

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AMERICAN BOARD OF INTERNAL MEDICINE,	:	
	:	
Plaintiff/counterclaim defendant,	:	
	:	
v.	:	Civil Action No. 14-cv-06428-KSH-CLW
	:	
JAIME A. SALAS RUSHFORD, M.D.,	:	
	:	
Defendant/counterclaim plaintiff/third- party plaintiff,	:	
	:	
v.	:	ORAL ARGUMENT REQUESTED
	:	
RICHARD BARON, M.D., et al.,	:	
	:	
Third-party defendants.	:	

**MEMORANDUM OF ABIM AND THE ABIM INDIVIDUALS IN OPPOSITION
-- ON SHORT NOTICE --
TO DEFENDANT'S MOTION FOR A PROTECTIVE ORDER**

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I. PRELIMINARY STATEMENT.

Plaintiff/counterclaim defendant American Board of Internal Medicine (ABIM) and third-party defendants Richard Baron, M.D., Christine K. Cassel, M.D., Lynn O. Langdon, Eric S. Holmboe, M.D., David L. Coleman, M.D., Joan M. Feldt, M.D., and Naomi P. O’Grady, M.D. (collectively, the “ABIM individuals”) (for ease of reference, ABIM and the ABIM individuals are collectively referred to here as “ABIM”) submit this opposition on short notice to the motion of defendant/counterclaim plaintiff/third-party plaintiff Jaime Salas Rushford, M.D. (“defendant”) for a protective order [D.E. No. 97] so that his motion may be addressed and denied by the Court during the upcoming June 3, 2016 conference.

On May 9, 2016, ABIM issued a deposition notice to defendant, which noticed his deposition for May 31, 2016.¹ That notice gave defendant 22 days to prepare for the deposition and make necessary arrangements to clear his schedule for the day, which was the Court-ordered last day of the fact discovery period.² That is more than sufficient to qualify as “reasonable written notice” for a deposition. Defendant’s motion for a protective order makes little effort to argue otherwise. Instead, defendant relies on minor inconveniences, like having to travel shortly after the Memorial Day weekend and potentially reschedule appointments or adjust his own birthday plans. These “inconveniences” are largely of defendant’s own making. Having already avoided ABIM’s attempt to schedule his deposition once, they simply are not sufficient excuses. Defendant filed a six-count counterclaim and third-party complaint, and has demanded at least

¹ A true and correct copy of the May 9, 2016 notice of deposition by oral examination with request for production of documents is attached hereto as **Exhibit “A”** and is made a part hereof by reference.

² See Text Order dated January 22, 2016. [D.E. No. 62.]

\$16.5 million in damages from ABIM. ABIM is entitled to test the basis for his claims in a deposition, and defendant may not avoid his deposition by repeatedly claiming “inconvenience.”

Defendant’s conduct is sanctionable. As ABIM informed defendant prior to his failure to appear for his deposition, merely filing a motion for a protective order does not suspend a party’s duty to comply with discovery. Rather, only a court order can suspend a party’s obligation to appear. Yet, defendant made no effort to obtain such an order. His motion, filed one business day before his scheduled deposition, did not seek expedited relief, and defendant made no other attempt to obtain a ruling from the Court on his objections to the deposition notice, despite having had the notice in hand for weeks. The conclusion is inescapable: defendant’s motion for a protective order is a ruse to avoid a properly scheduled deposition, which is precisely how defendant avoided the first deposition ABIM sought to schedule. In these circumstances, ABIM is entitled to recover its fees and costs in appearing for defendant’s deposition, and in responding to defendant’s motion for a protective order.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.

On April 6, 2015, the Court entered a pretrial scheduling order that set the end date for fact discovery at September 30, 2015. [D.E. No. 19.] On September 11, 2015, the fact discovery end date was extended to November 23, 2015. [D.E. No. 21.] That deadline was later extended to February 29, 2016 [D.E. 51], and then to the current deadline of May 31, 2016 [D.E. 62].

