

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GLORIA CLEVELAND,

Plaintiff,

v.

20-CV-1351 (JLS) (JJM)

C. R. BARD, INC. and BARD  
PERIPHERAL VASCULAR, INC.,

Defendants.

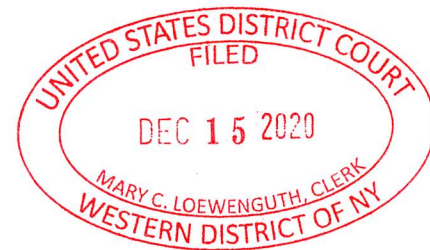
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**DECISION AND ORDER**

On September 23, 2020, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 17.

Judge McCarthy scheduled a telephonic scheduling conference for October 29, 2020 and, when counsel for Plaintiff Gloria Cleveland failed to appear, rescheduled it for November 6, 2020. Dkts. 26, 27. Plaintiff's counsel again failed to appear. Dkt. 28. That day, Judge McCarthy issued a Report and Recommendation ("R&R"), recommending that this action be dismissed on the merits pursuant to Federal Rule of Civil Procedure 41(b). Dkt. 29.

After the R&R was issued, Plaintiff's counsel entered a notice of appearance in this case. Dkt. 30. Plaintiff then opposed the R&R; Plaintiff's counsel indicated that she had not been receiving notifications in this case due to a clerical oversight.




Dkts. 31-32. Defendants, in response, indicated that “they do not oppose Plaintiff’s request for her case to be heard on the merits.” Dkt. 34, at 1.

Recognizing that Defendants do not oppose this outcome, the Court respectfully rejects Judge McCarthy’s recommendation to dismiss this case. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of September 23, 2020 (Dkt. 17).

SO ORDERED.

Dated: December 15, 2020  
Buffalo, New York

  
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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE