

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,

vs.

FISHER ISLAND DAY SCHOOL, INC., a
Florida not-for-profit corporation, ARTHUR
VISCUSI a/k/a ART VISCUSI, individually and
in his capacity as Head of School, and JANA
NEFF, individually and in her capacity as Chair of
the Board of Trustees,

Defendants.

**PLAINTIFFS' COMBINED RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' UNTIMELY
INITIAL DISCLOSURES AND WRITTEN DISCOVERY REQUESTS
AND DEFENDANTS' MOTION TO AMEND CASE MANAGEMENT
ORDER AND RESET CASE MANAGEMENT DEADLINES,
AND REQUEST FOR REASONABLE EXPENSES,
INCLUDING ATTORNEYS' FEES**

Plaintiffs, CHRIS MISERESKY and LAUREN COLEMAN, individually and on behalf of their minor child, A.M., respond in opposition to Defendants' Motion to Strike Plaintiffs' Untimely Initial Disclosures and Written Discovery Requests (DIN 61; Filing No. 259790293) (the "Motion to Strike") and Defendants' Motion to Amend Case Management Order and Reset Case Management Deadlines (DIN 59; Filing No. 259791465) (the "CMO Motion"), request their reasonable expenses, including attorneys' fees, under Florida Rule of Civil Procedure 1.380(a)(4)(B), and state:

SUMMARY OF ARGUMENT

At 12:34 p.m. on October 22, 2026, Defendants moved to strike Plaintiffs' initial disclosures and written discovery as late. At 12:45 p.m., eleven minutes later, they told the Court that the same disclosure deadline "fell on September 27, 2026, while the Third District's stay was in force," and asked for a reset that adds 124 days to most deadlines and gives them until November 20 to serve their disclosures. CMO Mot. at 3, 7-8. The stay stopped the clock for 34 days. With the stay tolled, Plaintiffs had until November 2, 2026, to serve disclosures and until November 20, 2026, to serve written discovery. They served both on October 19, 2026. Defendants claim the stay for their dates and deny it for Plaintiffs'. The Court should preserve Plaintiffs' October 19 service, not erase it to give Defendants a later response date.

The Court should deny both motions, rule that Plaintiffs served their disclosures and discovery on time on October 19, 2026, and award Plaintiffs their reasonable expenses, including attorneys' fees, in opposing the Motion to Strike. Striking would erase Plaintiffs' disclosures and every discovery request they served. It would decide this case on a timing technicality, over a deadline that Defendants admit fell while the Court could not act. Defendants caused the delay they now complain about, and they ask for 124 more days to cure it. In their words, "The next four months went to deciding where this case belongs," through their arbitration motion, their motion for reconsideration, their appeal and their stay request. CMO Mot. at 1. Defendants told the Third District that "no reasonable person could agree" with this Court's denial of a stay. Appellants' Mot. for Stay Pending Appeal at 25-26, No. 3D2026-1660 (Fla. 3d DCA Aug. 25, 2026). The Third District disagreed, "finding no abuse of discretion." (DIN 48). Now Defendants ask this Court, through a scheduling motion, for the delay both courts refused.

1. Defendants served their disclosures after Plaintiffs, under the same stay, and ask the Court to strike only Plaintiffs'. If Plaintiffs' October 19 service was late,

Defendants' October 23 service was later. If the stay moved Defendants' date, it moved Plaintiffs'. Defendants must answer one question: why does the rule they urge apply to Plaintiffs alone?

2. Plaintiffs served on time. Even on Defendants' count, Rule 1.380(d) excuses a failure that was "substantially justified or is harmless." The stay justified the timing. Defendants told the Court that "No written discovery has been answered. No deposition has been taken." CMO Mot. at 9. The timing harmed no one, and there is no good cause for a protective order.
3. Defendants caused the delay and now ask for more of it. They let the CMO stand for 145 days without objection. This Circuit's administrative order gave them 30 days from receipt to seek an amended order, and that window closed on June 29, 2026, two months before any stay. The CMO allows changes only "upon prompt motion." Defendants say the need for a reset "became known on October 1, 2026," then waited 21 days, until the October 17 deadlines had passed. They ask for 124 days to cure a 34-day stay.
4. Defendants did not confer in good faith. Their counsel offered a call "Friday morning," October 23, and Defendants filed both motions on Thursday, October 22. The next day, their counsel offered "Monday or Tuesday" to discuss a third motion and filed it fourteen minutes later. Ex. A at 7, 11.

Because the Motion to Strike seeks a protective order in the alternative, Rules 1.280(d) and 1.380(a)(4)(B) require the Court, after an opportunity for hearing, to award Plaintiffs their reasonable expenses, including attorneys' fees, when it denies the motion, unless the motion was substantially justified or an award would be unjust.

