

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

U.S. ALL STAR FEDERATION, INC.,

Plaintiff,

v.

Case No: 6:21-cv-2135-WWB-DCI

**OPEN CHEER & DANCE
CHAMPIONSHIP SERIES, LLC, THE
OPEN CHEER AND DANCE, LLC,
DAVID OWENS, HEIDI WEBER, JEB
HARRIS and DAVID HANBERY,**

Defendants.

ORDER

This cause comes before the Court for consideration with oral argument on the following motions:

MOTION: Plaintiff's Motion to Preclude Defendants' Late Production (Doc. 117)

FILED: November 10, 2023

MOTION: Defendants' Renewed and Unopposed Motion for Leave to File Under Seal (Doc. 119)

FILED: November 13, 2023

THEREON it is ORDERED that Plaintiff's Motion (Doc. 117) is GRANTED in part and Defendants' Motion (Doc. 119) is GRANTED in part.

On March 16, 2022, the Court entered a Case Management Scheduling Order setting the deadlines in this case including discovery and expert disclosures. Doc. 33. The Court subsequently granted the parties' renewed motion for entry of an amended scheduling order and

set October 30, 2023 as the discovery deadline. Doc. 106. Pending before the Court is Plaintiff's Motion to Preclude Defendants' Late Production. (Doc. 117, the Motion to Preclude). Plaintiff contends that after the discovery deadline Defendants produced "50 key documents" (the 50 Documents) including spreadsheets "represented to be *some* of the materials used by Defendants' purported expert Ellen Graham in preparing her spreadsheets (with more purportedly forthcoming)." *Id.* at 1 (emphasis in original). Plaintiff asserts that, pursuant to Federal Rule of Civil Procedure 37(c) and (d), "Defendants should be precluded from using or relying on any belatedly produced documents." *Id.* at 2, 3. Defendants have filed a Response in Opposition to the Motion. Doc. 120.

Defendants have also filed a Renewed and Unopposed Motion for Leave to File Under Seal pursuant to Federal Rule of Civil Procedure 5.2 and Local Rule 1.11. Doc. 119 (the Motion to Seal). Specifically, Defendants seek to seal Exhibits B, F, and G attached to Plaintiff's Motion to Strike Expert Disclosure. *Id.*, Doc. 114.

On November 28, 2023, the Court conducted a hearing on the Motion to Preclude and the Motion to Seal. As stated on the record at the hearing after giving the parties an opportunity to be heard, the Court finds that Defendants failed to timely provide Plaintiff with the 50 Documents in response to Plaintiff's discovery request¹ or to timely make the disclosure of those documents as required by Rule 26(a) or (e), and those failures were not substantially justified or harmless.

¹ The Court finds that—at the latest—prior to the close of discovery Defendants should have produced to Plaintiff the 50 Documents as responsive to Request No. 16 of Plaintiff's First Set of Requests for Production (*See* Doc. 117-1 at 11-12), as part of Defendant's initial disclosures under Rule 26(a)(1)(A)(i), or—at a minimum—as a supplemental disclosure under Rule 26(e).

For the reasons stated at the hearing, it is **ORDERED** that:

1. Plaintiff's Motion to Preclude (Doc. 117) is **GRANTED in part** to the extent that (a) pursuant to Rule 37(c)(1) Defendants are not allowed to use the 50 Documents to supply evidence on a motion, at a hearing, or at a trial and (b) pursuant to Rule 37(c)(1)(C) and 37(b)(2)(A)(ii) Defendants may not introduce the 50 Documents in evidence. The remainder of the Motion (Doc. 117) is **DENIED**. The Court will not apportion the reasonable expenses for the Motion to Preclude. *See* Rule 37(a)(5)(C); and
2. Defendants' Motion to Seal (Doc. 119) is **GRANTED in part** to the extent that Plaintiff is directed to file under seal the documents referenced at Docs. 114-6 and 114-7 (Exhibits F and G to Plaintiff's Motion to Strike Expert Disclosure). The documents shall remain under seal until the 90th day after the date the case is closed and all appeals exhausted. *See* Local Rule 1.11(f). The remainder of the Motion (Doc. 119) is **DENIED without prejudice**.

ORDERED in Orlando, Florida on November 28, 2023.



DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE