

Linares v. Target Stores, Inc., SACV 21-651 JVS (KESx)

Tentative Minute Order re Motion *in Limine*

Defendant Target Corporation (“Target”) moves for relief by way of a motion *in limine*. (Docket No. 17.) Target seeks to bar plaintiff Brittney Linares (“Linares”) from calling any expert witness for failure to make the required Rule 26 disclosure. Linares has filed an opposition, (Docket No. 21.)

I. Background.

The Scheduling Order required that expert disclosures be made no later May, 23, 2022. (Docket No. 13.) Linares failed to make any expert disclosure, and has not done so to date.

II. Legal Standard.

Expert disclosures are governed by Rule 26(a)(2) which provides in part:

2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

- (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
- (ii) a summary of the facts and opinions to which the witness is expected to testify.

(Fed. R. Civ. P. 26(a)(2) (emphasis supplied)).

Rule 37(c)(1) of the Federal Rules of Civil Procedure establishes a self-executing sanction for failing to make required disclosures: “If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1); Yetti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1105-06 (9th Cir. 2001). The Rule also provides for alternate sanctions:

In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

- (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(Id.)

### III. Discussion.

There is no dispute that Linares failed to make the required expert disclosures. (Opposition, p. 4.) Linares has identified an expert on safety procedures, Ernest J. Barillas, CXLT, CPSI. (Id., p. 6.) Linares indicates that she will seek to call non-retained experts, her treatment providers, but she does not identify who those witnesses are. (Id.)

She has not provided an expert report for Barillas, nor has she provided the information for non-retained experts. The Court rejects as an excuse her decision to await the outcome of the application to continue the trial. (Id.) The Court ruled on the application more than two months ago. (Docket No. 22.) Still no disclosures have been made.

The delay here is neither harmless nor substantially justified. Trial is just over a month away.

The Court grants the Motion.