A. DEFENDANT AVOIDS ABIM'S FIRST ATTEMPT TO SCHEDULE HIS DEPOSITION.³

Defendant filed his answer to the complaint, counterclaims & third-party complaint on September 22, 2015. [D.E. No. 33.] On October 26, 2015, ABIM sent defendant's counsel an e-mail inquiring of defendant's availability for a deposition on November 17, 2015.⁴ That same day, prior counsel for defendant responded that he would consult with his client and respond,⁵ but no further response was forthcoming. As a result, on November 13, 2015, ABIM served on defendant, through his counsel of record, a notice of deposition to be held on November 23, 2015, the then-last day of the fact discovery period.⁶

On November 19, 2015, ABIM sent an e-mail to defendant seeking confirmation that he would appear for the noticed deposition.⁷ Defendant's response was that he was "unavailable for the taking of a deposition on November 23, 2015, and for the next several weeks."⁸ Defendant offered no timely alternative.

³ A full recitation of the facts leading to Defendant's avoidance of his first scheduled deposition in this matter is set forth in ABIM's opposition to defendant's first motion for a protective order. [D.E. No. 54.]

⁴ A true and correct copy of ABIM's October 26, 2015 email to defendant's counsel is attached hereto as **Exhibit "B"** and is made a part hereof by reference.

⁵ A true and correct copy of the October 26, 2015 email from defendant's counsel to ABIM's counsel is attached hereto as **Exhibit "C"** and is made a part hereof by reference.

⁶ True and correct copies of the November 13, 2015 cover email, emailed letter and notice of deposition serviced on counsel for defendant are attached hereto as **Exhibit "D"** and are made a part hereof by reference.

⁷ A true and correct copy of ABIM's November 19, 2015 email to defendant's counsel is attached hereto as **Exhibit "E"** and is made a part hereof by reference.

⁸ A true and correct copy of the November 19, 2015 telecopied letter from defendant's counsel to ABIM's counsel is attached hereto as **Exhibit "F"** and is made a part hereof by reference.

The next day, on November 20, 2015, ABIM responded, noting that November 23, 2015 was the last day of the discovery period but that “as a courtesy to defendant, [ABIM was] willing to adjourn defendant’s November 23, 2015 deposition to a later date provided defendant will appear for [the] deposition at the next date set by [ABIM] regardless of whether the discovery deadline has been extended.”⁹ ABIM asked that defendant either respond to that offer by 4:00 p.m. the next day or appear for his deposition as noticed. *Ibid.* On November 20, 2015, at 5:05 p.m., defendant responded by an e-mailed letter rejecting the terms offered by ABIM.¹⁰ The following day, November 21, 2015, ABIM responded, reiterating that defendant was obligated to appear for the properly noticed November 23, 2015 deposition.¹¹ Defendant waited until the day before his scheduled deposition -- a Sunday -- to move for a protective order [D.E. No. 45], and never did appear for his deposition. On January 25, 2016, the Court denied defendant’s motion for a protective order and ordered that defendant “be made available for deposition in the continental United States.” [D.E. No. 63.]

B. DEFENDANT AVOIDS ABIM’S SECOND ATTEMPT TO SCHEDULE HIS DEPOSITION.

On Monday, May 9, 2016, ABIM sent defendant a notice of deposition scheduling his deposition for May 31, 2016, the final day of the current fact discovery schedule. In addition to requesting defendant’s deposition, the notice requested that defendant produce

⁹ True and correct copies of ABIM’s November 20, 2015 email and electronic mail letter to defendant’s counsel are attached hereto as **Exhibit “G”** and are made a part hereof by reference.

¹⁰ True and correct copies of defendant’s November 20, 2015 email and electronic mail letter to ABIM’s counsel are attached hereto as **Exhibit “H”** and are made a part hereof by reference.

¹¹ True and correct copies of ABIM’s November 21, 2015 email and electronic mail letter to defendant’s counsel are attached hereto as **Exhibit “I”** and are made a part hereof by reference.

documents on May 26, 2016 in response to eleven narrow document requests calculated to obtain information concerning defendant's counterclaims and damages. Four days later, on Friday, May 13, 2016 at 4:51pm, defendant sent an email to ABIM's containing what purported to be his "objections" to the deposition notice.¹² That same day, ABIM responded, informing defendant that his objections were both substantively and procedurally improper, and that the appropriate vehicle for objecting to his deposition notice was by a motion for a protective order.¹³

May 26, 2016 -- the scheduled date for defendant to produce documents under the deposition notice -- came and went without further correspondence from defendant. On the date those documents were due, ABIM sent defendant's counsel a letter requesting that, given the upcoming Memorial Day weekend, defendant confirm by noon on Friday, May 27, "whether he is appearing at his deposition as scheduled and when he will comply with both the duces tecum provisions of his notice of deposition and his Rule 26 disclosure requirements."¹⁴ Seemingly prompted by this correspondence, at 9:16 p.m. on Thursday, May 26 -- all of one business day before his scheduled deposition -- defendant filed a motion for a protective order. [D.E. No. 97.] Tellingly, that motion did not request expedited relief or include the customary notice of motion; rather, the cover page of defendant's memorandum lists a return date of June 20, 2016, three weeks *after* defendant's deposition was scheduled.