BACKGROUND

1. The Court entered its Case Management Order on May 30, 2026 (DIN 25) (the “CMO”). The CMO set September 27, 2026, as the deadline for initial disclosures and for “Filing and Resolution of All Pretrial Motions,” and October 17, 2026, as the deadline for serving written discovery and for initial scheduling of depositions. CMO at 2.

2. Defendants moved this Court to stay all proceedings pending their interlocutory appeal of the order on arbitration. (DIN 40). They argued that “the very act of participating in discovery” could “result in a finding that Defendants waived their right to arbitration.” DIN 40 at 8. The Court denied the motion on August 24, 2026. (DIN 46).

3. Defendants then sought a stay from the Third District. On August 28, 2026, the Third District ordered that “the trial court proceedings are hereby temporarily stayed pending further order of this Court.” (DIN 47). On October 1, 2026, the Third District denied Defendants’ motion and stated: “The temporary stay previously entered on August 28, 2026, is lifted.” (DIN 48). The stay lasted 34 days. When it began, 30 days remained before September 27, 2026, and 50 days remained before October 17, 2026.

4. On Monday, October 19, 2026, Plaintiffs served their initial disclosures (DIN 50) and requests for production, requests for admission, and interrogatories directed to each Defendant, and filed notices of service. (Filing No. 259554830).

5. On October 21, 2026, Defendants’ counsel wrote: “We need to extend the deadlines for reasons that are obvious given the history of the case.” Ex. A at 2. Plaintiffs’ counsel replied that day: “I’m willing to talk about the discovery schedule. I won’t agree to anything that reopens your clients’ time to answer, the pleading deadlines, or any deadline that has already run.” He added: “Send me a couple of times Thursday or Friday for a call.” Ex. A at 4.

Defendants' counsel answered: "I have time Friday morning to discuss revised and realistic case management deadlines." Ex. A at 7. The emails are attached as composite Exhibit A.

6. On Thursday, October 22, 2026, Defendants filed the Motion to Strike at 12:34 p.m. and the CMO Motion at 12:45 p.m. Neither certificate of conferral describes a call. Mot. to Strike at 8; CMO Mot. at 12.

7. On October 23, 2026, Defendants served their initial disclosures ("Defs.' Disclosures").

ARGUMENT

I. Defendants admit the September 27 deadline fell while the Court could not act, and the stay tolled both deadlines.

The Motion to Strike asks the Court to enforce two dates. It argues that "The initial disclosures came 22 days after the September 27 deadline" and that "A court that sets a case management deadline may enforce it." Mot. to Strike at 4. It rests on one premise: "The lifting of the stay on October 1, 2026 obligated the Plaintiffs to act." *Id.* at 2.

Defendants' papers establish that the disclosure deadline fell during the stay. The CMO Motion states that three deadlines, including "initial disclosures," "fell on September 27, 2026, while the Third District's stay was in force." CMO Mot. at 3. It also acknowledges that no pretrial motion could be resolved on that date because "The Court had no power to rule." *Id.* at 6. Defendants' initial disclosures repeat that the disclosure date "fell while the Third District's temporary stay of trial court proceedings was in effect." Defs.' Disclosures at 1. Defendants supply the premise of tolling: the deadline fell while the case was stayed.

On this point the CMO Motion states the law correctly, citing *Stokes v. Jones*, 317 So. 3d 262, 263 (Fla. 1st DCA 2021). CMO Mot. at 6. In *Stokes*, the First District quashed "a trial court order dated April 6, 2020, setting near-term discovery and other deadlines,"

because an order to show cause “had the effect of staying further proceedings in the trial court.” 317 So. 3d at 263. The Third District applies the same rule to its stays: “Because the trial court lacked jurisdiction to enter an order while our stay was in place, the order is a nullity.” *Menada, Inc. v. Arevalo*, 341 So. 3d 1189, 1191-92 (Fla. 3d DCA 2022). The Court could not have enforced the September 27 deadline on September 27. The Motion to Strike asks the Court to enforce it now as though the stay had not been entered.

If the stay halted the proceedings, it halted the clock. The Third District has held that when a stay prevents a party from acting within a set period, “the 120-day period is tolled until such time as the case may proceed, whether by operation of law or trial court Order,” and that “at the conclusion of the six-month stay, the 120-day period again began to run.” *Skrbic v. QCRC Assocs. Corp.*, 761 So. 2d 349, 351 (Fla. 3d DCA 2000). *Skrbic* involved service of process and a statutory stay. Its reasoning applies to a schedule interrupted by an appellate order that stayed “the trial court proceedings” without exception. (DIN 47).

