

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ISIDORO RIVERA, et al.,

Plaintiffs,

-against-

THE INCORPORATED VILLAGE OF
FARMINGDALE, et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is defendant the Incorporated Village of Farmingdale's ("defendant") letter motion dated July 11, 2013 seeking leave to submit its expert's report *nunc pro tunc* to May 24, 2013. Plaintiffs oppose the application arguing principally that defendant has failed to demonstrate good cause and/or excusable neglect for the delay and that plaintiffs will suffer material prejudice if the extension of time is granted.

At a status conference held before the undersigned on April 10, 2013, defendant was directed to serve its expert report by May 10, 2013. On May 9, 2013, defendant sought, on consent, an additional two weeks' time to serve the expert report to May 24, 2013, which the court granted. Defendant served the report on June 3, 2013. Defendant now explains in its application that its "expert ran into a complication that took more time to resolve than he initially expected . . . to complete his report." Defendant further states that after service of the report, "the plaintiff initially objected to the late service but the parties had agreed to 'back burner' their differences with respect to the report's timing in an effort to concentrate on potential settlement of the action." The court is troubled that defendant did not seek an additional extension of time to serve the report. Notwithstanding, the undersigned finds that the ten-day delay in defendant's production of the expert report will not delay the filing of the pre-trial order or the agreed upon date for trial readiness nor will it prejudice the plaintiff. Accordingly, preferring to have the case decided on its merits, defendant's motion is granted.

Dated: Central Islip, New York
July 24, 2013

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge