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

RITA CABALLERO, et al.,

Plaintiffs

v.

CIVIL 07-1665 (JA)

HOSPITAL ESPAÑOL AUXILIO MUTUO
DE PUERTO RICO, INC., et al.,

Defendants

OPINION AND ORDER

This matter is before the court on motion for protective order filed by the defendants on October 5, 2009. (Docket No. 63.) Plaintiffs opposed to the defendants' motion on October 14, 2009 and in addition requested that the defendants' expert witness testimony be excluded. (Docket No. 64.) On November 10, 2009, the defendants replied. (Docket No. 67.) Having considered the arguments of the parties and for the reasons set forth below, the defendants' motion for protective order is GRANTED and plaintiffs' motion to strike is DENIED.

I. BACKGROUND

On June 12, 2009, the pre-trial conference was held and the scheduling order was then issued. According to the scheduling order the parties had until October 31, 2009, to complete all discovery. Plaintiffs' expert witnesses were scheduled to be deposed in Boston on September 3-5. Plaintiffs' experts were

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4 also supposed to be deposed on September 12, 2009, at 9:30 a.m. On that same
5 day, at 2:00 p.m., Dr. Wilfredo Nieves-Colomer (expert witness for the
6 defendants) was also scheduled to be deposed. The scheduling order specified
7 that the dates of September 15, 23 and 24 were reserved to depose the hospital's
8 expert Dr. Manuel Quiles and the defendants' joint economics expert Dr. Ramón
9 Cao. (Docket No. 57.)

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11 On October 5, 2009, the defendants filed " Joint Motion for Protective
12 Order". (Docket No. 63.) In their motion the defendants request that the court
13 eliminate the fees demanded by both of plaintiffs' expert witnesses, Dr. Christian
14 Arbeláez and Dr. Richard Sullivan, for the cancellation of their depositions. The
15 depositions of plaintiffs' expert witnesses were scheduled for September 4 and 5,
16 2009. (Id. at 1, ¶ 1.) The defendants claim that the depositions were
17 involuntarily cancelled due to situations that were beyond their control. (Id. at 3,
18 ¶ 8.)
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21 On October 14, 2009, plaintiffs opposed the defendants' request and moved
22 for the exclusion of their expert witness, Dr. Nieves-Colomer, for not making a
23 timely and full disclosure as required by Rule 26(a)(2) of the Federal Rules of Civil
24 Procedure. (Docket No. 64, at 1, ¶ 1.) Plaintiffs also claim that the defendants
25 have not allowed them to depose Dr. Nieves-Colomer. (Id. at 11, ¶ 1.)
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4 On November 10, 2009, the defendants replied explaining once again the
5 reason why the depositions of both Dr. Arbeláez and Dr. Sullivan were cancelled.
6 (Docket No. 67, at 1-3.) As to the request to exclude Dr. Nieves-Colomer as an
7 expert witness, the defendants claim they were allowed by the plaintiffs to make
8 the disclosures after December 22, 2008. (Id. at 3, ¶ 7.) The defendants state
9 that on January 30, 2009, Dr. Nieves-Colomer's expert report was notified to
10 plaintiffs. (Id.) As to the other disclosures that were pending, the defendants
11 claim that plaintiffs were informed that they were going to be furnished on a later
12 date. (Id.)

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14 According to the defendants, on June 12, 2009 the disclosures that were
15 pending were personally notified to the plaintiffs. (Id.) The defendants argue that
16 even though the disclosures were not made on or before December 22, 2008,
17 they were nevertheless produced opportunistically. (Id. ¶ 8.) The defendants
18 therefore request that plaintiffs' motion be denied. (Id. at 4, ¶ 11.)
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21 II. ANALYSIS

22 A. Protective Orders

23 Federal Rule of Civil Procedure 26(c) "confers broad discretion on the trial
24 court to decide when a protective order is appropriate and what degree of
25 protection is required." Baker v. Liggett Group, Inc., 132 F.R.D. 123, 125 (D.
26 Mass. 1990) (quoting Seattle Times v. Rhinehart, 467 U.S. 20, 36 (1984)). The
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4 court may issue a protective order upon motion by “[a] party or any person from
5 whom discovery is sought . . . [accompanied by] a certification that the movant
6 has in good faith conferred or attempted to confer with other affected parties in
7 an effort to resolve the dispute without court action.” Fed. R. Civ. P. 26(c).

