

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO.: 2026-006626-CA-01

CHRIS MISERESKY and LAUREN COLEMAN,
individually and on behalf of their minor child, A.M.,

Plaintiffs,

v.

FISHER ISLAND DAY SCHOOL, INC., *et al.*,

Defendants.

**DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' UNTIMELY
INITIAL DISCLOSURES AND WRITTEN DISCOVERY REQUESTS**

Defendants Fisher Island Day School, Inc. ("FIDS"), Arthur Viscusi, and Jana Neff (collectively, "Defendants") respectfully move the Court to strike the initial disclosures and written discovery requests that Plaintiffs served on October 19, 2026, after the deadlines set in the Court's Case Management Order [DIN 25] (the "CMO") had passed, and state as follows:

I. Introduction

This case has had a complicated initial few months. The Complaint and Amended Complaint were filed on March 31, 2026 [DIN 2, 9]. Defense counsel appeared for all Defendants on April 23, 2026 [DIN 19]. The Defendants filed their Motion to Compel Arbitration or Dismiss on May 8, 2026 [DIN 22]. The Court issued its Case Management Order on May 30, 2026 [DIN 25]. On June 24, 2026, the Court heard argument on the Defendants' Motion Compel Arbitration and to Dismiss and entered an order on those motions on July 2, 2026 [DIN 29]. A motion for reconsideration was filed, heard and denied [DIN 37] and an interlocutory appeal was filed on July 31, 2026 [DIN 38]. After this Court denied a motion to stay pending appeal on August 24, 2026

[DIN 46], the Defendants sought a stay from the Third District Court of Appeal. On August 28, 2026, the Third District stayed these proceedings pending a further order [DIN 47]. That temporary stay was lifted on October 1, 2026 [DIN 48].

Counsel for the Plaintiff reached out on October 20, 2026 seeking the status on Defendants initial disclosures and referencing the discovery (including Plaintiffs' initial disclosures) that Plaintiff filed moments before midnight the night before. Counsel for the Defendants suggested that the Case Management Deadlines should be extended and requested times when counsel could meet and confer to come up with reasonable extended deadlines. Counsel for Plaintiff, seeking to capitalize on a deadline that already passed (and ironically which Plaintiffs also missed) refused to consider any reasonable extensions to the deadlines that had passed. Counsel for Plaintiff also did not respond to the fact that Plaintiffs' initial disclosures and discovery were untimely and, at 10:46 p.m. on October 21, 2026, filed motions seeking to default the defendants all of whom had been actively participating in this action.

The Defendants believe that the case management deadlines should be reasonably extended for reasons that are obvious from a review of the docket. The Defendants will be filing a motion seeking such relief. However, if the Plaintiff's oppose any such reasonable extensions of the Case Management Deadlines, they should suffer the consequences of their untimely filings

The Plaintiffs missed two deadlines the CMO said would be strictly enforced. Their initial disclosures were due September 27, 2026. Their written discovery was due October 17, 2026. Plaintiffs served all of it on October 19, 2026. They did not move for an extension, and the CMO bars the parties from extending its deadlines on their own. The lifting of the stay on October 1, 2026 obligated the Plaintiffs to act. They did not timely do so. If Plaintiffs' refuse to reasonably

extend the CMO deadlines, the Court should strike the untimely papers and relieve Defendants of any obligation to respond to them.

II. Statement of Facts

On May 30, 2026, the Court entered the CMO. Its first operative sentence reads: “The parties must strictly comply with the deadlines established in this order, which will be strictly enforced unless changed by Court order.”¹ The CMO continues: “The parties cannot agree to extend the deadlines except as specified in Florida Rule of Civil Procedure 1.200(e), and cannot agree to waive any portion of the provisions of this order.”

Paragraph 1 adds: “The parties may not unilaterally extend any of the deadlines contained in the Case Management Procedures. Deadlines may be altered by the Court where the interests of justice so require, upon prompt motion, notice, and hearing.”²

The CMO lists each deadline by date. Two matter here:³

Deadline for Rule 1.280(a) Initial Discovery Disclosures: 09-27-2026

Deadline for Propounding Requests for Production, Requests to Admit and Interrogatories: 10-17-2026

Paragraph 5 of the CMO sets out what a party must do to extend a deadline. The motion must state the basis for the extension, whether it is opposed, the specific date requested, and the steps that will allow the movant to meet the new date.⁴ Plaintiffs filed no such motion.

On Monday, October 19, 2026, shortly before midnight, Plaintiffs served their initial disclosures together with interrogatories, requests for production, and requests for admission

¹Case Management Order [DE 25], p. 1.

²Id., ¶ 1.

³Id., ¶ 2, p. 2.

⁴Id., ¶ 5.

directed to Defendants. The initial disclosures came 22 days after the September 27 deadline. The written discovery came two days after the October 17 deadline.

III. Argument

A. Plaintiffs Missed Both Deadlines Without Seeking Relief

Deadlines in a case management order must be strictly enforced unless the court changes them by order. Fla. R. Civ. P. 1.200(e)(1). The CMO says the same thing on its first page. The Court did not change either deadline.

The CMO gave Plaintiffs one way to get more time: a prompt motion, notice, and hearing. Plaintiffs did not use it. They could not have obtained the same result by agreement, because the CMO forbids that too. They simply served the papers late.

