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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZHIVKA VALIAVICHARSKA,

Plaintiff,

v.

MITCH CELAYA, et al.,

Defendants.

Case No.: CV 10-4847 JSC

**ORDER DENYING PLAINTIFF'S
REQUEST TO SUBSTITUTE
MEDICAL EXPERTS (DKT. NO. 110)**

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Now pending before the Court is a January 22, 2012 letter from Plaintiff requesting to substitute properly noticed medical expert witness Dr. Mathias Masem with a Dr. Strudwick.

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The deadline to disclose expert witnesses was December 29, 2011, and discovery on expert witnesses closed January 20, 2012. (Dkt. No. 74.) Trial is scheduled to commence on February 6, 2012. Plaintiff did not disclose Dr. Strudwick as an expert witness and, accordingly, he has not been deposed. Plaintiff did place on her trial exhibit list a medical report Dr. Strudwick authored after he examined Plaintiff in the summer of 2011, but Defendant moved to exclude the exhibit as inadmissible hearsay. At the pretrial conference on January 19, 2012, Plaintiff explained that she did not intend to call Dr. Strudwick as a witness but that his report had been reviewed by the parties' medical experts. Accordingly, the Court sustained Defendant's objection.

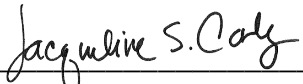
United States District Court
Northern District of California

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Plaintiff now asserts in a letter dated January 22, 2012 that a “mistaken” member of Dr. Masem’s staff informed Plaintiff that Dr. Masem would testify as an expert in the trial, but Plaintiff just learned that Dr. Masem “makes it a rule never to act as an expert witness.” (Dkt. No. 110.) Plaintiff proposes to substitute Dr. Strudwick as an alternate expert medical witness, even though he was never identified as such and has not been deposed. On the eve of trial, such a substitution is not proper. Plaintiff is responsible for ensuring that anyone she identifies as an expert witness has, in fact, agreed to serve as an expert witness on her behalf. Dr. Masem’s unwillingness to testify as an expert is not grounds to introduce a new expert witness who was not properly disclosed—or deposed—before discovery deadlines. Plaintiff’s motion is **DENIED**.

IT IS SO ORDERED.

Dated: January 23, 2012



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE