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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CARMEN M. OCASIO-HERNANDEZ et  
al.

Plaintiffs

v.

LUIS FORTUNO-BURSET et al.

Defendants

CIVIL 09-1299 (GAG)

ORDER

14 On March 25, 2009, plaintiffs filed a complaint against the defendants  
15 pursuant to 28 U.S.C. §§ 1331 and 1983, and the First, Fifth and Fourteenth  
16 Amendments to the Constitution of the United States (freedom of speech and of  
17 association; due process, and equal protection). (Docket No. 1 at 2, ¶1 and  
18 Docket No. 1 at 25, ¶139.) Plaintiffs also brought supplemental claims under  
19 the laws and Constitution of Puerto Rico alleging violations of their rights under  
20 the Constitution and laws of the Commonwealth of Puerto Rico. The state causes  
21 of action are brought under Law 131 of May 13, 1943, P.R. Laws Ann. Tit. 1, §§  
22 13-19; and articles 1802 and 1803 of the Civil Code, P.R. Laws Ann. Tit. 31, §§  
23 5141-5142. (Docket No. 1 at 2, ¶1; 1 at 26, ¶ 143.)

26 This matter is before the court on motion to compel and request for  
27 miscellaneous relief filed by defendants on January 25, 2012. (Docket No. 99.)  
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4 Plaintiffs responded in opposition to the motion to compel and cross-moved  
5 requesting order on January 31, 2012. (Docket No. 101(substituted by Docket No.  
6 102)). An amended response and cross-motion was filed later that day. (Docket  
7 No. 102). A response in opposition to the cross-motion was filed on February 6,  
8 2012. (Docket No. 112).

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10 For the reasons set forth below, defendants motion to compel is GRANTED in  
11 part and DENIED in part and plaintiffs cross motion is MOOT in part and DENIED  
12 in part.

13 On December 2, 2011, the court issued an order setting February 10, 2012  
14 as the deadline to conclude discovery. The deadline for filing dispositive motions  
15 was set for March 12, 2012. The defendants complain that their request for  
16 production of certain documents has been ignored or not complied with, and that  
17 these requests date back to November 8, 2011. Specific requests for production  
18 of documents were made following the depositions of certain plaintiffs. The  
19 defendants seek the production of the documents forthwith. The defendants also  
20 request that plaintiff inform if co-plaintiff Leticia Matos Santiago's causes of action  
21 will be voluntarily dismissed since she failed to appear at her scheduled  
22 deposition.  
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4 Plaintiffs respond that many of the documents requested by the defendants  
5 are not available or are otherwise shielded by the doctor-patient privilege.<sup>1</sup>  
6 Plaintiffs note that they have attempted to comply with the requests and continue  
7 to compile the additional documents requested. They also stress the very limited  
8 resources of plaintiffs and that often time they do not have the capital to secure  
9 the documents requested. (Docket No. 102 at 1, ¶2.) They also note that the  
10 defendants have failed to certify under Local Rule 26(b) their effort to reach  
11 agreement and that an attempt will not suffice. Plaintiffs make reference to  
12 almost vexatious conduct on the part of the defendants in the request for copies  
13 of termination letters which the note would be in the possession of the  
14 defendants. Plaintiffs note they do not possess evidence of non-events, such as  
15 their not receiving sick or vacation pay due them. Plaintiffs protest the deadlines  
16 imposed by the defendants for the production of the documents sought. They  
17 note that certain documents were already sent to them. Plaintiffs seek  
18 compliance with Rule 26 ( a Rule 26 conference was finally held on January 27,  
19 2012) and also seek an order to compel announcement of witnesses and  
20 replacements, that is, people who replaced the plaintiffs. Dates were separated  
21 for their depositions (January 26, 27, 30 and 31, 2012). Names were provided  
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27 <sup>1</sup>The issue of privilege was brought up at today’s discovery hearing. No  
28 information of a privileged nature is being sought and the information requested  
as limited, such as dates of treatment, which is not privileged, is to be provided.

