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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARISA MARTINEZ,  
Plaintiff,  
v.  
COSTCO WHOLSESALE  
CORPORATION,  
Defendant.

Case No.: 19-CV-1195-GPC-WVG

**ORDER ON DEFENDANT’S  
MOTION TO STRIKE PLAINTIFF’S  
SUPPLEMENTAL EXPERT  
REPORT**

**I. INTRODUCTION**

“It’s better to ask for forgiveness than to seek permission.” At least that is what Plaintiff, Marisa Martinez, (“Plaintiff” or “Martinez”) thought. In this discovery dispute Plaintiff seeks this Court’s forgiveness for her abuse of set discovery deadlines. She could have sought permission to have deadlines extended but chose not to. But even the adage does not do justice to Plaintiff’s cavalier approach to discovery. Plaintiff’s Opposition to Costco Wholesale Corporation’s (“Defendant” or “Costco”) Motion to Strike Plaintiff’s Supplemental Expert Report blatantly defends Plaintiff’s failure to timely serve her supplemental expert report by three days – all without rhyme, reason, or a shred of regret. Plaintiff offers her expert’s summer vacation and the ongoing COVID-19 pandemic as a

1 showing of good cause to justify her disruption to the Parties' discovery efforts and the  
2 operative Scheduling Order. While Plaintiff's excuses abound, good cause does not. For  
3 the reasons explained below, the Court GRANTS Defendant's Motion to Strike Plaintiff's  
4 Supplemental Expert Report in entirety.

## 5 **II. PROCEDURAL HISTORY**

6 On April 23, 2019, this Court issued the operative Scheduling Order. (Doc. No. 5.)  
7 In relevant part, the Court set a March 6, 2020 deadline for the Parties to exchange expert  
8 reports. (*Id.*) Supplemental expert reports were due on April 3, 2020. (*Id.*) On February 28,  
9 2020, Plaintiff's counsel requested Defendant's stipulation to a month-long continuance of  
10 the March 6, 2020 expert disclosure deadline, after learning Plaintiff's expert "will be away  
11 on vacation for roughly the first two weeks of March [2020]." (Doc. No. 19-1, 40.)  
12 Defendant agreed to Plaintiff's request. (*Id.*) On March 2, 2020, the Parties filed a Joint  
13 Motion to Continue Expert Disclosure Date and requested 45-day continuances of the  
14 expert disclosure and supplemental expert disclosure deadlines and the expert discovery  
15 cut-off. (Doc. No. 14.) On March 3, 2020, the Court denied the Parties' Joint Motion for  
16 lack of good cause.

17 On March 5, 2020, the Parties renewed their Joint Motion to Continue Expert  
18 Disclosure Date ("Joint Motion"). The Joint Motion sought 45-day extensions of: (1) the  
19 March 6, 2020 expert disclosure deadline; (2) the April 3, 2020 supplemental expert  
20 disclosure deadline; and (3) the May 1, 2020 expert discovery cut-off. (Doc. No. 16.) On  
21 March 6, 2020, the Court issued an order granting in part and denying in part the Parties'  
22 Joint Motion. (Doc. No. 17.) Respectively, the Court continued (1) the expert disclosure  
23 deadline to April 6, 2020; (2) the supplemental expert disclosure deadline to April 27,  
24 2020; and (3) the expert discovery cut-off to May 15, 2020. The Court made clear "no  
25 further continuances [would] be granted in this matter absent an unequivocal, thoroughly  
26 explained showing of good cause." (*Id.*) In concluding, the Court "urg[ed] counsel to  
27 clearly communicate all relevant deadlines in the Court's Scheduling Order to any expert  
28

1 the Parties seek to retain, prior to their retention, and certainly at the outset of retaining any  
2 such expert.” (*Id.*)