The next morning, May 27, 2016, ABIM's counsel wrote to defendant's counsel, informing him that his eleventh-hour motion for a protective order did not suspend defendant's

¹² True and correct copies of defendant's May 13, 2016 email and "objections" are attached hereto as **Exhibit "J"** and are made a part hereof by reference.

¹³ True and correct copies of ABIM's May 13, 2016 email and enclosed letter to defendant's counsel are attached hereto as **Exhibit "K"** and are made a part hereof by reference.

¹⁴ True and correct copies of ABIM's May 26, 2016 email and enclosed letter to defendant's counsel are attached hereto as **Exhibit "L"** and are made a part hereof by reference.

obligation to appear at his deposition, nor did it excuse him from producing the documents commanded in the notice.¹⁵ ABIM therefore asked defendant (a) to confirm whether he would appear for his deposition on May 31, 2016, and (b) to inform ABIM as to when defendant would produce the documents required by the notice of deposition and *Rule 26(a)*. [*Ibid.*] Defendant responded by email on the same day, stating “[t]here will be no deposition of Dr. Salas Rushford on May 31[.]”¹⁶ ABIM responded, indicating that defendant’s failure to attend his scheduled deposition was at his own peril.¹⁷ ABIM attended the scheduled deposition on May 31, 2016 at 10:00am, but defendant did not appear.¹⁸

This opposition follows; it is submitted on short notice so that the issues are joined for the Court’s consideration during the scheduled June 3, 2016 conference.

III. ARGUMENT.

A. ABIM PROVIDED REASONABLE WRITTEN NOTICE OF DEFENDANT’S DEPOSITION, YET DEFENDANT FAILED TO APPEAR.

Rule 30(b)(1) is straightforward: a notice of deposition must provide “reasonable written notice” of the time and place for the examination. “Reasonable” varies based on the circumstances of the particular case. *See* 8A Charles Allen Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 2111 (“In some cases, one day’s notice has been upheld, albeit under unusual

¹⁵ True and correct copies of ABIM’s May 27, 2016 email and enclosed letter to defendant’s counsel are attached hereto as **Exhibit “M”** and are made a part hereof by reference.

¹⁶ A true and correct copy of the May 27, 2016 email from defendant’s counsel to ABIM’s counsel is attached hereto as **Exhibit “N”** and is made a part hereof by reference.

¹⁷ A true and correct copy of the May 27, 2016 email from ABIM’s counsel to defendant’s counsel is attached hereto as **Exhibit “O”** and is made a part hereof by reference.

¹⁸ A record of proceedings was made, highlighting defendant’s failure to appear; it will be provided to the Court as soon as the notes are transcribed. In the interim, **Exhibit “P”** has been reserved for it as a placeholder.

circumstances, and notice of six or eight days has been upheld.” (footnotes omitted)). ABIM’s notice to defendant was served on May 9, 2016, giving defendant over three weeks to arrange his schedule, book the necessary travel to the District of New Jersey, and prepare for his deposition. That should have been more than enough time to prepare for this straightforward case involving events that occurred between a handful of parties during a relatively short period of time. *See Smith v. Stephens*, No. 2:10-CV-13763, 2012 U.S. Dist. LEXIS 35631, at *11-*12 (E.D. Mich. March 16, 2012) (holding 4 days’ notice sufficient where pro se deponent was incarcerated and topics for examination were not complicated). Not surprisingly, defendant has not cited a single case in which 22 days’ notice was deemed unreasonable for a deposition, much less the deposition of a party in a relatively simple case. That is to be expected, as the law is squarely to the contrary.¹⁹ *See 7-30 Moore’s Federal Practice – Civil* § 30.20 (“Commonly, courts find that notice of at least five days is sufficient for a party’s deposition, depending on the circumstances.”). Defendant received ample notice of his deposition; his failure to appear is inexcusable.²⁰

