

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

ERIKA LUCEUS :  
 :  
 v. : C.A. No. 15-489ML  
 :  
 STATE OF RHODE ISLAND, et al. :

**MEMORANDUM AND ORDER**

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendants’ Motion to Strike Plaintiff’s Expert. (Document No. 43). Plaintiff opposes the Motion. (Document No. 44). For the following reasons, Defendants’ Motion to Strike is GRANTED.

Defendants contend that Plaintiff’s expert disclosure fails to comply with Rule 26(a)(2)(B), Fed. R. Civ. P. Plaintiff concedes that the disclosure fails to comply with “the four corners of Rule 26(a)(2)(B).” (Document No. 44 at p. 1). She offers two explanations: (1) her inability to afford the cost of the expert’s report; and (2) Defendants’ failure to produce certain documents. Neither explanation excuses Plaintiff’s noncompliance.

Plaintiff was required by the Court’s Amended Pretrial Order (Document No. 21) to produce her expert witness disclosure by December 1, 2016. Pursuant to Rule 26(a)(2)(D), Fed. R. Civ. P., a party must make its expert disclosures “at the times and in the sequence that the court orders.” On December 1, 2016, the parties agreed to extend that deadline to December 14, 2016. (Document No. 40). Plaintiff made an expert disclosure on December 14, 2016 that fell far short of complying with the applicable Rule. (Document No. 43-2). Defendants’ counsel promptly advised Plaintiff’s counsel of the deficiency and requested a supplemental disclosure complying with Rule 26(a)(2)(B) by December 21, 2016. (Document No. 43-3). Absent such a disclosure, Defendants’ counsel

indicated that he would file a motion to strike. Id. Plaintiff responded with additional information on December 21, 2016 but again fell far short of complying with the applicable Rule. (Document No. 43-4). Although Plaintiff identified her proposed expert, it is undisputed that the disclosures did not comply with the Rule and failed to disclose any actual opinion to be expressed by the proposed expert. The deficient expert disclosure effectively made it impossible for Defendants to retain and disclose a rebuttal expert report by January 16, 2017 as required. (See Document No. 40).

While it may be true that Plaintiff cannot presently afford a full expert report, that does not excuse Plaintiff's failure to make her expert disclosure in a timely fashion and in accordance with the Rule.<sup>1</sup> This case was filed in 2015, and Plaintiff has had ample notice of the deadline for engaging an expert. The Court set deadlines for expert witness disclosures, and Plaintiff never filed any motion asking the Court for relief from her deadline. Rather, Plaintiff's counsel simply produced a plainly deficient disclosure. Plaintiff has failed to show good cause for her noncompliance. See Rules 6(b)(1)(B) and 16(b)(4), Fed. R. Civ. P.

As to the discovery explanation, it also fails to excuse Plaintiff's noncompliance. Fact discovery closed in this case on November 1, 2016. Plaintiff filed a Motion to Compel on October 21, 2016 but it did not address the Document Request (No. 12) in question. (See Document No. 36). Further, Defendants represent that the documents in question have been produced to Plaintiff.

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<sup>1</sup> Plaintiff previously ignored the Court's deadline for moving to amend her Complaint. (See Text Order dated July 26, 2016 ). Although Plaintiff was excused from that noncompliance, the experience should have alerted her counsel to the potential consequences of ignoring Court-imposed deadlines. In fact, during the hearing on Plaintiff's Motion to Amend, this issue was addressed at length with Plaintiff's counsel. (See Document No. 32 at pp. 3-6 – Transcript of July 26, 2016 hearing.)

(Document No. 43-1 at p. 11 and No. 45 at p. 5). Despite receiving these documents, Plaintiff has not supplemented her expert witness disclosure or sought additional time by Motion to do so.<sup>2</sup>

Accordingly, for the foregoing reasons, Defendants' Motion to Strike Plaintiff's Expert (Document No. 43) is GRANTED.

SO ORDERED

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
January 20, 2017

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<sup>2</sup> The discovery explanation appears to be a red herring since the claimed inability to afford an expert report would preclude compliance regardless of the timely receipt of documents.