3 Plaintiff timely served her supplemental expert report on April 6, 2020. The  
4 supplemental expert report consisted of six opinions, all of which concluded for various  
5 reasons that Defendant’s conduct “fell below the standard of care” Defendant owed  
6 Plaintiff for the duration of her employment. (Doc. No. 19-1, 43-86.) In deposition,  
7 Plaintiff’s expert admitted she “had not done any work prior to March 3 at all” even though  
8 she possessed all materials to inform her expert opinion. (*Id.*, 102:16-17.) Plaintiff’s expert  
9 testified she read “a few pages before and a few pages after” deposition pages Plaintiff’s  
10 counsel cited in answering her questions because “[s]he didn’t have time to read the full  
11 transcripts” while on vacation. (*Id.*, 103:9-12, 209:14-18; 210:16-25.) Plaintiff’s expert  
12 added she had only read “the first 80 pages of [Plaintiff’s deposition] transcript” and that  
13 she “did not read Volume II” of Plaintiff’s deposition transcript to any extent. (*Id.*, 212:4-  
14 19.) Then came the April 27, 2020 deadline for the Parties to exchange supplemental expert  
15 reports. Defendant met its deadline; Plaintiff did not. Plaintiff’s supplemental expert report  
16 arrived three days later on April 30, 2020. Plaintiff’s expert could not recall exactly when  
17 she began to prepare the supplemental report but testified it was either one or two days  
18 prior to April 30, 2020. (*Id.*, 207: 17-25.)

19 On May 13, 2020, the Parties notified this Court’s Chambers of the instant discovery  
20 dispute. On that same day, the Court issued its Order Setting Briefing Schedule. (Doc. No.  
21 18.) Defendant timely filed its Motion to Strike Plaintiff Marissa Martinez’s Supplemental  
22 Expert Report on May 18, 2020. (Doc. No. 19.) On May 22, 2020, Plaintiff timely filed her  
23 Opposition to Defendant’s Motion to Strike. (Doc. No. 20.) Defendant moves to strike  
24 Plaintiff’s supplemental expert report on procedural and substantive grounds, namely for  
25 the report’s untimeliness and effort to rewrite or “do over” the expert’s initial report.  
26 Plaintiff dismisses her “only” three-day delay in serving her supplemental expert report as  
27 negligible. (*Id.*, 1:8.) Moreover, Plaintiff responds she is entitled to entry of her  
28 supplemental expert report as evidence because “its inclusion will cause Defendant no

1 prejudice.” (*Id.*, 1:17.) Substantively, Plaintiff defends the contents of the supplemental  
2 expert report as compliant with Federal Rule of Civil Procedure 26(e). The Parties’ dispute  
3 is ripe for this Court’s adjudication<sup>1</sup>.

### 4 III. LEGAL STANDARD

5 Federal Rule of Civil Procedure Rule 26 applies here. Under Rule 26(a), litigants  
6 must disclose all expert opinions and related materials that may be used at trial and make  
7 such disclosures at the times directed by the court. Fed. R. Civ. P. 26(a)(2)(C); *Plumley v.*  
8 *Mockett*, 836 F. Supp. 2d 1053, 1061–62 (C.D. Cal. May 26, 2010); *Epitech, Inc. v. Krause*,  
9 2016 WL 7637660, at \*2 (C.D. Cal. Sept. 21, 2016). Further, Rule 26(e) obligates parties  
10 to supplement an initial expert report served pursuant to Rule 26(a) “if the party learns that  
11 in some material respect the disclosure or response is incomplete or incorrect, and if the  
12 additional or corrective information has not otherwise been made known to the other parties  
13 ...” Fed. R. Civ. P. 26(e); *Cueto v. Overseas Shipholding Group, Inc.*, 2012 WL 28357, at  
14 \*2 (S.D. Cal. Jan. 4, 2012). “In determining whether a supplement under Rule 26(e) is  
15 appropriate, the court considers (1) whether the supplemental information correspond[s] to  
16 a prior Rule 26(a) disclosure and, if so, (2) whether the supplemental information [was]  
17 available at the time set for the initial disclosure.” *Ibekwe v. White*, 2016 WL 6963051, at  
18 \*4 (C.D. Cal. Feb. 23, 2016) (citing *Burger v. Excel Contractors, Inc.*, 2013 WL 5781724,  
19 at \*3 (D. Nev. Oct. 25, 2013).