¹⁹ As an indication of what constitutes “reasonable written notice” for a deposition, several States’ rules of civil procedure provide for a specific amount of advance notice to a deponent. For example, in New Jersey, a party wishing to take a deposition must give “not less than 10 days’ notice.” *N.J. Rules of Court* 4:14-2(a); *see also Tenn. Comp. R. & Regs.* 30.02 (requiring 5 days’ notice for depositions taken within the county, and 7 days’ notice for depositions taken outside the county); *Cal. Civ. Proc.* 2025.270(a) (requiring “at least 10 days” notice). In addition, *Fed. R. Civ. P.* 32(5)(A) limits the use of depositions taken on “short notice,” effectively defining “short notice” as 14 days or less. Several Local Rules that address the deposition notice period allow depositions on far shorter notice times than the 22 days provided here. *See, e.g., D.N.M. Local Rule* 30.1 (requiring 14 days’ notice); *E.D. Va. Local Rule* 30(H) (providing that 11 days’ notice is reasonable as “general rule”); *D. Colo. Local Rule* 30.1 (requiring not less than 14 days’ notice); *D. Del. Local Rule* 30.1 (requiring not less than 10 days’ notice).

²⁰ Again unsurprisingly, defendant cites only a single case: *United States v. Compaction Systems Corp.*, No. 96-5349, 2000 U.S. Dist. LEXIS 14362 (D.N.J. July 11, 2000). Even the most cursory reading of *Compaction Systems* shows that it is inapposite on its facts, something defendant ignores. In *Compaction*, the court quashed a third-party subpoena that sought a

When placed in its proper context, the 22 days' notice provided by ABIM's May 9, 2016 formal notice of defendant's deposition far understates the notice defendant in fact had that he would be deposed in this matter. Defendant is a party to this case and has filed a number of counterclaims against ABIM and third-party claims against individuals associated with ABIM, alleging -- without a shred of evidentiary support -- \$16.5 million in damages. [D.E. No. 33, at 30 ¶¶ 75-76.] ABIM first sought to depose defendant in November 2015, when he also conveniently claimed that he did not have enough notice. Defendant should have, and surely did, anticipate that ABIM would seek to depose him before the May 31, 2016 current discovery period close. Defendant's claim of inadequate notice is disingenuous: he has known for over 6 months that ABIM would be seeking his deposition prior to the close of discovery.

B. DEFENDANT'S REMAINING OBJECTIONS ARE WITHOUT MERIT.

Defendant's remaining objections are: (1) May 31 is his birthday; (2) it would be inconvenient for defendant to have to travel during Memorial Day weekend; and (3) defendant has pre-existing patient appointments scheduled for the noticed deposition date. None hold water.

The inconvenience associated with defendant's attendance at his deposition is a self-inflicted wound; it is he who has resisted his deposition. If defendant had submitted to deposition when noticed in November of 2015, his deposition would have been taken already. If defendant had negotiated in good faith concerning ABIM's offer to take his deposition at a mutually convenient time beyond the close of discovery period in November, again his deposition would have been over by now. If defendant had not wasted the Court's and ABIM's

deposition more than 18 months *after* the close of discovery. *Id.* at 2-5 (noting that discovery closed in October 1998 and party sought to issue deposition subpoena in May 2000). Needless to say, *Compaction Systems* did not address what constitutes "reasonable written notice" for a deposition.

resources in a letter-writing campaign that ended in his recent motion to compel, the parties could have scheduled and taken his deposition by now. And, if defendant had acted with the alacrity and integrity the circumstances demand, his deposition would have been taken by now. Throughout, ABIM has sought to work with defendant on the scheduling of his deposition, but has been met with uncompromising rejection. As it stands, defendant's conduct has left ABIM with only the option to notice his deposition. Defendant's response to that deposition notice was characteristic: he offered not a single additional date on which he would be willing to be deposed, he made no effort to produce a single document requested, and he outright ignored his *Rule 26* disclosure obligations.

