

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARIANELA SUSANA,

Plaintiff,

-v-

NY WATERWAY *et al.*,

Defendants.
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20 Civ. 455 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On November 11, 2021, Defendants submitted a letter motion requesting an Order “1) pursuant to FRCPs 35 and 37(b), compelling Plaintiff Marianela Susana to attend an FRCP 35 IME, or risk sanctions up to and including dismissal of this case with prejudice and awarding costs for failing to appear at her scheduled November 8, 2021, IME; 2) pursuant to FRCPs 26 and 37 (b)(1), compelling Plaintiff’s witness and daughter Bridgette Escolasticos to attend a deposition, or risk contempt of court and preclusion of Ms. Escolasticos as a witness at trial and striking of any statements made by Ms. Escolasticos; and 3) extension of the fact discovery period until December 15, 2021 for the sole purpose of conducting Ms. Susana’s IME and Ms. Escolasticos’s deposition.” Dkt. 53.

On November 16, 2021, Plaintiff responded to Defendants’ November 11, 2021 letter, stating that (1) Plaintiff “does not oppose the portion of Defendant’s request to extend their time to conduct Plaintiffs IME as [Plaintiff’s counsel] became aware, after the fact, that [Plaintiff] did not attend the IME”; (2) Plaintiff’s counsel is “unable to speak to the circumstances of why Plaintiff failed to attend but am aware that there was a recent death in her family (Plaintiffs nephew)”; and (3) Plaintiff’s counsel “was informed that Ms. Escolasticos recently underwent a

surgical procedure that subsequently got infected” and “[t]hat may have resulted in her failure to appear at her noticed deposition.” Dkt. 55.

It is hereby ORDERED that Defendants’ request for extension of time until December 15, 2021 to conduct Plaintiff’s IME and to depose Ms. Escolasticos is granted. No further extensions of discovery deadlines will be granted absent good cause. Defendants’ request for an order compelling Plaintiff to attend the IME pursuant to Rules 35 and 37(b) of Federal Rules of Civil Procedure and an order compelling Ms. Escolasticos to attend a deposition pursuant to Rules 26 and 37(b)(1) of the Federal Rules of Civil Procedure is denied without prejudice. Plaintiff is advised that her failure to appear at the rescheduled IME and any other failure to comply with the Court’s discovery deadlines may result in sanctions up to and including dismissal of this case with prejudice.

The Clerk of Court is respectfully ordered to terminate the motion pending on Docket Number 53.

SO ORDERED.

Dated: November 17, 2021
New York, New York



JOHN P. CRONAN
United States District Judge