



Chen-Oster et al v. Goldman, Sachs & Co. LLC. et al

2023 | Cited 0 times | S.D. New York | March 15, 2023

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK H. Cristina Chen-Oster, Shanna Orlich, Allison Gamba, and Mary De Luis, Plaintiffs, -against-

10 Civ. 6950 (AT)

ORDER Goldman Sachs & Co. LLC and The Goldman Sachs Group, Inc., Defendants. ANALISA TORRES, District Judge:

ECF Nos. 1425, 1429 32; see also ECF No. 1426. Plaintiffs -motion conference in limine pending before [the

(1) Goldman Sachs & Co. LLC

and The Goldman Sachs Group, Inc. (collectively or dates for the [thirty-three] of [] [forty-six] named trial witnesses who were never

(2) list of trial witnesses because

[Defendants] never disclosed [those witnesses] as required under [Federal] Rule

(3) [f] in [l]imine

ECF No. 1425 at 1 2. Defendants they ha[ve] provided dates . . . for all of the [thirty-three] witnesses at issue and [they] ha[ve] produced basic personnel information of the type typically found in a personnel file, such as prior work experience, educational background, tenure[,] and scope of job functions and responsibilities at Goldman Sachs. 2. Defendants oppose the Id. at 2 5. quest that Defendants provide deposition dates for thirty-three of their forty-six named trial witnesses who were never previously deposed is DENIED as moot, and ID numbers, is DENIED. Plaintiffs argue that Defendants USDC SDNY

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complete, unfiltered information about 3 (emphasis omitted). Plaintiffs contend that this request is [Defendants] ha[ve] previously produced such information for the named Plaintiffs, for class members who submitted declarations at class certification . . . , and [thirty-two Id. at 2 3 (citing ECF No. 753 at



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6). Defendants have information, argue that the Court No. 1430 at 2. Defendants contend that Plaintiffs ECF No. 753, Goldman Sachs to produce such highly confidential files for the [n]amed Plaintiffs and the [thirty-two] named comparators an opportunity for full- Id. at 3 (emphasis omitted). aced. Discovery in this action has closed.

Second, individuals 1

from trial witness list pursuant to Rule 37(c)(1) is GRANTED. Plaintiffs argue that Defendants violated their discovery obligations under Rule 26(a) and (e) by failing to identify the eight individuals. See ECF No. 1425 at 4. Defendants contend that the eight individuals, who are former Goldman Sachs this action, described in 1430 at 4 5. Rule 26(a) requires more. Fed. R. Civ. P. 26(a)(1)(A)(i) (requiring that a party provide, for instance, the name and, if known, the address and telephone number of each individual likely to have discoverable information) Defendants did not identify the eight individuals at issue pursuant to Rule 26 until the parties exchanged their trial witness lists in early 2023. See ECF No. 1425 at 4; see also ECF No. 1430 at 5 n.5. Fact discovery in this action closed on November 20, 2020. ECF No. 1050. Defendants, therefore, failed to identify these individuals until over two years after the close of fact discovery.

Downey v. Adloox Inc., No. 16 Civ. 1689, 2018 WL 794592, at *1 (S.D.N.Y. Feb. 8, 2018) (citing Fed. R. Civ. P. 37(c)(1)); see also Codename Enters., Inc. v. Fremantlemedia N.A., Inc., No. 16 Civ. 1267, 2018 WL 3407709, at *2 (S.D.N.Y. Jan. 12, 2018). practice of sandbagging Codename Enters., Inc., 2018 WL 3407709, at *2 (citation and quotation marks omitted). in deciding whether to impose sanctions and, if it does, what sanctions to imp Downey, 2018 WL 794592, at *1 (citation and quotation marks omitted). The Court must weigh four

1 The eight witnesses are: (1) Jacqueline Arthur; (2) Anne-Victoire Auriault; (3) Vivek Bantwal; (4) Stephanie Rader; (5) Akila Raman; (6) Jennifer Roth; (7) Pamela Ryan; and (8) Laurence Stein. ECF No. 1425 at 4; see also ECF No. 1425-1.

(3) the prejudice suffered by the opposing party as a result of having to prepare to meet the new Id. (citing Patterson v. Balsamico, 440 F.3d 104, 117 (2d Cir. 2006) (alterations omitted)).

The Court concludes that preclusion of the eight witnesses at issue is appropriate. Defendants do not provide an adequate explanation justifying their failure to comply with the disclosure requirement. Defendants attempt to do so by referring to a stipulation entered into by the parties on September 24, 2019, ECF No. 85 . ECF No. 1430 at 4. Defendants Id. (emphasis omitted). the Federal Rules of Civil Procedure . . . The [p]arties shall have the right to depose any witnesses designated by the opposing [p]arty to testify at trial who has not previously [been] The Court does not read the 2019 Stipulation to suspend the requirements of Rule 26. And, as far as the Court is aware, depositions of the other individuals on trial witness list who have not been deposed are currently underway. Defendants also argue that, even without the 2019 Stipulation, their failure to disclose is at 4 (citing ECF No. 1425).



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Further, Defendants seek the Rule 37 remedy as all eight individuals fall into at least one category described in *Goldman Id.* The Court disagrees, and finds that the first factor weighs in favor of preclusion. Next, the Court determines that Defendants have not demonstrated the importance. Defendants are unable to obtain the same testimony from witnesses who have been properly disclosed. 2

Indeed, proposed trial witness list identifies several other witnesses with substantially similar anticipated testimony. ECF No. 1409 at 14 18. The second factor, therefore, also weighs in favor of preclusion. The third factor is neutral [Defendants] deprived Plaintiffs of a fair opportunity to develop the record regarding these eight individuals during Plaintiffs 2, 5. The fourth factor weighs in favor of preclusion. The case has been pending since 2010, discovery in this action has long closed, and trial is set for June 7, 2023. In short, the Patterson factors weigh in favor of preclusion here. *Downey*, 2018 WL 794592, at *2.

Third, The Court shall issue a decision on in limine in due course.

In addition, Defendants seek their , ECF Nos. 1430-3, 1431- . ECF No. 1429. Specifically, Defendants request that the Court -public facing ECF No. 1429 at 1. Plaintiffs do not oppose request on those grounds, but point out E name and email address. ECF No. 1432. The Court finds that Defendants have met their burden to demonstrate that the interests in redacting the name and email address of the non-public facing current employee in Exhibit C outweigh the presumption of public access under *Lugosch v. 2* This determination does not constitute a in limine. The Court shall address the parties motions in limine in a separate order.

Pyramid Co. of Onondaga, 435 F.3d 110 (2d Cir. 2006). However, Defendants have failed to justify the additional redactions made in Exhibit C. Accordingly, request that the Court permit redactions of the name and email address of the non-public facing current employee is GRANTED. By March 24, 2023, Defendants (1) shall file a revised Exhibit C on the public docket with the redactions permitted by this order or (2) may provide a detailed explanation justifying the additional redactions made in Exhibit C, ECF Nos. 1430-3, 1431-3.

The Clerk of Court is directed to terminate the motion at ECF No. 1429 and amend the caption on this Court s docket to conform to the caption on this order.

SO ORDERED. Dated: March 14, 2023 New York, New York