8 Rule 26(c) also requires a showing of good cause by the movant. Pub.
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10 Citizen v. Liggett Group, Inc., 858 F.2d 775, 779 (1st Cir. 1988); Multi-Core, Inc.
11 v. S. Water Treatment Co., 139 F.R.D. 262, 263 (D. Mass. 1991). “Whether or
12 not ‘good cause’ exists for the entry of such an order must depend on the facts
13 and circumstances of the particular case.” Mompoin v. Lotus Dev. Corp., 110
14 F.R.D. 414, 418 (D. Mass. 1986). In other words, “[a] finding of good cause must
15 be based on a particular factual demonstration of potential harm, not on
16 conclusory statements.” Baker v. Liggett Group, Inc., 132 F.R.D. at 125 (quoting
17 Anderson v. Cryovac, Inc., 805 F.2d 1, 7 (1st Cir. 1986)).

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19 After the movant meets these requirements, “[t]he court may, for good
20 cause cause, issue an order to protect a party or person from annoyance,
21 embarrassment, oppression, or undue burden or expense” Fed. R. Civ. P.
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23 26(c).

24 The defendants in this case request that a protective order be entered in
25 order to eliminate the fees demanded by both of plaintiffs’ expert witnesses,
26 Dr. Arbelález and Dr. Sullivan, for cancelling their depositions. According to the
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4 defendants the depositions, which were scheduled to be taken on September 4
5 and 5, 2009 at Boston, Massachusetts, had to be cancelled due to tropical storm
6 Erika. (Docket No. 63, at 1, ¶ 1.) The defendants claim that before the
7 depositions were cancelled plaintiffs were kept informed of the emergency every
8 few hours as the reports from the National Hurricane Center (“NHC”) were being
9 posted. (Id.) The defendants claim that during a conference call all of the parties
10 “agreed that the most reasonable thing to do was to cancel the depositions” and
11 reschedule them. (Id. at 2-3, ¶ 7.)
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14 After the depositions were cancelled, the defendants claim that they
15 received an email from plaintiffs’ counsel on September 16, 2009, informing them
16 that Dr. Arbeláez and Dr. Sullivan were demanding \$1,200 and \$800,
17 respectively, for the cancellation of their depositions. (Id. at 1, ¶ 2.)
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20 The defendants admit that the tropical storm eventually did not enter Puerto
21 Rico, weakened and was reclassified as a tropical depression. Nevertheless, the
22 defendants argue that when the decision-making took place, in order to determine
23 whether or not the depositions were going to be cancelled, the scenario was not
24 positive for Puerto Rico. (Id. at 3, ¶ 10.) The defendants contend that it was not
25 possible for them to reschedule the travel arrangements and reservations exactly
26 the way they originally were. (Id.)
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4 Plaintiffs on the other hand argue that the defendants are responsible for
5 canceling the depositions and are liable for the fees demanded by Dr. Arbeláez
6 and Dr. Sullivan. (Docket No. 64, at 5, ¶ 22.) Plaintiffs claim that they called the
7 defendants "to inform them to try at all costs to keep the scheduled depositions,"
8 and were also "explained that there would be a cost associated with the
9 cancellation of the depositions." (Id. at 3, ¶¶ 10 & 11.) According to plaintiffs the
10 National Oceanic Atmospheric Agency Record ("NOAA") issued a "Tropical
11 Depression Erika Advisory 9" on September 3, 2009, at approximately 5:00 p.m.
12 (Id. at 4, ¶ 16.) Plaintiffs sustain that the advisory stated that the tropical storm
13 would only affect Puerto Rico in a very limited area on the southwest tip of the
14 island, that flight operations were not disrupted and that the Luis Muñoz-Marín
15 International Airport serving San Juan did not close. (Id. ¶¶ 16 & 17.) Plaintiffs
16 claim that they were given no choice but to cancel the depositions despite their
17 willingness to go forward with them. (Id. ¶ 18.)