Applied here, the 30 days that remained on the disclosure deadline when the stay began resumed on October 1, 2026, and ran through Saturday, October 31, 2026, which moves to Monday, November 2, 2026. Fla. R. Gen. Prac. & Jud. Admin. 2.514(a)(1)(C). The 50 days that remained on the written discovery deadline ran through Friday, November 20, 2026. Plaintiffs served both on October 19, 2026. Both were timely.

Defendants’ answer deadline is a different matter. The Court ordered Defendants to answer “within twenty (20) days from the date of this Order” of July 2, 2026, and Defendants’ extension motion put that date at July 22, 2026. (DIN 29; DIN 34 at 1). Even the full extension Defendants requested, to seven days after the July 29, 2026, order denying reconsideration, ran out on August 5, 2026, more than three weeks before the stay began on August 28, 2026.

(DIN 34 at 2; DIN 37; DIN 47). Defendants then went 78 days without filing an answer, including 21 days after the stay lifted on October 1, 2026. (DIN 48). Plaintiffs moved for default at 10:45 p.m. on October 21, 2026. Defendants answered at 9:37 a.m. the next morning, less than 11 hours later. (DIN 53-55; DIN 60). The stay tolled deadlines that were still running when it began; it did not revive one that had already expired.

As Judge Cope wrote in *Skrbic*, “It is unseemly to allow the defendants to argue that the plaintiff did not proceed quickly enough, when it was someone on the defendants’ side of the case who caused the proceedings to come to a halt.” 761 So. 2d at 352 (Cope, J., concurring in part and dissenting in part). Judge Cope would have held that good cause was shown, because “there was a stay in effect through, and beyond, the 120th day.” *Id.* Here the halt came from Defendants’ motion in the Third District, and that motion failed. The Third District’s August 28 order only stayed the case “temporarily” and “pending further order of this Court” while the parties briefed the motion. (DIN 47). That motion did not argue only that this Court erred. It charged that this Court’s ruling “was an abuse of discretion as no reasonable person could agree with the trial court’s blanket denial.” Appellants’ Mot. for Stay Pending Appeal at 25-26. The Third District rejected that charge. On October 1, 2026, “finding no abuse of discretion,” it denied the stay and lifted the temporary one. (DIN 48). The only stay Defendants obtained was a 34-day holding order entered while the Third District considered a motion it then denied.

Even without tolling, the written discovery was timely. The October 17, 2026, deadline fell on a Saturday. Rule 2.514(a) applies to “computing time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time.” When an order required interrogatory answers “by April 17, 2016,” answers served the next day were “timely because April 17 was a Sunday.” *Bank of N.Y. Mellon v. Johnson*, 270 So. 3d 1269,

1270-71 (Fla. 1st DCA 2019). Defendants' case, *FLN Props., LLC v. First Stop Food Mart, Inc.*, 2026 Fla. App. LEXIS 5564, at *10, 2026 WL 2104967 (Fla. 2d DCA July 22, 2026), was a mandamus proceeding under the commercial eviction statute, and the order there required recurring rent deposits on "the first day of each month," which the court treated as "a date, not a period of time." A monthly rent deposit is not a discovery deadline. *Johnson* applied Rule 2.514 to a court-ordered discovery date, which is the question here. Plaintiffs served on Monday, October 19, 2026, before the last day ended at "11:59:59 p.m., eastern time." Fla. R. Gen. Prac. & Jud. Admin. 2.514(a)(4)(A).

II. Defendants served their disclosures after Plaintiffs, under the same stay, and ask the Court to strike only Plaintiffs'.

Defendants served their disclosures on October 23, 2026, four days after Plaintiffs, under the same CMO and the same stay. Their disclosures invoke that stay: the September 27 deadline "fell while the Third District's temporary stay of trial court proceedings was in effect." Defs.' Disclosures at 1. Under the Motion to Strike's premise, Defendants' disclosures are later than Plaintiffs'. Under tolling, both are timely. No reading of the CMO makes Plaintiffs late and Defendants timely. The CMO Motion asked for 29 more days, until "on or before November 20, 2026," to serve Defendants' disclosures. CMO Mot. at 8. Defendants served them the next day and asked the Court to strike only Plaintiffs'. They offer no reason the stay moved their date and not Plaintiffs'. It moved both, and it supplies no basis to erase Plaintiffs' service or to postpone the response period.

III. The stay justified the timing, the timing harmed no one, and there is no good cause for a protective order.

Plaintiffs served on time. Even on Defendants' count, the rule Defendants invoke answers the motion. Rule 1.380(d) bars use of information or a witness not disclosed "as required by rule

1.280(a) or (g),” but not if “the failure was substantially justified or is harmless.” The Motion to Strike says “Plaintiffs have offered no justification.” Mot. to Strike at 6. The justification is the stay. The Third District stayed “the trial court proceedings” for 34 days (DIN 47; DIN 48), and Defendants acknowledge that the disclosure deadline fell inside that stay. CMO Mot. at 3; Defs.’ Disclosures at 1. And the timing harmed no one. In seeking their reset, Defendants told the Court: “No party is prejudiced. No written discovery has been answered. No deposition has been taken.” CMO Mot. at 9. Blanket striking does not follow.