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3 but the replacements were not made available to plaintiffs. Their addresses were  
4 provided on January 18, 2012, which is insufficient time to subpoena them to  
5 appear at a deposition within the limits of the discovery deadline. See Fed. R. Civ.  
6 P. 32(a)(5)(A). At today's discovery hearing, the defendants announced,  
7 apparently not for the first time, that the only witnesses that will be presented  
8 will be the defendants themselves.  
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11 Plaintiffs seek an extension of the discovery deadline to enable them to  
12 subpoena and depose six people who are employees at the Governor's mansion.  
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14 The defendants responded to the cross-motion to compel asking the court  
15 to deny the request for the identification of their witnesses since plaintiffs have  
16 known that the only defense witnesses will be the defendants themselves. That  
17 was emphasized at the discovery hearing. (Docket No. 112). They also object to  
18 extending the discovery deadline for the taking of depositions. Indeed, the driving  
19 force behind the flurry of relatively activity is the fast approaching discovery  
20 deadline.  
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22 Local Rule 26(b) and Federal Rule of Civil Procedure 37(a)(1) requires that  
23 before filing a motion to compel, the moving party has to certify that it "has made  
24 a reasonable and good-faith effort to [try and solve the discovery dispute] with  
25 opposing counsel" without the court's intervention. Local Rules of the U.S. Dist.  
26 Court for the Dist. of P.R. Rule 26(b); see Fed. R. Of Civ. P. 37(a)(1). "An  
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3 attempt to confer will not suffice.” Local Rule 26(b). While the required  
4 certification is not present, and the defendants explain their efforts at resolving  
5 the discovery issues considering the fast approaching deadlines,, the court  
6 instructed the attorneys to meet prior to the conference and the attorneys did  
7 that. I will not belabor the point. The desire for compliance with the local rule  
8 has been overcome by events.  
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11 The last discovery deadline and motion timetable was set as the result of a  
12 joint informative motion (Docket No. 95) which called for the February 10, 2012  
13 deadline. The court has the right to expect that self-imposed deadlines and  
14 mutually agreed upon dates will be met. See Cintrón-Lorenzo v. Departamento  
15 de Asuntos del Consumidor, 312 F.3d 522, 526 (1st Cir. 2002) (quoting Tower  
16 Ventures, Inc. v. City of Westfield, 296 F.3d 43, 47 (1st Cir. 2002)) (“[w]hen a  
17 litigant . . . proposes a compliance date, the court is entitled to expect that the  
18 litigant will meet its self-imposed deadline.”).  
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21 Having heard the extensive, detailed argument of counsel at the discovery  
22 hearing, I do not find good cause to extend the discovery deadline and therefore  
23 deny plaintiffs’ request to subpoena and depose the six persons mentioned at the  
24 hearing. Diligence was a word which was used extensively during the in  
25 chambers meeting. In this case, the court was clear as to the deadlines and even  
26 with a short extension, I find that plaintiffs’ strong efforts to secure the desired  
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3 depositions come too late. The defense argument in relation to diligence is  
4 ultimately correct. The reasons for not producing the requested documents are  
5 insufficient to continue to delay their production. The lack of their existence should  
6 also be explained. Plaintiffs are to produce the requested documents by the  
7 deadline date or inform the defendants the reason why compliance is not  
8 forthcoming. Pending will be an insufficient answer.  
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### 11 III. CONCLUSION

12 For the reasons set forth above, the defendants' motion to compel (Docket  
13 No. 99) is GRANTED in part and DENIED in part. Again, plaintiffs are to produce  
14 the requested documents by the deadline date or inform the reason why  
15 compliance is not forthcoming. Pending will be an insufficient answer. Plaintiffs  
16 will not be required to state promptly whether the claims asserted by Leticia Matos  
17 Santiago will be voluntarily dismissed.  
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19 Plaintiffs' cross-motion requesting order (Docket No. 102) is MOOT in part  
20 and DENIED in part. The request to compel the defendants to disclose their trial  
21 witnesses is deemed moot as of today and prior to today. The request for a brief  
22 extension of time for discovery is DENIED. The matter of the taking of the  
23 deposition of the Governor remains pending before the district court.  
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25  
26 At San Juan, Puerto Rico, this 8th of February, 2012.

27 S/ JUSTO ARENAS  
28 United States Magistrate Judge