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21 Federal Rule of Civil Procedure 26(b)(4)(C)(i) places a financial burden of
22 deposing a testifying expert on the party that conducts the deposition. Fed. R.
23 Civ. P. 26(b)(4)(C)(i). Additionally, courts have generally found that the party
24 taking the deposition is required by Rule 26(b)(4)(C)(i) to pay for preparation
25 time. Lent v. Fashion Mall Partners, 223 F.R.D. 317, 318 (S.D.N.Y. 2004);
26 Fleming v. United States, 205 F.R.D. 188, 190 (W.D. Va. 2000); Collins v. Vill. of
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3 Woodridge, 197 F.R.D. 354, 307 (N.D. Ill. 1999); Emmeneger v. Bull Moose Tube
4 Co., 33 F. Supp. 2d 1127, 1136 (E.D. Mo. 1998). However, "[t]he provisions
5 about payment in Rule 26(b)(4)(C) are subject to the condition 'unless manifest
6 injustice would result.' Thus the court can decline to require payment in some
7 deserving cases." 8A The Late Charles Alan Wright, Arthur R. Miller & Richard L.
8 Marcus, Federal Practice and Procedure Civ. § 2034.
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11 "[T]he manifest injustice exception is a 'stringent standard.'" Harris v. San
12 José Mercury News, Inc., 235 F.R.D. 471, 473 (N.D. Cal. 2006) (citing Reed v.
13 Binder, 165 F.R.D. 424, 427 (D.N.J. 1996) (quoting Gorlikowski v. Tolbert, 52
14 F.3d 1439, 1444 (7th Cir. 1995)). "To apply the exception, the court must find
15 . . . 'that requiring [the defendants] to pay a deposition fee . . . would create
16 an undue hardship.'" Harris v. San José Mercury News, Inc., 235 F.R.D. at 473
17 (quoting Edin v. The Paul Revere Life Ins. Co., 188 F.R.D. 543, 547 (D. Ariz.
18 1999)). "In making the determination of undue hardship, the court must 'weigh
19 the possible hardships imposed on the respective parties . . . [and] balance the
20 need for doing justice on the merits between the parties . . . against the need for
21 maintaining orderly and efficient procedural arrangements.'" Harris v. San José
22 Mercury News, Inc., 235 F.R.D. 471, 473 (quoting Reed v. Binder, 165 F.R.D. at
23 427-28) (quoting Gorlikowski v. Tolbert, 52 F.3d at 1444).
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4 The court finds that plaintiffs' request that the defendants pay the fees
5 demanded by Dr. Arbeláez and Dr. Sullivan is unwarranted. The fees demanded
6 by the plaintiffs' expert witnesses for canceling the depositions cannot be
7 considered as preparation costs. Therefore, the defendants cannot be ordered to
8 pay the fees requested. Furthermore, another reason why the defendants are not
9 responsible for paying the fees requested by plaintiffs' expert witnesses is that
10 they have shown good cause as to why the depositions were canceled. As the
11 defendants pointed out, the depositions were canceled due to the imminence of
12 a tropical storm. It is clear that in light of the circumstances the defendants'
13 decision to cancel the depositions was not arbitrary but rather logical and
14 reasonable. Although plaintiffs believe that the defendants' proffered reason does
15 not justify canceling the depositions the court finds that it is.
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18 As the defendants have explained, the tropical storm was going to affect
19 Puerto Rico on September 3 and 4, 2009. Both of defendants' counsel had their
20 flights scheduled for September 3, 2009. On September 2, 2009, counsel for the
21 defendants decided to cancel the depositions because according to a bulletin from
22 the NHC the tropical storm, although weakened, still sustained winds of 40 mph
23 and was projected to remain over or near the island causing significant rain and
24 floods. As a direct consequence of cancelling the depositions, counsel for the
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3 defendants had to absorb the costs of suspending all of their travel arrangements
4 (flight, hotel, etc.).
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6 B. Failure to Make Disclosures

7 Rule 26(a)(2) of the Federal Rules of Civil Procedure "requires parties to
8 disclose the identity of their expert witnesses as well as their experts' reports in
9 accordance with scheduling orders issued by the trial court." Morel v. Daimler-
10 Chrysler Corp., 259 F.R.D. 17, 19-20 (D.P.R. 2009) (citing Fed. R. Civ. P.
11 26(a)(2)); see Laplace-Bayard v. Battle, 295 F.3d 157, 161-62 (1st Cir. 2002).