Defendants ask the Court to strike Plaintiffs’ disclosures and all of their written discovery and to relieve Defendants of any duty to respond. Mot. to Strike at 6-7. That relief would gut Plaintiffs’ proof before a single deposition. The Florida Supreme Court requires that “if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative.” *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993). *Kozel* addressed dismissal, but relief that would strip a party of its proof calls for the same step: the Court should consider lesser measures first. Defendants’ later motion confirms that striking is not necessary: it seeks other relief, in the alternative, if the Court does not strike. (Filing No. 259905296).

The CMO Motion itself invokes Florida’s preference for “deciding a case on its merits rather than on a technicality.” CMO Mot. at 10 (quoting *Polymer Extrusion Tech. Inc. v. Glasshape Mfg., Ltd.*, 374 So. 3d 34, 38 (Fla. 4th DCA 2023), which quotes *J.J.K. Int’l, Inc. v. Shivbaran*, 985 So. 2d 66, 69 (Fla. 4th DCA 2008)). *Polymer* and *J.J.K.* each reversed an order that kept a party from the merits after a missed step that was excusable neglect. The same policy applies to Plaintiffs’ discovery.

Defendants’ Sixth District cases do not change this. *Creceilius v. Rizzitano*, 430 So. 3d 268, 280-81 (Fla. 6th DCA 2026) (*en banc*), certified conflict with Third District decisions holding that prejudice must be found before exclusion, including *Callari v. Winkeljohn*, 329 So. 3d 795 (Fla. 3d DCA 2021), and *Dos Santos v. Carlson*, 806 So. 2d 539 (Fla. 3d DCA 2002), and the Florida Supreme Court has granted review in *Wal-Mart Stores E., L.P. v. Wynn*, 435 So. 3d 114 (Fla. 6th DCA 2026), *review granted*, 2026 Fla. LEXIS 1260 (Fla. Aug. 3, 2026). Both concern expert opinions at trial, not discovery requests at the start of a case. Both recognize Rule 1.380(d)’s express exception for a disclosure failure that is substantially justified or harmless. *Creceilius*, 430 So. 3d at 279 n.7; *Wynn*, 435 So. 3d at 118 n.3. The stay and the absence of prejudice satisfy that exception here.

The alternative request for a protective order fails for the same reason. Rule 1.280(d) requires “good cause shown” to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense.” Defendants point only to timing, response deadlines, privilege logs and deemed admissions. Mot. to Strike at 6. Ordinary response timing meets each of those needs, and none calls for striking. The Court should also deny the request to stay Defendants’ time to respond.

IV. After 145 days without objection, including 21 days after the stay lifted, Defendants seek 124 days to cure a 34-day stay. It is a second request for the stay both courts denied.

This Circuit’s administrative order gave Defendants 30 days to challenge the original schedule: “Parties may seek an amended case management order within 30 days of receipt of the Court’s Case Management Order. Parties should make an effort to comply with the case management schedule before objecting.” *In re Re-Establishment of Procedures for Active Case Management in the Circuit Civil Division*, Fla. 11th Jud. Cir. Admin. Order No. 24-20, § IV.3

(Dec. 30, 2024). The Court entered and served the CMO on May 30, 2026. (DIN 25; Filing No. 249280150). Counted from receipt, that window closed on June 29, 2026, two months before the Third District's August 28 temporary stay. (DIN 47). Defendants did not use it. They moved on October 22, 2026, 145 days after the CMO and 115 days after the window closed. A need that arises later must be raised by a prompt motion that meets Rule 1.200(e)(3). AO 24-20 § IV.4; CMO at 1. Defendants say their need arose on October 1, 2026, and they waited 21 more days. The stay explains neither the 145 days nor the 21. Nor did Defendants make the effort to comply that the order asks for. They served their first disclosures on October 23, 2026.

Defendants want 124 days to cure a 34-day stay. They measure most of the reset by adding “the time between entry of the CMO and the lifting of the Third District's stay.” CMO Mot. at 1. They exclude the service deadlines and propose a separate November 20 date for initial disclosures. *Id.* at 3 n.5, 8. The other 90 days ran while no stay was in effect, and Defendants chose how to spend them.