20 “Rule 37(c)(1) gives teeth to [Rule 26’s] requirements by forbidding the use at trial  
21 of any information required to be disclosed by Rule 26(a) that is not properly disclosed.”  
22 *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). This  
23 rule excludes untimely expert witness testimony, unless the “parties’ failure to disclose the  
24 required information is substantially justified or harmless.” *Yeti by Molly, Ltd.*, 259 F.3d at  
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26  
27 <sup>1</sup> The Court apologizes to the Parties for its delay in issuing the instant discovery order. The Court  
28 expects the Parties to efficiently and expeditiously tend to their duties. No less should be expected of  
this Court.

1 1062. Furthermore, a party that fails to comply with a scheduling order is subject to the  
2 sanctions available to a court to enforce its orders, including those authorized by Rule  
3 37(b)(2)(A)(ii)-(vii). Fed. R. Civ. P. 16(f).

#### 4 **IV. DISCUSSION**

##### 5 **a. Plaintiff's Supplemental Expert Report Merits Striking for Its** 6 **Untimeliness**

7 Rule 16(b)(4) "provides that a district court's scheduling order may be modified upon  
8 a showing of 'good cause,' an inquiry which focuses on the reasonable diligence of the  
9 moving party." *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1174 n. 6 (9th Cir.2007) (citing  
10 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992)). More  
11 specifically, in its discretion, a court may modify the operative discovery and pre-trial  
12 scheduling order "if [a deadline] cannot reasonably be met despite the diligence of the party  
13 seeking the extension." Fed. R. Civ. P. 16, Advisory Committee's Notes (1983  
14 Amendment); *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, 2015 WL 1119406, at \*7  
15 (S.D. Cal. Mar. 11, 2015) ("in part, the 'good cause' standard requires the parties to  
16 demonstrate that 'noncompliance with a Rule 16 deadline occurred or will occur,  
17 notwithstanding [a party's] diligent efforts to comply, because of the development of  
18 matters which could have not been reasonably foreseen..."). At all times, "[the] focus of  
19 the inquiry is upon the moving party's reasons for seeking modification... If that party was  
20 not diligent, the inquiry should end." *Johnson*, 975 F.2d at 609; *Jackson v. Laureate, Inc.*,  
21 186 F.R.D. 605, 608 (E.D. Cal. Jun.16, 1999).

22 Plaintiff had nearly eleven months to prepare and submit timely expert reports. Yet  
23 even with ample time, Plaintiff waited until four days before the expert disclosure was due  
24 to ask for an extension. The Court immediately denied that request but upon a second  
25 request submitted two days later, granted in part the requested extensions. As a threshold  
26 matter, it is undisputed Plaintiff served her supplemental expert report on April 30, 2020,  
27 three days after the April 27, 2020 deadline lapsed. At such point, Plaintiff had benefitted  
28 from an additional 24 days to prepare and finalize her supplemental expert report following

1 the Court’s continuance of the initial April 3, 2020 deadline. (Doc. No. 5.) Nevertheless,  
2 at no time prior to the April 27th deadline (or even before serving her three day late and  
3 untimely April 30th report) did Plaintiff seek leave of Court to obtain additional time to  
4 serve her supplemental expert report. In the Court’s March 6, 2020 Order, Plaintiff was  
5 given proverbial marching orders to make “an unequivocal, thoroughly explained showing  
6 of good cause” if she were to bring any additional requests to modify the operative  
7 Scheduling Order. (Doc. No. 17.) Yet, Plaintiff did not do so at any time on or after the  
8 issuance of the Court’s March 6, 2020 Order.