12 "An expert's complete report is due at a specific time during the discovery period
13 in order to allow opposing counsel to depose the expert, if desired, and to allow
14 the opposing party's expert witness time to respond to the opinions expressed in
15 the report, also within the discovery period, so that the plaintiff's counsel will also
16 have an opportunity to explore those opinions before the end of discovery and the
17 deadline for the filing of dispositive motions." Griffith v. E. Me. Med. Ctr., 599 F.
18 Supp. 2d 59, 63-64 (D. Me. 2009); see Thibeault v. Square D Co., 960 F.2d 239,
19 244 (1st Cir. 1992). "An expert can always supplement his or her opinions after
20 submitting a report, should the need arise. What the expert cannot do is dictate
21 the timing and progress of the case; that is a matter solely within the court's
22 control." Griffith v. E. Me. Med. Ctr., 599 F. Supp. 2d at 64.
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4 When the “automatic discovery provisions of Rule 26(a) and 26(e) are
5 violated . . . ” subsection (c) of Rule 37 comes into play. Ortiz-López v. Sociedad
6 Española de Auxilio Mutuo y Beneficiencia de P.R., 248 F.3d 29, 33 (1st Cir. 2001)
7 (citing Fed. R. Civ. P. 37(c)). Subsection (c) of Rule 37 provides, in relevant part,
8 that if “a party that without substantial justification fails to disclose information
9 required by Rule 26(a) or 26(e)(1) [, that party] shall not, unless such failure is
10 harmless, be permitted to use as evidence at a trial, at a hearing, or on a motion
11 any witness or information not so disclosed.” Ortiz-López v. Sociedad Española
12 de Auxilio Mutuo y Beneficiencia, 248 F.3d at 33 (citing Fed. R. Civ. P. 37(c)(1)).
13 Thus, “Rule 37(c)(1) ‘clearly contemplates stricter adherence to discovery
14 requirements, and harsher sanctions for breaches of this rule, and the required
15 sanction in the ordinary case is mandatory preclusion.’” Griffith v. E. Me. Med.
16 Ctr., 599 F. Supp. 2d at 64 (quoting Lohnes v. Level 3 Commc’ns, Inc., 272 F.3d
17 49, 60 (1st Cir. 2001)).

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21 “[T]he burden of proving substantial justification or harmlessness” for an
22 untimely disclosure falls on the offending party. Alves v. Mazda Motor of Am.,
23 Inc., 448 F. Supp. 2d 285, 293 (D. Mass. 2006) (citing Saudi v. Valmet-Appleton,
24 Inc., 219 F.R.D. 128, 132 (E.D. Wis. 2003) (“The party to be sanctioned must
25 show that its violation of Rule 26(a) was either ‘substantially justified’ or
26 ‘harmless.’”). Besides being able to preclude as evidence “any witness or
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3 information not so disclosed," the court "may impose other appropriate sanctions
4 . . . [which] may include any of the actions authorized under subparagraphs (A),
5 (B), and (C) of subdivision (b)(2) of this Rule." Ortiz-López v. Sociedad Española
6 de Auxilio Mutuo y Beneficiencia de P.R., 248 F.3d at 34 (quoting Fed. R. Civ. P.
7 37(c)). The objective of Rule 26(a) is to "promote full disclosure of the facts and
8 prevent 'trial by ambush,' because opposing counsel cannot adequately cross-
9 examine without advance preparation." Morel v. Daimler-Chrysler Corp., 259
10 F.R.D. at 20 (citing Macaulay v. Anas, 321 F.3d 45, 50, 52 (1st Cir. 2003)).

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12 "The expert disclosure requirements are not merely aspirational, and courts
13 must deal decisively with a party's failure to adhere to them." Griffith v. E. Me.
14 Med. Ctr., 599 F. Supp. 2d at 64 (quoting Lohnes v. Level 3 Commc'ns, Inc., 272
15 F.3d at 60). Therefore, "[f]ormal disclosure of experts is not pointless." Vigilant
16 Ins. v. E. Greenwich Oil Co., 234 F.R.D. 20, 24 (D.R.I. 2006) (quoting Musser v.
17 Gentiva Health Servs., 356 F.3d 751, 757 (7th Cir. 2004)). "The purpose of the
18 expert disclosure rules is 'to facilitate a "fair contest with the basic issues and
19 facts disclosed to the fullest practical extent.'"" Poulis-Minott v. Smith, 388 F.3d
20 354, 358 (1st Cir. 2004) (quoting Lohnes v. Level 3 Commc'ns, Inc., 272 F.3d at
21 60 (quoting Thibeault v. Square D Co., 960 F.2d at 244). "[P]reclusion of expert
22 testimony is a grave step, not to be undertaken lightly[.]" Primus v. United
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3 States, 389 F.3d 231, 235 (1st Cir. 2004) (quoting Thibeault v. Square D Co., 960
4 F.2d at 247).

