	§	
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ORDER

Before the Court in the above-styled and numbered cause of action is Defendants' Motion to Exclude or Limit Testimony of Dr. Henry Small [#56]. This case was referred to the undersigned for all pretrial proceedings pursuant to Rules CV-72 and 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas. In reviewing the motion, the Court also considered Plaintiff's Response [#58], Defendants' Reply [#62], and the parties' Joint Advisory [#63]. The Court held a hearing on the motion on March 26, 2019, at which all parties were present as represented by counsel. After considering the motion, response, and reply, the relevant portions of the record in this case, and the arguments of counsel at the hearing, the Court orally granted in part and denied in part Defendants' motion for the reasons stated on the record during the hearing. The Court now memorializes its oral ruling with this written Order.

IT IS HEREBY ORDERED that Defendants' Motion to Exclude or Limit Testimony of Dr. Henry Small [#56] is GRANTED IN PART AND DENIED IN PART as follows: Plaintiff's Amended Designation of Expert Witnesses [#23] does not comply with the disclosure

requirements for non-retained experts as set forth in Rule 26(a) of the Federal Rules of Civil Procedure. Pursuant to Rule 37(c), the Court hereby orders that the deposition of Dr. Henry Small be reopened and finds that this remedy will cure any prejudice suffered by Defendants as a result of the Rule 26 violation. The Court further denies Defendants' challenge to Dr. Small's expert testimony under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993) and Rule 702 of the Federal Rules of Evidence in light of the reopening of the deposition. This denial is without prejudice to refiling such challenge at a later date after the deposition.

IT IS FURTHER ORDERED that in all other respects the motion is **DENIED**.

SIGNED this 27th day of March, 2019.

ELIZABETH S. ("BETSY") CHESTNEY