9 The docket in this matter reflects Plaintiff’s knowledge and availment of  
10 straightforward filing procedures that would have permitted Plaintiff to move the Court for  
11 another continuance. Plaintiff chose to instead set back the Parties’ discovery efforts and  
12 deposition schedule by untimely serving her supplemental expert report and seeking the  
13 Court’s blessing retroactively. Now, Plaintiff attempts to trivialize her three-day delay by  
14 vaguely referring to “the ever-changing challenges imposed by the Coronavirus pandemic  
15 and the short turnaround time between March 6 and April 26.” (Doc. No. 20, 8:5-10.)  
16 Unlike Plaintiff, the Court takes lightly neither the deadlines the Parties are charged with  
17 under Rule 26 nor the good cause standard as defined by the Ninth Circuit. Indeed,  
18 Plaintiff’s nonchalance about her “mere” three-day non-compliance with the operative  
19 Scheduling Order is almost as glaring as Plaintiff’s ill-placed blame on the COVID-19  
20 pandemic for her expert’s non-compliant supplemental expert report. *Kennis v. Metro. W.*  
21 *Asset Mgmt., LLC*, 2018 WL 9440483, at \*5 (C.D. Cal. Nov. 29, 2018) (observing “Rule  
22 26(e) does not provide a party free rein to continue developing expert testimony beyond  
23 the deadline set in the Scheduling Order” in granting in part defendant’s motion to strike  
24 plaintiff’s supplemental expert report for untimeliness, amongst substantive grounds).

25 On March 4, 2020, Governor Newsom declared a state of emergency across  
26 California in light of the COVID-19 pandemic. See  
27 [https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/)  
28 [help-state-prepare-for-broader-spread-of-covid-19/](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/). Plaintiff’s expert did not testify in



1 deposition that she considered rescheduling her two-week vacation in early March due to  
2 the pandemic's eruption or that she abandoned her vacation at any time after Governor  
3 Newsom declared a state-wide public health emergency. In fact, Plaintiff's expert's  
4 deposition testimony wholly belies Plaintiff's Opposition in that the expert admitted she  
5 believed she had insufficient time to review all relevant materials *because she was on*  
6 *vacation* and not for any other reason.

7 This Court can only presume at this point that when Plaintiff retained the services of  
8 her expert the two had discussed and reviewed the Court's operative Scheduling Order.  
9 Had they done so, then it would have been apparent that the expert's disclosure was due  
10 on March 6th, and supplemental disclosures were due on April 3rd. These dates were not  
11 just recently set by the Court. Rather, these deadlines were well known by the parties and  
12 particularly Plaintiff as early as April 23, 2019, nearly eleven months prior. Yet, armed  
13 with this information, Plaintiff's expert chose to go on vacation exactly when her initial  
14 report was due.<sup>2</sup> Plaintiff's expert also knew at the time of her early March 2020 vacation  
15 that the Court ultimately granted a reprieve from the reporting deadlines, ultimately  
16 extending both the expert disclosure deadline and supplemental expert disclosure deadlines  
17 to April 6th and April 27th respectively. Equally significant, Plaintiff's expert admits she  
18 had all of the discovery materials, including complete deposition transcripts, she needed  
19 prior to her vacation to timely prepare her initial and supplemental expert reports.

20 Plaintiff attempts to seek convenient refuge for her tardiness by laying blame on the  
21 recent COVID-19 pandemic. True, the pandemic has wreaked havoc in many ways on  
22 business, social events, and even courts across the country. But in this District, the Court  
23 has stayed open and civil cases particularly have continued to move forward with little to  
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26 <sup>2</sup> Plaintiff had several options. Perhaps, knowing the expert deadlines set by the Court on April 23,  
27 2019, either the expert should have respectfully declined the retainer if she had her vacation already  
28 planned and could not alter her schedule, or Plaintiff should have retained a different expert who did not  
have a scheduling conflict, or Plaintiff could have immediately alerted the Court well before March 2,  
2020 to seek a modification of the March 6, 2020 expert disclosure deadline.