Defendants explain those 90 days by saying they “could not serve merits discovery and press their arbitration rights at the same time without putting those rights at risk.” CMO Mot. at 6. That is the argument Defendants made to this Court in support of a stay. DIN 40 at 8. This Court rejected it. (DIN 46). Defendants made it again to the Third District, Appellants' Mot. for Stay Pending Appeal at 25, which found “no abuse of discretion” in this Court's ruling. (DIN 48). The CMO Motion asks this Court to accept the argument it rejected and that the Third District left undisturbed. It is also an argument without an end date. As Defendants acknowledge, “The appeal remains pending.” CMO Mot. at 2. A reset measured by the time spent litigating arbitration is a stay pending appeal under another name. And the same day, the Motion to Strike described Defendants as “actively participating in this action.” Mot. to Strike at 2.

Nor was the motion prompt. Rule 1.200(e)(3)(A) requires a movant to state “the basis of the need for the extension, including when the basis became known to the movant.” Defendants say “The full need for a reset became known on October 1, 2026.” CMO Mot. at 7. The CMO allows changes only “upon prompt motion, notice, and hearing.” CMO at 1. By their account, Defendants knew on October 1. They waited 21 days, let the October 17 deadlines pass without a motion, and moved only after Plaintiffs had served their discovery. Defendants created that delay, and the CMO Motion asks the Court to extend it.

Defendants rely on *City of Sweetwater v. Mejia*, 316 So. 3d 769 (Fla. 3d DCA 2021). CMO Mot. at 7. They say the motion there “failed because it offered only boilerplate.” *Id.* The Third District relied on more than that. The petitioners in *Sweetwater* “actively opposed an extension sought by the respondent” and later sought an extension for themselves. 316 So. 3d at 770-71. The court denied relief “Based on the petitioners’ actions opposing an extension during the summary judgment hearing and the paucity of information presented to the trial judge.” *Id.* at 771. Defendants take both positions at once. At 12:34 p.m. on October 22, 2026, they asked the Court to hold Plaintiffs to the September 27 and October 17 dates. At 12:45 p.m., they asked the Court for 124 more days.

The relief Defendants request confirms the purpose. They ask the Court to deem Plaintiffs’ October 19 disclosures and discovery “served on the date the Amended CMO is entered,” with responses measured from that date. CMO Mot. at 10. And Defendants tie the two motions together: “If the Court denies this motion, the Motion to Strike should be granted for the reasons stated there.” *Id.* Defendants want the delay or, failing that, an order striking Plaintiffs’ discovery. The Motion to Strike says so: if Plaintiffs “oppose any such reasonable extensions of

the Case Management Deadlines, they should suffer the consequences of their untimely filings.” Mot. to Strike at 2. Opposing a motion is not grounds for a sanction.

The CMO also answers Defendants’ complaint that Plaintiffs would not agree to a reset. “The parties cannot agree to extend the deadlines except as specified in Florida Rule of Civil Procedure 1.200(e).” CMO at 1. Only the Court can change the schedule.

Nor does the case stand “where it would have stood if the CMO had issued on October 1, 2026.” CMO Mot. at 9. Plaintiffs have served disclosures and discovery. Defendants have answered (DIN 60) and served disclosures and documents. Defs.’ Disclosures at 2. The Court should deny the CMO Motion.

V. Defendants did not confer in good faith.

“Before filing a non-dispositive motion, the movant must confer with the opposing party in a good-faith effort to resolve the issues raised in the motion.” Fla. R. Civ. P. 1.202(a). The certificate must state that the movant “discussed the relief requested in this motion.” Fla. R. Civ. P. 1.202(b). Good faith includes “not setting unreasonable deadlines for responses.” CMO at 2.

The Motion to Strike’s certificate says Defendants conferred “via email on October 21, 2026 by notifying counsel that the discovery and initial disclosure were untimely.” Mot. to Strike at 8. Notice is not conferral. The October 21 emails do not mention striking or a protective order. Ex. A at 2, 4, 7.

For the CMO Motion, Plaintiffs’ counsel set the terms on October 21: he would talk about the discovery schedule, but he would not reopen Defendants’ time to answer or any deadline that had already run. *See* Background ¶ 5. He asked for a call on Thursday or Friday. Defendants’ counsel offered “Friday morning.” Ex. A at 7. Defendants filed both motions on Thursday. About twelve minutes after filing the CMO Motion, at 12:57 p.m. on October 22,

2026, Defendants' counsel sent a draft motion with an email that "shall serve as our effort to meet and confer" and demanded an answer "by 3:00 p.m. tomorrow (October 23, 2026)." Ex. A at 8-9. At 3:06 p.m. on October 23, Plaintiffs' counsel asked about a call the next week. Ex. A at 10. At 3:14 p.m., Defendants' counsel replied: "Monday or Tuesday. All day. Pick a time." Ex. A at 11. At 3:26 p.m., he wrote: "I will be filing the motion to compel today to avoid any delays. Hopefully our call next week will resolve the motion and we don't need to have it heard." Ex. A at 15. Defendants filed it at 3:28 p.m. (Filing No. 259905296).

