

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

SHANNON CORBETT,
Plaintiff,

v.

**TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER,**
Defendant.

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Civil Action No. 5:21-cv-281-H

DEFENDANT’S OPPOSED MOTION TO STRIKE PLAINTIFF’S EXPERT

TO THE HONORABLE JAMES WESLEY HENDRIX:

Defendant Texas Tech University Health Sciences Center (“TTUHSC”) files this Opposed Motion To Strike Plaintiff’s Expert, Yvette Rodriguez. Plaintiff Shannon Corbett (“Corbett”) failed to comply with Federal Rule of Civil Procedure 26(a)(2)(C) governing the disclosure of expert witnesses. TTUHSC respectfully requests that Corbett’s expert be stricken.

I. INTRODUCTION

Plaintiff Shannon Corbett (“Plaintiff”), a former resident in TTUHSC’s anesthesiology residency program, brings this lawsuit against TTUHSC, alleging that she was wrongfully dismissed from the residency program because of her gender and in retaliation for reporting gender discrimination in violation of Chapter 21 of the Texas Labor Code (fka The Texas Commission on Human Rights Act) and Title VII of the Civil Rights Act of 1964. [DKT 1-8]. Plaintiff also claims that she was subjected to a hostile work environment based upon her gender. *Id.*

Plaintiff is seeking damages for economic loss, compensatory loss and mental anguish,

attorneys fees, and exemplary damages. *Id.* at ¶¶ 82-86.

This Court issued a Scheduling Order on January 5, 2022 [DKT 6]. The Scheduling Order indicated May 6, 2022 as the deadline for Plaintiff to designate experts and tender reports in accordance with FED. R. CIV. P. 26(b). On May 5, 2022, Plaintiff served Defendant with Plaintiff's Fed. R. Civ. P. 26(a)(2) Expert Disclosures. [DKT 7]. In addition to designating her attorney, Carrie Harris, Esq., for attorney's fees, Plaintiff designated Yvette Rodriguez, Equal Opportunity Investigator with the El Paso Office of the EEOC as a non-retained witness with expert knowledge. *Id.* Plaintiff's designation of Ms. Rodriguez is too vague and does not comply with FRCP 26(a)(2)(C). Plaintiff's designation is as follows:

Ms. Rodriguez may offer expert opinion testimony regarding the subject matter. Ms. Rodriguez may also offer opinion testimony to rebut the opinion testimony of experts designated by Defendant. Ms. Rodriguez will rely upon her education, background, and training; documents produced in discovery; depositions and discovery responses; and the opinions, conclusions, and testimony of Defendant's other expert witnesses. Plaintiff further refers Defendant to Ms. Rodriguez's deposition testimony, if taken, and the documents produced by Plaintiff during the course of discovery, if requested.

II. ARGUMENT AND AUTHORITIES

A. Plaintiff's Expert Should Be Stricken.

Under Federal Rule of Civil Procedure Rule 26(a)(2)(C) disclosures regarding witnesses who are not required to provide a written report must include "(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 testify." FED. R. CIV. P. 26(a)(2)(C). Although the disclosures required under Rule 26(a)(2)(C) are not as extensive as the report that is required in 26(a)(2)(B), some specificity is required. *Camacho v. Cano and Son Mexico, S.A. DE C.V.*, No. 7:19-CV-00031, 2020 WL 13401935, at *2 (S.D. Tex. Sept. 30, 2020) quoting

Tolan v. Cotton, No. H-09-1324, 2015 WL 5332171, at *5 (S.D. Tex. Sept. 14, 2015).

“...a summary of opinions under Rule 26(a)(2)(C) means a brief account of the main opinions of the expert, and that the opinions must state a view or judgment regarding a matter that affects the outcome of the case.” Additionally, “...a summary of facts supporting those opinions under Rule 26(a)(2)(C) means a brief account of facts-only those on which the expert actually relied in forming his or her opinions-that states the main points derived from a larger body of information; merely stating the topic matters of facts relied upon does not suffice. Similarly it does not suffice to reference large bodies of material sources of facts, without stating a brief account of the main points from those large bodies of material on which the expert relies.” *Id.* at *6.

Plaintiff’s designation of Yvette Rodriguez, as her Non-Retained Witness With Expert Knowledge categorically fails to comply with FED. R. CIV. P. 26(a)(2)(C) and this Court’s Scheduling Order, and therefore the expert designated therein should be stricken. Specifically, Plaintiff failed to 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.

If a party fails to provide information or identify a witness as required by Rule 26(a) or (c), 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. OF CIV. P. 37(c)(1). The failure to properly designate an expert witness in compliance with Rule 26 is not harmless, it is prejudicial. *Carr v. Montgomery Cty., Tex.*, No. H-13-2795, 2015 WL 5838862, at *4 (S.D. Tex. Oct. 7, 2015) (citing *Cont’l Cas. Co. v. F-Star Prop. Mgmt., Inc.*, No EP-10-CV-102-KC, 2011 WL 2887457, at *7 (W.D. Tex. July 15, 2011)). (“a party’s failure to provide a proper summary of facts and opinions is prejudicial because opposing counsel cannot determine whether to depose that witness or decide what rebuttal evidence to offer.”)

Because Plaintiff has failed to comply with the requirements of FED. R. CIV. P. 26(a)(2)(C) and this Court's Order regarding the designation of experts and such failure is prejudicial to TTUHSC, Plaintiff's expert, Yvette Rodriguez, should be stricken.

III. PRAYER FOR RELIEF

Defendant TTUHSC, prays that Plaintiff's expert, Yvette Rodriguez, be stricken, and that Defendant be granted such other relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), I certify that I have complied with Local Rule CV-7(h) and attempted to confer with Carrie Harris, counsel for Plaintiff, via email and telephone on November 4, 2022, regarding the substance of the foregoing motion. Counsel for Plaintiff did not respond so Defendant assumes the motion is opposed.

/s/ Yvonne D. Bennett

YVONNE D. BENNETT

Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this the 4th day of November, 2022 upon the following individual, and upon all other counsel of record via the court's CM/ECF system:

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