1 no disruption in progress. The Court certainly is sensitive to the impact that the COVID-  
2 19 pandemic may have on litigants and attorneys and has granted accommodations when  
3 justified. But here, Plaintiff simply says the word “COVID-19” as if it, in and of itself, is  
4 justification to excuse delays and dereliction without providing any support. For example,  
5 was Plaintiff’s expert herself affected by the virus, or someone she cares for? Did COVID-  
6 19 prevent the expert from accessing important information she needed? Apparently, none  
7 of these things or more occurred because if they had, Plaintiff most assuredly would have  
8 included these challenges in her papers. Rather, it appears, the Parties continued engaging  
9 in written discovery and in taking and defending depositions without apparent obstruction  
10 to the flow of information and documents relevant to this litigation. Under such  
11 circumstances, any alleged disturbances to the Parties’ exchange of discovery due to the  
12 COVID-19 pandemic ring hollow. As such, the Court finds Plaintiff’s Opposition reads  
13 disingenuously by holding out a public health crisis to excuse Plaintiff’s violation of the  
14 operative Scheduling Order, as modified by this Court on March 6, 2020. (Doc. Nos. 5,  
15 17.) The Court will not entertain it. For this reason alone, the Court STRIKES Plaintiff’s  
16 supplemental expert report from the record.

17 **b. Plaintiff’s Supplemental Expert Report Impermissibly Exceeds the Scope**  
18 **of Supplementation under Rule 26(e)**

19 Separate from its procedural findings above, the Court concludes that Plaintiff  
20 breached the bounds of Rule 26(e)’s duty to supplement initial expert disclosures. As noted,  
21 Plaintiff’s initial expert report memorialized six opinions, all of which determined  
22 Defendant breached its duty of care to Plaintiff in responding to Plaintiff’s accommodation  
23 requests and engaging in the interactive process with Plaintiff. In other words, the initial  
24 expert report exclusively addressed a subset of issues arising from two overarching claims,  
25 namely Plaintiff’s failure to provide reasonable accommodation claim and related failure  
26 to engage in a good faith interactive process claim. But Plaintiff’s supplemental expert  
27 report includes a seventh opinion relating to Defendant’s Vice President of Human  
28 Resource’s internal investigation of Plaintiff’s disability-related claims. In doing so, the



1 supplemental report impermissibly widens the reach of the initial expert report by  
2 exploring and opining on a claim angled at Defendant’s internal investigation, rather than  
3 Defendant’s response to Plaintiff’s accommodations requests and/or conduct throughout  
4 the interactive process. Further, the supplemental report doubly violates Rule 26(e) by  
5 enriching the initial expert report with detail that was admittedly available to Plaintiff’s  
6 expert at the time she drafted the initial expert report.

7 From the outset of its discussion here, the Court turns to Plaintiff’s expert’s own  
8 words in characterizing the nature of her supplemental expert report. In deposition, defense  
9 counsel asked Plaintiff’s expert when she “first realized that [her] opinions and [her] report  
10 of April 6 were not complete.” (Doc. No. 19-1, 215: 8-9.) Tellingly, Plaintiff’s expert  
11 responded, “I realized once I started reading [three individuals’] deposition transcripts in  
12 full that... my opinions were becoming more detailed” and that she “had not addressed  
13 [Defendant’s internal investigation] at all.” (*Id.*, 215:10-17.) Plaintiff’s expert added that  
14 after having the “opportunity to read the entire transcript of [Defendant’s investigator’s  
15 deposition] [she] thought that [she] had some opinions about her investigation of the  
16 retaliation, harassment, and discrimination complaint of Marisa...” (*Id.*, 208:21-25.)  
17 Taking these circumstances into account, Plaintiff’s expert admitted, once she “fully read  
18 [Defendant’s investigator’s] transcript,” she asked defense counsel “if [she] could add a  
19 new opinion in [her] actual written report.” (*Id.*, 206:2-4.) Plaintiff’s expert ultimately did  
20 so and stated in deposition she “went ahead and updated [her] report on April 30 with a  
21 new opinion,” clarifying that Opinion 7 was her “new” opinion. (*Id.*, 208: 5-12.)

