

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THIS DOCUMENT RELATES TO ALL CASES

**MOTION TO QUASH DEPOSITION SUBPOENAS AND
PAUSE NON-AGREED DEPOSITIONS**

Coordinated Plaintiffs move the Court to quash multiple deposition subpoenas that Defendants have recently sent out and to pause any depositions that the parties have not agreed to take until the Court rules on Defendants' pending motion to extend discovery, stating in support as follows:

Introduction

1. As the Court is aware, Defendants have moved to extend fact discovery by six months so that they could take more than 150 additional depositions. Dkt. 622. Plaintiffs opposed that motion in large part but agreed that Defendants could take approximately 30 depositions after the close of fact discovery.

2. The Court took Defendants' motion under advisement and ordered the parties to file supplemental factual information by December 13, 2023. Dkt. 622.

3. Because the Court has not ruled on Defendants' motion, the fact discovery deadline is currently December 18, 2023. *See id.*

4. Plaintiffs do not oppose Defendants scheduling the approximately 30 depositions that Plaintiffs agreed they could take in response to the motion to extend discovery. Very recently, however, Defendants have sent out sixteen or more deposition notices or subpoenas, and Plaintiffs request that the Court pause almost all of those depositions until it rules on Defendants' motion for a discovery extension.¹

5. The depositions fall into three categories:

- a. Defendants seek to depose two Plaintiffs. They also seek to depose one damages witness who Plaintiffs have already agreed could occur after fact discovery ends. Plaintiffs do not oppose those depositions going forward.²
- b. On or before the December 18 fact-discovery cutoff, Defendants seek to depose eleven individuals who are subject to their pending motion for a discovery extension. Plaintiffs oppose those depositions occurring while the motion is pending because case law shows that there is insufficient time to take those depositions.
- c. On December 20 and 21, Defendant Mohammed seeks to depose two additional individuals who are subject to the pending discovery motion. Taking those depositions would plainly evade the Court's power to set discovery deadlines.

6. On December 6 and December 7, the undersigned held telephonic meet and confers with counsel for the Defendants who have issued the subpoenas at issue, but they were unable to resolve their dispute, necessitating this motion.

¹ Plaintiffs say "sixteen or more because Defendants continue to send notices. Just before Plaintiffs filed this motion, Defendants sent a notice of subpoena to depose FBI Agent Mike Ponicki on December 15, 2023. As far as Plaintiffs are aware, the Defendants have not previously informed the FBI that they intend to depose Mr. Ponicki. Moreover, it does not appear that Defendants actually believe the deposition will occur on December 15. Plaintiffs had previously offered that date for the continued deposition of a Plaintiff, and counsel for two of the defense firms said that they were unable to commit to that date due to firm holiday parties. Plaintiffs do not begrudge counsel's right to attend their firm holiday parties, but their position that they were unable for a deposition on December 15 suggests that they do not actually intend for the deposition of Mr. Ponicki to occur that day.

² Also, just before this motion was filed, Defendants sent an email noting that the deposition of one of those Plaintiffs would be rescheduled. Again, Plaintiffs do not oppose Defendants' efforts to depose the Plaintiffs.

Argument

I. The Court should pause non-agreed depositions until it rules on Defendants' motion for a discovery extension

7. Defendants' attempt to squeeze in sixteen depositions at the tail end of discovery is contrary to the federal rules, particularly given that fourteen of those witnesses are subject to Defendants' pending motion to extend the discovery deadline. Reasonable notice for a deposition is fourteen days. *Lawrence v. United States*, No. 18 C 1570, 2021 WL 601718 (N.D. Ill. Feb. 16, 2021) (collecting cases) (14 days before the desired deposition is benchmark for reasonableness); Rule 45 (d)(2) (14 days is the benchmark for reasonable notice of deposition). Defendants are providing far less than two weeks' notice to the parties (*see* Ex. A), and even less notice to the witnesses, depending on when they are actually served. This requires Plaintiff's counsel to scramble to prepare for depositions with inadequate notice, which is prejudicial to Plaintiffs (who have their own priorities for tasks to complete before fact discovery concludes and which they are entitled to do in an orderly fashion). It is also likely that the witnesses may not be available at the times unilaterally selected by Defendants, requiring rescheduling of those depositions in January. Scheduling depositions with five business days' notice is unlikely to actually result in many completed depositions; it appears the point is to be able to tell the Court that they have been trying to obtain necessary testimony before the close of fact discovery.³

8. The time for selecting which witnesses to depose has passed and noticing depositions now which realistically will not be completed before fact discovery closes, is

³ Indeed, as noted above, Defendants noticed the deposition of an FBI agent on a date when they had previously said they were unavailable due to holiday parties, and in fact have notice two depositions for that day – Mr. Ponicki, and Gerard Baker (a witness who Plaintiffs had already withdrawn).

contrary to the rules. See L.R. 16.1 (“Except to the extent specified by the court on motion of either party, discovery must be completed before the discovery closing date. Discovery requested before the discovery closing date, but not scheduled for completion before the discovery closing date, does not comply with this order.”).

9. To be clear, Plaintiffs are not opposed to continuing to schedule depositions for witnesses where the parties have agreed that depositions may be taken, and they do not seek to postpone the upcoming depositions of the two Plaintiffs scheduled to take place before fact discovery ends. Given the significant number of witnesses whose depositions the parties have agreed to take, the parties should concentrate their efforts on completing those depositions. Defendants should not be permitted to jam the depositions of twelve disputed witnesses into the last ten days of discovery while saving the witnesses where Plaintiff has agreed to allow depositions until after discovery closes. As discussed below, they should also not be permitted to unilaterally notice up the depositions of two disputed witnesses to take place after fact discovery closes.

II. Defendant Mohammed subpoenaed two fact witnesses to appear for depositions after discovery closes

10. Defendant Mohammed sent subpoenas for depositions of fact witnesses Thomas Mitchell and George Green to occur after the close of discovery. This is improper. Both of these witnesses are named in Defendants’ motion to extend fact discovery. Defendants have asked the Court to let them take the depositions, and Plaintiffs opposed that request. Nonetheless, Defendant Mohammed scheduled their depositions for December 20 and December 21, which is after discovery closes but before the Court will rule on the pending motion to extend discovery. Ex. B (Mohammed notice of subpoenas).

11. Plaintiffs asked Defendant Mohammed to withdraw the subpoenas, but he refused.

12. Mohammed's refusal to withdraw the subpoenas is completely unjustified. There is a current fact discovery deadline in place and a disputed motion for an extension. By scheduling the depositions for a date that is before the Court will rule on the motion for an extension of time, Mohammed is plainly seeking to evade the possibility that the Court will deny their motion.

13. Not only is Mohammed's attempt to depose Green and Mitchell before the Court rules on the pending motion unjustified, but his insistence on taking these two depositions in particular also undercuts the defense position that they are not seeking to take any unnecessary depositions. Both of the witnesses that Mohammed is seeking to depose were arrested on the same date in the same location as Plaintiff Lionel White Sr. Both of them gave detailed statements to COPA more than four years ago. Ex. C (Green COPA statement, filed under seal); Ex. D (Mitchell COPA statement, filed under seal). Their knowledge is already memorialized, and the defense's insistence on taking their depositions is a prime example of their refusal to make reasonable litigation choices.

Conclusion

14. For the reasons stated above, the Court should quash the deposition subpoenas that Defendant Mohammed served for the depositions of Thomas Mitchell and George Green. In addition, the Court should pause all depositions that the parties have not agreed to take, pending its decision on Defendants' motion to extend the fact discovery cutoff.

Respectfully submitted,

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