The CMO Motion also misdates the request. It states that "Defendants raised the reset with Plaintiffs on October 20, 2026." CMO Mot. at 7. The October 20 email was Plaintiffs' counsel's request for Defendants' disclosures. Ex. A at 1. In that email thread, Defendants first asked to extend the deadlines on October 21. Ex. A at 2.

"Failure to comply with the requirements of this rule may result in an appropriate sanction, including denial of a motion without prejudice." Fla. R. Civ. P. 1.202(d). The Court should deny both motions on this ground as well.

VI. Plaintiffs are entitled to their reasonable expenses, including attorneys' fees, in opposing the Motion to Strike.

The Motion to Strike asks, in the alternative, "for a protective order that the discovery not be had. Fla. R. Civ. P. 1.280." Mot. to Strike at 6. Under Rule 1.280(d), "The provisions of rule 1.380(a)(4) apply to the award of expenses incurred in relation to the motion." And Rule 1.380(a)(4)(B) provides:

If the motion is denied and after opportunity for hearing, the court must require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

The Motion to Strike was not substantially justified. Defendants acknowledge that the deadline fell inside the stay. They filed before the call their counsel offered, and they served their disclosures after Plaintiffs. Defendants delayed this case with a stay request both courts denied (DIN 46; DIN 48) and an answer filed after their time had run (DIN 60). Now they ask for 124 more days and an order striking Plaintiffs' timely discovery. After an opportunity for hearing, the Court should award Plaintiffs their reasonable expenses, including attorneys' fees, in opposing the Motion to Strike, in an amount to be determined.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order:

- (a) denying the Motion to Strike, including its alternative request for a protective order and its request to stay Defendants' time to respond;
- (b) denying the CMO Motion;
- (c) ruling that Plaintiffs' initial disclosures and written discovery were served on October 19, 2026, with responses due as the Florida Rules of Civil Procedure provide from that date;
- (d) if the Court finds any scheduling adjustment necessary, preserving October 19, 2026, as the service date of Plaintiffs' disclosures and written discovery, limiting any adjustment to identified remaining work, and not extending or excusing Defendants' expired time to answer; and

- (e) after an opportunity for hearing, awarding Plaintiffs their reasonable expenses, including attorneys' fees, incurred in opposing the Motion to Strike under Rules 1.280(d) and 1.380(a)(4)(B), in an amount to be determined.

Dated: October 25, 2026

Respectfully submitted,

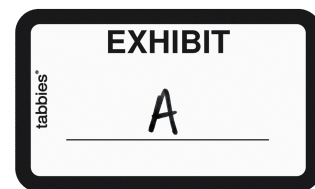
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By: /s/ Joseph W. Montgomery
JOSEPH W. MONTGOMERY, ESQ.
Florida Bar Number: 120569

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 25, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the Florida Courts E-Filing Portal, which will serve a copy by e-mail under Fla. R. Gen. Prac. & Jud. Admin. 2.516 on: Christopher M. David, Esq. (cdavid@fidjlaw.com; mchamorro@fidjlaw.com; dmuller@fidjlaw.com), Miguel J. Chamorro, Esq. (mchamorro@fidjlaw.com; cdavid@fidjlaw.com; dmuller@fidjlaw.com), and Joshua Salmon, Esq. (jsalmon@fidjlaw.com; dmuller@fidjlaw.com), Fuerst Ittleman David & Joseph, One Datan Center, 9100 South Dadeland Blvd., Suite 1610, Miami, FL 33156, Counsel for Defendants.

By: /s/ Joseph W. Montgomery
JOSEPH W. MONTGOMERY, ESQ.



Joseph Montgomery <joe@educationlawyers.com>

Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

Joseph Montgomery <joe@educationlawyers.com>

Tue, Oct 20, 2026 at 5:11 PM

To: Christopher David <cdavid@fidjlaw.com>

Cc: Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, Lynn Teti <lynn@iwantjustice.com>

Bcc: Chris Miseresky [REDACTED]

Counsel,

Defendants' initial discovery disclosures under Florida Rule of Civil Procedure 1.280(a) and paragraph 8 of the Case Management Order remain outstanding for Fisher Island Day School, Inc., Arthur Viscusi, and Jana Neff. That includes the insurance agreements the rule requires.

Please serve complete disclosures for each Defendant by Friday, October 23, 2026. I am available to confer by phone tomorrow, Wednesday, October 21, 2026, at any time between 10:00 AM and 4:00 PM. Please tell me what time works.