22 Plaintiff’s expert’s testimony seals Plaintiff’s fate on this discovery issue.  
23 “Supplementing an expert report pursuant to Rule 26(e) means ‘correcting inaccuracies or  
24 filling the interstices of an incomplete report based on information that was not available  
25 at the time of the initial disclosure.’” *Sherwin–Williams Co. v. JB Collision Servs., Inc.*,  
26 2015 WL 1119406, at \*6 (S.D. Cal. Mar. 11, 2015); *Gerawan Farming, Inc. v. Rehig*  
27 *Pacific Co.*, 2013 WL 1982797, at \*5 (E.D. Cal. May 13, 2013) (citing *Keener v. United*  
28 *States*, 181 F.R.D. 639, 640 (D. Mont. 1998)). Moreover, this Court and others within the

1 Ninth Circuit “have rejected supplemental expert reports that were significantly different  
2 from the expert's original report and effectively altered the expert's theories or attempted  
3 to deepen and strengthen the experts' prior reports.” *Sherwin-Williams Co.*, 2015 WL  
4 1119406, at \*7. Further, “supplementation does not cover failures of omission because the  
5 expert did an inadequate or incomplete preparation[.] To construe supplementation to apply  
6 whenever a party wants to bolster or submit additional expert opinions would wreak havoc  
7 in docket control and amount to unlimited expert opinion preparation.” *Id.* (internal citation  
8 and quotation marks omitted).

9 As noted, Rule 26(e) does not permit “a party to introduce new opinions after the  
10 disclosure deadline under the guise of a ‘supplement.’” *Plumley*, 836 F. Supp. 2d at 1062.  
11 Yet that is what Plaintiff endeavors to do here in her Opposition to Defendant’s Motion to  
12 Strike. By her own admission, Plaintiff’s expert was in possession of all deposition  
13 transcripts and discovery materials she needed prior to setting off on her two-week vacation  
14 with initial and supplemental expert disclosure deadlines looming. Thus, Plaintiff cannot  
15 argue in good faith that her expert’s supplemental report was “based on information that  
16 was not available at the time of the initial disclosure.” *Sherwin-Williams, Co.*, 2015 WL  
17 1119406, at \*6. Plaintiff’s expert had a library of information and documents to review,  
18 analyze, and opine on for both her initial and supplemental expert reports. Her unilateral  
19 decision to set aside a thorough study of these materials in a timely manner is Plaintiff’s  
20 burden to bear and no one else’s. There was no new information presented to Plaintiff’s  
21 expert upon her return from vacation and subsequent preparation of the supplemental  
22 expert report. The only news to Plaintiff’s expert was her midnight discovery of the  
23 contents of papers sitting atop her desk, which informed her “new” seventh opinion and  
24 bolstering of previous opinions memorialized in her initial expert report. Of course, this is  
25 no legitimate basis to allow Plaintiff’s supplemental expert report to be adopted into the  
26 record. For this additional reason, the Court GRANTS Defendant’s Motion to Strike and  
27 STRIKES from the record Plaintiff’s supplemental expert report.