The fact that defendant's deposition may be on a slightly less convenient weekend than he would like is no reason to conclude that 22 days is not sufficient time to prepare for and complete the trip from San Juan, Puerto Rico to Cherry Hill, New Jersey (the location of ABIM's counsel's office and the site of the deposition). Flights between San Juan and cities nearby to Cherry Hill, like Philadelphia, are frequent and relatively short.²¹ *See F.A.A. v. Landy*, 705 F.2d 624, 635 (2d Cir. 1983), *cert. denied*, 464 U.S. 895 (1983) ("The court may take judicial notice of frequent flights from New York to Tampa, as well as the availability of procedural remedies, in concluding that the deposition notice was reasonable."). And defendant -- as a party claiming millions of dollars in damages -- is not entitled to adjourn unilaterally a properly scheduled deposition because he may wish to celebrate his birthday or when he may have family plans or other professional commitments. It cannot be gainsaid: 22 days' notice is more than enough

²¹ By way of illustration only, a sample listing of flights between San Juan, Puerto Rico and Philadelphia, Pennsylvania on May 28, 2016, obtained through Google on May 27, 2016, is attached hereto as **Exhibit "Q"** and is made a part hereof by reference.

time to make alternate plans and reschedule any patient appointments defendant may have had scheduled.²²

C. ABIM's document requests are appropriate.

Defendant highlights that, under ordinary circumstances, a party has 30 days to respond to document requests served under *Rule 34*. Had ABIM used its deposition notice merely to seek documents that it otherwise would seek as part of a Rule 34 request, defendant's argument might have some traction. But, defendant ignores the context in which ABIM's document requests were served. Defendant has made wide-ranging claims of damage to his medical practice, damages to his "personal and professional reputation," and damages based on "profound mental anguish and anxiety." [D.E. 33 ¶¶ 75-76.] Putting aside that each of defendant's counterclaims to be legally and factually unsupportable -- each is the subject of a pending motion to dismiss -- defendant has produced not a single document or other piece of evidence to support his counterclaims or third-party complaint. Nor as a result of those same counterclaims and third-party complaint, and despite repeated requests, has he supplemented his *Rule 26(a)* initial disclosures to include "a computation of each category of damages claimed," or to make available to ABIM "as under Rule 34 the documents or other evidentiary material . . . on which each computation is based, including materials bearing on the nature and extent of injuries suffered." *Fed. R. Civ. P.* 26(a)(1)(A)(iii).

ABIM intends to depose defendant concerning his claimed damages, and will examine him regarding any documents supporting the computation of those damages. Because of defendant's failure to produce any such documents under *Rule 26(a)*, ABIM requested that,

²² It is difficult, if not impossible, to ignore the tension between defendant's claims -- unsupported by any testimony on his part -- that ABIM's suspension of his certification status damaged his medical practice to the tune of several million dollars, but that his medical practice is far too busy to permit him to be deposed about those damages on 22 days' notice.

before his deposition, defendant produce documents that might bear on his claimed damages. ABIM's requests to this effect were narrow and not burdensome; notably, defendant does not argue otherwise in his motion. For example, ABIM requested accounting records and revenue generated by defendant's medical practice in the years following his graduation from medical school, including tax records, to assess how his income actually changed in the years before and after the suspension of his certification. (*See* Exh. A, appendix to deposition notice to Jaime Salas Rushford, M.D., at Requests Nos. 2-3.) ABIM also sought documents concerning defendant's communications with patients and physicians concerning his Board Certification status, to assess his claim that ABIM's suspension of his certification caused him professional or reputational damages. (*Id.*, at Requests Nos. 7-10.) And, ABIM sought documents concerning defendant's claimed emotional damages, including any medical records documenting such harm. (*Id.*, at Requests Nos. 4-5.) Each of ABIM's document requests is narrowly tailored to seek documents concerning defendant's claimed damages, which ABIM reasonably expected would be provided as part of defendant's *Rule* 26(a) mandatory but yet-to-be-tendered initial disclosures, and which are necessary to conduct an effective and efficient examination of defendant. Defendant's motion for a protective order should be denied and, in advance of his deposition, he should be required to (a) respond fully to ABIM's document requests and (b) make his long-overdue *Rule* 26 mandatory initial disclosures.