If the disclosures are not served by Friday, Plaintiffs will move to compel and will seek the relief available under Rule 1.380, including fees.

--



Joseph W. Montgomery, Esq.

Attorney / Radio Show Host on 610ESPN

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Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

Christopher David <CDavid@fidjlaw.com>

Wed, Oct 21, 2026 at 1:55 PM

To: Joseph Montgomery <joe@educationlawyers.com>

Cc: Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, Lynn Teti <lynn@iwantjustice.com>, Joshua Salmon <JSalmon@fidjlaw.com>

Joe,

We need to extend the deadlines for reasons that are obvious given the history of the case. We will need to meet and confer and propose the extended dates for the Court to consider. When are you available to discuss?

Also, we are working on the initial disclosures and should have them served by Monday.

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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E-mail: cdavid@fidjlaw.com

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From: Joseph Montgomery <joe@educationlawyers.com>

Sent: Tuesday, October 20, 2026 5:11 PM

To: Christopher David <CDavid@fidjlaw.com>

Cc: Miguel Chamorro <mchamorro@fidjlaw.com>; Deborah Muller <dmuller@fidjlaw.com>; Lynn Teti <lynn@iwantjustice.com>

Subject: Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

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RE: Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

Joseph Montgomery <joe@educationlawyers.com>

Wed, Oct 21, 2026 at 2:21 PM

To: cdavid@fidjlaw.com

Cc: mchamorro@fidjlaw.com, dmuller@fidjlaw.com, JSalmon@fidjlaw.com, lynn@iwantjustice.com

Bcc: [REDACTED]

Chris,

I'm willing to talk about the discovery schedule. I won't agree to anything that reopens your clients' time to answer, the pleading deadlines, or any deadline that has already run.

The disclosures are due Friday, October 23. Monday doesn't work.

Send me a couple of times Thursday or Friday for a call.

On Wed, Oct 21, 2026 01:55 PM, Christopher David <CDavid@fidjlaw.com> wrote:

Joe,

We need to extend the deadlines for reasons that are obvious given the history of the case. We will need to meet and confer and propose the extended dates for the Court to consider. When are you available to discuss?

Also, we are working on the initial disclosures and should have them served by Monday.

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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Sent: Tuesday, October 20, 2026 5:11 PM
To: Christopher David <CDavid@fidjlaw.com>
Cc: Miguel Chamorro <mchamorro@fidjlaw.com>; Deborah Muller <dmuller@fidjlaw.com>; Lynn Teti <lynn@iwantjustice.com>
Subject: Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

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Counsel,

Defendants' initial discovery disclosures under Florida Rule of Civil Procedure 1.280(a) and paragraph 8 of the Case Management Order remain outstanding for Fisher Island Day School, Inc., Arthur Viscusi, and Jana Neff. That includes the insurance agreements the rule requires.

Please serve complete disclosures for each Defendant by Friday, October 23, 2026. I am available to confer by phone tomorrow, Wednesday, October 21, 2026, at any time between 10:00 AM and 4:00 PM. Please tell me what time works.

If the disclosures are not served by Friday, Plaintiffs will move to compel and will seek the relief available under Rule 1.380, including fees.

--



Joseph W. Montgomery, Esq.

Attorney / Radio Show Host on 610ESPN

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w: www.EducationLawyers.com

a: 631 US 1, Suite 202, North Palm Beach, FL 33408

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Joseph W. Montgomery, Esq.

Attorney / Radio Show Host on 610ESPN

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RE: Miseresky v. Fisher Island Day School, Case No. 2026-006626-CA-01, Defendants' Initial Disclosures

Christopher David <CDavid@fidjlaw.com>

Wed, Oct 21, 2026 at 2:54 PM

To: Joseph Montgomery <joe@educationlawyers.com>

Cc: Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, Joshua Salmon <JSalmon@fidjlaw.com>, "lynn@iwantjustice.com" <lynn@iwantjustice.com>

Joe,

You do realize that your discovery was untimely, correct? The Case Management Order, which we would like to amend, set the Deadline for Propounding Requests for Production, Requests to Admit and Interrogatories and the Deadline for Initial Scheduling and Setting Depositions for October 17, 2026. Initial disclosures were due on September 17, 2026. Your filings were all done on October 19, 2026—two and thirty-two days late, respectively. So, you are late and all your notices violate the Case Management Order.