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6 “Rules 26(a) and 37(c)(1) seek to prevent the unfair tactical advantage that
7 can be gained by failing to unveil an expert in a timely fashion, and thereby
8 potentially deprive a plaintiff of the opportunity to ‘depose the proposed expert,
9 challenge his credentials, solicit expert opinions of his own, or conduct expert-
10 related discovery.’” Poulis-Minott v. Smith, 388 F.3d at 358 (quoting Lohnes v.
11 Level 3 Commc’ns, Inc., 272 F.3d at 60). However, Rule 37(c)(1) “allows the
12 court to admit belatedly proffered expert evidence if the proponent's failure to
13 reveal it was either substantially justified or harmless.” Id. In deciding whether
14 to exclude expert testimony under Rule 37(c)(1), the court considers the history
15 of the litigation, the party's need for the expert testimony, the party's justification
16 for late disclosure, and any prejudice to the opposing party caused by the late
17 disclosure. Santiago-Díaz v. Lab. Clínico y de Referencia del Este & Sara López,
18 M.D., 456 F.3d 272, 276-77 (1st Cir. 2006) (quoting Macaulay v. Anas, 321 F.3d
19 at 51).

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23 Plaintiffs in this case have requested that the testimony and report of the
24 defendants’ expert witness, Dr. Nieves-Colomer, be excluded from trial for failing
25 to comply with the order entered by this court on October 14, 2008, which
26 required the parties to make all expert disclosures by December 22, 2008.
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3 (Docket No. 64, at 8-9, ¶ 37.) Plaintiffs believe that the defendants' untimely
4 disclosures regarding their expert witness is neither justified nor harmless. (Id.)
5 According to plaintiffs on December 22, 2008, they received an email from the
6 defendants requesting a brief extension of time until January, 15, 2009, to make
7 their disclosures. (Id. at 6, ¶ 26.) Plaintiffs state that even though they gave in
8 to the defendants' request the disclosures were not made as agreed. (Id. at 6,
9 ¶ 28.)

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11 The disclosures, plaintiffs state, were made on January 30, 2009. (Id.)
12 However, plaintiffs claim that the disclosures made by the defendants were
13 incomplete since they only consisted of a report by Dr. Nieves-Colomer. (Id.)
14 Plaintiffs also claim that no extension of time was requested by the defendants,
15 nor did they offer any excuse justifying the additional delay. (Id.) Plaintiffs claim
16 that the disclosures made by the defendants regarding Dr. Nieves-Colomer did not
17 contain a curriculum vitae, the list of cases in which he has testified nor a
18 schedule of fees. (Id. at 6-7, ¶ 29.) Plaintiffs claim that it was not until June 12,
19 2009, that the defendants finally provided them with both the curriculum vitae
20 and the case list. (Id.) However, according to the plaintiffs the list furnished by
21 the defendants failed to comply with Rule 26. (Id.)

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23 Plaintiffs list in detail the deficiencies in the disclosures made by the
24 defendants. According to plaintiffs the disclosures made by the defendants failed
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3 to provide the following information: (1) the identity of the lawyers involved in
4 the cases in which Dr. Nieves-Colomer has testified; (2) a statement of the
5 compensation to be paid to Dr. Nieves-Colomer; (3) conclusions regarding the
6 topics which Dr. Nieves-Colomer is expected to testify; (4) the basis and reasons
7 for Dr. Nieves-Colomer conclusions; (5) the data and/or information that was
8 considered by Dr. Nieves-Colomer in forming his conclusions; (6) exhibits that
9 could be used to summarize or support Dr. Nieves-Colomer's testimony. (Id. at
10 9-10.)
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13 Plaintiffs also claim that to this date the defendants have not allowed them
14 to depose Dr. Nieves-Colomer. According to plaintiffs they were not able to
15 depose Dr. Nieves-Colomer as scheduled because he had experienced a bout of
16 kidney stones exacerbation. (Id. at 7, ¶ 32.) Plaintiffs were only able to depose
17 Dr. Pedro Rodríguez-Benítez on September 12, 2009, as well as Dr. Manuel A.
18 Quiles-Lugo on September 15, 2009. (Id. at 7, ¶¶ 30 & 33.) Plaintiffs claim that
19 on September 16, 2009, their attorney suggested to the defendants that he could
20 stay in Puerto Rico until September 18, 2009, to depose Dr. Nieves. (Id. at 7-8,
21 ¶ 34.) However, plaintiffs state that on September 17, 2009, counsel for the
22 defendants informed them that Dr. Nieves-Colomer could not be deposed because
23 he was still under medication. (Id. at 8, ¶ 35.) Plaintiffs claim that to this date
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3 they have not received any proposals from the defendants to depose Dr. Nieves-
4 Colomer in Puerto Rico. (Id. at 8, ¶ 36.)