A court that sets a case management deadline may enforce it. The power to set the deadline would mean little without the power to hold parties to it. *Crececius v. Rizzitano*, 430 So. 3d 268 (Fla. 6th DCA 2026). Enforcement does not turn on whether the opposing party can show prejudice. *Id.*; *Wal-Mart Stores E., L.P. v. Wynn*, 435 So. 3d 114 (Fla. 6th DCA 2026).

Two days late is still late. The CMO draws no line between a short miss and a long one. Twenty-two days late needs no further comment.

B. Rule 2.514 Does Not Move a Deadline Set by Date

Plaintiffs will likely argue that because the October 17 deadline fell on a Saturday it rolled to Monday under Florida Rule of General Practice and Judicial Administration 2.514(a). It did not.

Rule 2.514(a) governs how to count a period of time. By its terms, it applies “in computing time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time.” *FLN Props., LLC v. First Stop Food Mart, Inc.*, No. 2D2025-2453, 2026 WL 2104967, at *4 (Fla. 2d DCA July 22, 2026) (quoting Fla. R. Gen. Prac. & Jud.

Admin. 2.514(a)) (emphasis omitted). The weekend extension “applies only when a ‘period of time’ is being construed.” *Id.*

A date is not a period. In *FLN Properties*, a court order required a tenant to deposit rent into the registry on “the first day of each month.” *Id.* at *1. June 1 fell on a Sunday, and the tenant deposited on Monday. *Id.* at *2. The trial court applied Rule 2.514 and treated the Monday deposit as timely. *Id.* The Second District granted mandamus and reversed. The order set a date, not a period, so the weekend extension did not apply and did not excuse the late deposit. *Id.* at *4.

The CMO here does the same thing. It does not give Plaintiffs a number of days to propound discovery. It gives them a date: “10-17-2026.” Rule 2.514(a) has nothing to compute.

The holding does not depend on the eviction statute at issue in *FLN Properties*. It rests on the text of Rule 2.514(a), which reaches court orders in general. *Id.* at *4. The CMO is a court order.

Nothing prevented timely service. Discovery served on Friday, October 16, would have met the deadline, and so would discovery served on any day in the four and a half months after the CMO issued. A party facing a weekend date can act before it or ask the Court to change it. *See id.* at *4 n.3. Plaintiffs did neither.

Rule 2.514 does not save the initial disclosures under any reading. Paragraph 8 of the CMO ties initial disclosures to a period, 60 days after service of the complaint, but the deadline table fixes the date at September 27, 2026. If that Sunday deadline rolled forward, it rolled to Monday, September 28. Plaintiffs served their disclosures 21 days after that.

C. The Untimely Papers Should Be Stricken

The remedy Defendants seek is narrow. They do not ask the Court to strike Plaintiffs' pleadings or dismiss this action. Defendants ask only that the Court hold Plaintiffs to dates it already set.

For the written discovery, that means striking the interrogatories, requests for production, and requests for admission served October 19, 2026, and ordering that Defendants need not respond to them. In the alternative, Defendants ask for a protective order that the discovery not be had. Fla. R. Civ. P. 1.280.

Responses to the late requests would come due on or about November 20, 2026, and unanswered requests for admission are deemed admitted by operation of Rule 1.370(a). Defendants therefore ask that their time to respond, object, or produce a privilege log be stayed until the Court rules on this motion.

For the initial disclosures, striking the October 19 disclosures leaves Plaintiffs where the CMO placed them. A party that fails to make the disclosures Rule 1.280(a) requires may not use the undisclosed information or witness on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless. Fla. R. Civ. P. 1.380(d). Plaintiffs have offered no justification. They have not offered any explanation at all.

WHEREFORE, Defendants respectfully request that the Court (a) strike Plaintiffs' initial disclosures served October 19, 2026; (b) strike Plaintiffs' interrogatories, requests for production, and requests for admission served October 19, 2026, and order that Defendants need not respond to them; (c) stay Defendants' time to respond to those requests until the Court rules on this motion; (d) order that Plaintiffs may not use any information or witness not timely disclosed under Rule 1.280(a) unless Plaintiffs show the failure was substantially justified or harmless; (e) award Defendants their reasonable expenses, including attorneys' fees, under Rule 1.380(d)(1); and (f) grant such further relief as the Court deems just and proper.

Dated: October 22, 2026

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CERTIFICATE OF CONFERRAL

I HEREBY CERTIFY that I conferred with counsel for the Plaintiffs via email on October 21, 2026 by notifying counsel that the discovery and initial disclosure were untimely. That email chain also sought an agreement to extend the Case Management Deadlines due the fact that the case was subject to detailed motion practice related to the Defendants' Motion to Compel Arbitration, the pending interlocutory appeal and the recently expired stay that had been entered by the Third District Court of Appeal. Counsel for Plaintiff rejected any extension of the Case Management order that did not leave expired deadlines intact (despite Plaintiffs' own non-compliance) and did not respond to the fact that Plaintiffs' initial disclosures and discovery were untimely and, at 10:46 p.m. on October 21, 2026, filed motions seeking to default the defendants, all of whom had actively participated in this action. The Defendants believe that the case management deadlines should be reasonably extended for reasons that are obvious from a review of the docket. However, if the Plaintiff's oppose any such reasonable extensions of the Case Management Deadlines, they should suffer the consequences of their untimely filings.

By: /s/ Christopher David
CHRISTOPHER M. DAVID

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 22, 2026, I electronically filed the foregoing document using Florida's eFiling Portal. I also certify that the foregoing document is being served this day on all parties of record via the E-service list associated with this action.

By: /s/ Christopher David
CHRISTOPHER M. DAVID