If you think the time for compliance with Saturday's deadline was extended to Monday, you would be wrong. Under Florida law, the computation of time rules — specifically Florida Rule of General Practice and Judicial Administration 2.514 and Florida Rule of Civil Procedure 1.090 — do not automatically extend a deadline to the next business day when the deadline is set as a specific calendar date in a court order (such as a case management order), even if that date falls on a Saturday, Sunday, or legal holiday. The weekend/holiday extension in Rule 2.514(a)(1)(C) applies only when a *period of time* (e.g., within 30 days of service) is being computed — not when a court order specifies a fixed date on which an act must occur. The Second DCA made this clear in *FLN Props., LLC v. First Stop Food Mart, Inc.*, No. 2026 WL 2104967 (Fla. 2nd DCA July 22, 2026), when it held that Rule 2.514(a)'s Sunday extension did not apply to a court order requiring payment on "the first day of each month," because the order set a specific date rather than a period of time.

The Case Management Order set the deadline for October 17. You were late and need the deadlines extended as well.

I have time Friday morning to discuss revised and realistic case management deadlines so this case can be resolved on its merits instead of a trial where nobody has any discovery.

[Quoted text hidden]

Miseresky v. FIDS

Christopher David <CDavid@fidjlaw.com> Thu, Oct 22, 2026 at 12:57 PM
To: "Joseph W. Montgomery (joe@educationlawyers.com)" <joe@educationlawyers.com>
Cc: Joshua Salmon <JSalmon@fidjlaw.com>, Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>

Joe,

This email shall serve as our effort to meet and confer regarding your clients untimely initial disclosures [DIN 50]. As is detailed in the attached draft motion to compel, the disclosures are deficient and do not meet the requirements of Rule 1.280(a)(1). Please confirm by 3:00 p.m. tomorrow (October 23, 2026) that you will file amended initial disclosures which are compliant with Rule 1.280(a)(1) by no later than October 27, 2026. If you have a substantial justification for the failure to comply with Rule 1.280(a)(1), please let me know what it is. Thank you.

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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[Miami, Florida 33156](#)

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Defendants Motion to Compel Complete Initial Disclosures (10.22.26).pdf

147K

Miseresky v. FIDS

Joseph Montgomery <joe@educationlawyers.com>

Fri, Oct 23, 2026 at 3:06 PM

To: cdavid@fidjlaw.com

Cc: JSalmon@fidjlaw.com, mchamorro@fidjlaw.com, dmuller@fidjlaw.com, lynn@iwantjustice.com

Chris,

Got your email. We're going through it along with the disclosures and production you served this morning. What's your availability next week for a call?

Joe

Joseph W. Montgomery, Esq.

Attorney / Radio Show Host on 610ESPN

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Miseresky v. FIDS

Christopher David <CDavid@fidjlaw.com>

Fri, Oct 23, 2026 at 3:14 PM

To: Joseph Montgomery <joe@educationlawyers.com>

Cc: Joshua Salmon <JSalmon@fidjlaw.com>, Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, "lynn@iwantjustice.com" <lynn@iwantjustice.com>

Monday or Tuesday. All day. Pick a time.

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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[9100 South Dadeland Blvd., Suite 1610](#)

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From: Joseph Montgomery <joe@educationlawyers.com>

Sent: Friday, October 23, 2026 3:07 PM

To: Christopher David <CDavid@fidjlaw.com>

Cc: Joshua Salmon <JSalmon@fidjlaw.com>; Miguel Chamorro <mchamorro@fidjlaw.com>; Deborah Muller <dmuller@fidjlaw.com>; lynn@iwantjustice.com

Subject: RE: Miseresky v. FIDS

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Miseresky v. FIDS

Christopher David <CDavid@fidjlaw.com>

Fri, Oct 23, 2026 at 3:15 PM

To: Joseph Montgomery <joe@educationlawyers.com>

Cc: Joshua Salmon <JSalmon@fidjlaw.com>, Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, "lynn@iwantjustice.com" <lynn@iwantjustice.com>

Joe,

Respectfully, my clients' disclosures are irrelevant to the deficiencies in your clients' filings (except to demonstrate what a compliant disclosure would include). Are you going to provide compliant disclosures as requested?

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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Subject: RE: Miseresky v. FIDS

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Chris,

[Quoted text hidden]

[Quoted text hidden]

Miseresky v. FIDS

Christopher David <CDavid@fidjlaw.com>

Fri, Oct 23, 2026 at 3:26 PM

To: Joseph Montgomery <joe@educationlawyers.com>

Cc: Joshua Salmon <JSalmon@fidjlaw.com>, Miguel Chamorro <mchamorro@fidjlaw.com>, Deborah Muller <dmuller@fidjlaw.com>, "lynn@iwantjustice.com" <lynn@iwantjustice.com>

Joe,

I wanted to give you a heads up. I will be filing the motion to compel today to avoid any delays. Hopefully our call next week will resolve the motion and we don't need to have it heard. Have a nice weekend.

Christopher M. David, Esq.

Fuerst Ittleman David & Joseph

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Subject: RE: Miseresky v. FIDS

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