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6 The defendants admit that they requested a brief extension of time from the
7 plaintiffs in order to make the disclosures regarding Dr. Nieves-Colomer. (Docket
8 No. 67, at 3, ¶ 7.) The defendants also admit that the expert report was notified
9 to plaintiffs on January 30, 2009. (Id.) The defendants however claim that on
10 that same date plaintiffs were informed that Dr. Nieves-Colomer's qualifications,
11 list of cases and fees were going to be furnished on a later date. (Id.) The
12 defendants also do not deny that the pending disclosures were made on June 12,
13 2009. (Id.) Despite of this the defendants contend that even though the
14 disclosures were made in a later date plaintiffs cannot allege that it has caused
15 them an undue prejudice because they were produced opportunely, considering
16 that the deposition was scheduled for September, 2009. (Id. at 3, ¶ 8.) The
17 defendants further argue that during the status conference that was held on June
18 12, 2009, plaintiffs made no objections regarding this matter. (Id.) The
19 defendants also contend that it is not correct that they have failed to allow the
20 plaintiffs to depose Dr. Nieves-Colomer. (Id. ¶ 9.) According to the defendants
21 on the day that Dr. Nieves-Colomer was supposed to be deposed he suffered from
22 a medical condition that persisted for more than a week. (Id. at 3-4, ¶ 9.) The
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3 defendants claim that Dr. Nieves-Colomer's deposition could have been
4 rescheduled for the days that plaintiffs' attorney was staying in Puerto Rico. (Id.)

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6 The defendants have failed to comply with a basic discovery rule even
7 though plaintiffs gave them additional time to make the disclosures regarding
8 Dr. Nieves-Colomer. The defendants were supposed to make their disclosures on
9 or before December 22, 2008, as ordered by this court. Nevertheless, plaintiffs
10 gave the defendants until January 15, 2009, to make the disclosures but they
11 failed to do so. It was not until January 30, 2009, that the defendants without
12 any justification for their additional delay disclosed Dr. Nieves-Colomer's expert
13 report. The disclosures that were pending were made five months later on June
14 12, 2009. The defendants surprisingly do not even offer a hint of justification for
15 doing so. Although the defendants might have informed plaintiffs that the
16 disclosures that were pending were going to be made on a later date, it does not
17 mean that they were implicitly authorized to do so.

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21 Notwithstanding the defendants' unexcused reasons for not complying with
22 the Rule 26, the court finds that the exclusion of Dr. Nieves-Colomer's testimony
23 is not an appropriate sanction. Even though the defendants' actions might be
24 unjustified they are nevertheless harmless. The plaintiffs will not be materially
25 prejudiced since no trial date has been set. To the court's understanding besides
26 the deposition of Dr. Nieves-Colomer, the depositions of Dr. Arbeláez and
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4 Dr. Sullivan also remain to be taken. Furthermore, the defendants indicate that
5 they have not been able to produce Dr. Cao's report due to plaintiffs' failure to
6 produce information regarding Mr. Miranda's pension plans and annuities. This
7 information the defendants believe is vital since according to them it was used by
8 plaintiffs' economic expert for the preparation of his report.
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10 The defendants understand that this information needs to become available
11 to their expert so that he can take it into account before rendering a report.
12 Therefore, the defendants still can provide the required disclosures without
13 causing any undue delay. Plaintiffs' request that the testimony of the defendants'
14 expert witness be excluded is denied.
15

16 III. CONCLUSION

17 In view of the above, the defendants motion for protective order is
18 GRANTED. The plaintiffs' request to exclude the testimony and report of the
19 defendants' expert witness is DENIED.
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21 At San Juan, Puerto Rico, this 8th day of February, 2010.

22 S/ JUSTO ARENAS
23 Chief United States Magistrate Judge
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