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1                   **c. Plaintiff’s Supplemental Expert Report Is Unjustified and Not Harmless**

2                   In line with Rule 37(c), a party’s untimely expert disclosures in discovery may bar  
3 the party from “us[ing] that information or witness to supply evidence on a motion, at a  
4 hearing, or at a trial, unless the failure was ‘substantially justified’ or is ‘harmless.’” Fed.  
5 R. Civ. P. 37(c)(1). “The burden is on the party facing sanctions to prove harmlessness.”  
6 *Ibekwe*, 2016 WL 6963051, at \*4 (citing *Yeti by Molly, Ltd.*, 259 F.3d at 1106–1107  
7 (affirming district court’s decision to exclude defendant’s witness testimony where  
8 defendant disclosed evidence 28 days prior to trial even where the exclusion made it  
9 “difficult, perhaps almost impossible” for defendant to rebut plaintiff’s claim). For the  
10 reasons discussed at length above, the Court finds Plaintiff has shown neither justifiability  
11 nor harmlessness. At all relevant times, Plaintiff’s expert was aware of the discovery  
12 deadlines implicating her preparation and Plaintiff’s service of her initial and supplemental  
13 expert reports. As such, that Plaintiff’s expert knew she also gained a 30-day extension to  
14 complete her initial and supplemental reports is a given. Nevertheless, Plaintiff served her  
15 supplemental expert report three days late after admitting she could not find sufficient time  
16 to meet her deadline in light of her two-week vacation. Now, Plaintiff points to the COVID-  
17 19 pandemic as the basis for her expert discovery woes. Not so.

18                   Moreover, Plaintiff’s characterization of her expert’s non-compliance with the  
19 operative Scheduling Order as “harmless” is as bold as Plaintiff’s claim the non-  
20 compliance was justified. Strikingly, Plaintiff’s Opposition contends “Defendant received  
21 [the expert’s] updated report prior to her deposition, giving Defendant sufficient  
22 opportunity to review the report and remedy any purported surprise or prejudice before her  
23 deposition.” (Doc. No. 20, 12:22-24.) One can hardly call harmless an opponent’s service  
24 of new and expansive expert opinions just hours prior to an expert’s noticed deposition.  
25 Yes, it is true that Plaintiff agreed to continue for a week her expert’s deposition. Faced  
26 with a Hobson’s choice to either go forward with the deposition as scheduled and be  
27 unprepared or delay it by one week and try to mitigate some of the damage caused by the  
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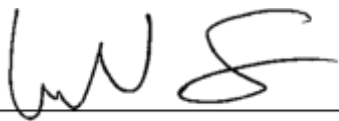
1 untimely disclosure of the supplemental report, Costco chose the latter option. Further,  
 2 Plaintiff’s Opposition is entirely silent as to the fact that Plaintiff wholly deprived  
 3 Defendant of the opportunity to address or otherwise respond to Plaintiff’s overreaching  
 4 supplemental expert report. If it were inclined to set an additional rebuttal expert report  
 5 deadline, which it is not, the Court would effectively be imposing further unnecessary  
 6 litigation costs and expense on Defendant, all in an effort to accommodate Plaintiff’s non-  
 7 compliance. The Court will not do so here and refuses to legitimize Plaintiff’s careless  
 8 approach to discovery. To that end, the Court DENIES without prejudice Defendant’s  
 9 request for monetary sanctions as reimbursement for the attorney fees and costs Defendant  
 10 incurred in being forced to file its instant Motion to Strike. Defendant shall file and provide  
 11 to opposing counsel **no later than Wednesday, July 29, 2020** its time records and cost  
 12 sheets to support the requested sanction. Plaintiff shall have until **Wednesday, August 5,**  
 13 **2020** to respond in opposition to Defendant’s Motion for Attorney Fees and Costs

14 **V. CONCLUSION**

15 Given the above, the Court hereby GRANTS Defendant’s Motion to Strike  
 16 Plaintiff’s Supplemental Expert Report. Plaintiff’s Supplemental Report shall be excluded  
 17 from the record in its entirety.

18 **IT IS SO ORDERED.**

19 Dated: July 22, 2020

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 22 Hon. William V. Gallo  
 23 United States Magistrate Judge  
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