D. DEFENDANT SHOULD BE SANCTIONED FOR FAILING TO APPEAR.

Merely filing a motion for a protective order, as defendant did at 9:16 p.m. one business day before his scheduled deposition, does not suspend a party's obligation to comply with a deposition notice. *See, e.g., Landy, supra*, 705 F.2d at 634-35 (“[I]t is not the filing of [a motion for a protective order] that stays the deposition, but rather a court order.”); *United States v. Portland Cement Co.*, 338 F.2d 798, 803 (10th Cir. 1964), *cert. denied*, 389 U.S. 975 (1967)

(holding that issuance of protective order “must precede the taking of the depositions”); *Williams v. Am. Tel. & Tel. Co.*, 134 F.R.D. 302, 303 (M.D. Fla. 1991) (“The filing of a motion for a protective order does not excuse the movant from complying with the discovery requested.”); *Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 67 (D.P.R. 1981) (holding that “[protective] order must be obtained before the date set for the discovery” (emphasis supplied)). Defendant nevertheless (a) failed to seek expedited relief from the Court, (b) waited 17 days from ABIM’s notice of deposition to seek a protective order, and (c) exercising rank self-help, flatly told ABIM that “[t]here will be no deposition of Dr. Salas Rushford on May 31.” Defendant’s “brief” consists of roughly two pages of argument and a single, irrelevant case citation; it is nothing more than a rank repetition of the “points” defendant raised in his earlier “objections” to the deposition. There can be no doubt: defendant filed his slap-dash motion for a protective order not because he believes ABIM’s deposition notice is improper, but to camouflage his intentional failure to appear at his properly scheduled deposition.

Moreover, defendant’s conduct is consistent with his tactics for avoiding his first scheduled deposition. In that instance, as here, defendant filed a motion for a protective order on the eve of his scheduled deposition and failed to appear. In this instance, defendant’s non-compliance with the properly served deposition notice is exacerbated by the fact that it flies in the face of the Court’s order requiring defendant to produce himself for deposition in the continental United States [D.E. No. 63], an order that was entered rejecting defendant’s self-centered efforts to have his deposition conducted in Puerto Rico. To punish this behavior and to deter defendant from engaging in similar avoidance tactics, sanctions are both permitted and required.

Fed. R. Civ. P. 37(d)(1)(A)(i) allows the Court to impose sanctions on a party that fails to appear at a properly noticed deposition. Among the available sanctions, the *Rules* permit the Court to award reasonable attorney's fees caused by the deponent's failure to attend. *Fed. R. Civ. P. 37(d)(3)*. Likewise, *Fed. R. Civ. P. 37(a)(5)(B)* provides that, if a motion for a protective order is denied, sanctions are mandatory unless "the motion was substantially justified or other circumstances make an award of expenses unjust." Defendant's motion for a protective order was not justified, much less "substantially justified." And, there is nothing that makes an award of expenses here "unjust;" on the contrary, an award of expenses is fitting and proper in these circumstances.

Specifically, ABIM should receive its reasonable counsel fees and costs for (i) filing this opposition to defendant's motion for a protective order, and (ii) attending the deposition on May 31, 2016. Those sanctions should be imposed both on defendant himself and on his local and *pro hac vice* counsel. *See Arpaio v. Dupree*, No. 08-3548, 2015 U.S. Dist. LEXIS 170073, at 15 (D.N.J. Sept. 9, 2015), *report and recommendation adopted*, 2015 U.S. Dist. LEXIS 169291(D.N.J. Dec. 10, 2015) (granting costs, counsel fees, and other sanctions where party waited until "eve" of deposition to claim inconvenience and filed motion for protective order day after deposition was to be taken); *Williams, supra*, 134 F.R.D. at 303 (ordering that costs and counsel fees sanctions for missed deposition be paid by deponent's counsel). If this relief is granted, ABIM will provide an appropriate affidavit of services within 10 days. Finally, in order to ensure defendant's attendance at his deposition, ABIM requests that the Court enter an order requiring defendant to appear for his deposition in New Jersey on a date certain.

IV. CONCLUSION.

For the foregoing authority, arguments and reasons, ABIM respectfully requests that the Court deny defendant's motion for a protective order, award sanctions subject to the submission of an affidavit of services, and issue such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



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party defendants the ABIM individuals*

DATED: May 31, 2016

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2016, I electronically filed the foregoing memorandum in opposition on short notice to the motion of defendant/counterclaim plaintiff/third-party plaintiff Jaime A. Salas Rushford, M.D. for a protective order with the Clerk of Court using the CM/ECF system, and thereby served all counsel of record with a copy thereof.

DATED: May 31, 2016



Roberto A. Rivera-Soto