

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02704-WDM-MJW

PURNENDU SARKAR,

Plaintiff(s),

v.

NANCY MCCALLIN, et al.,

Defendant(s).

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MINUTE ORDER

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Entered by Magistrate Judge Michael J. Watanabe

It is hereby **ORDERED** that Plaintiff's Motion to Re-Open Depositions (docket no. 94) is **DENIED** in the court's discretion pursuant to Roberts v. State of Oklahoma, 110 F.3d 74 (10<sup>th</sup> Cir. 1997) (Table). The Tenth Circuit has defined abuse of discretion as "an arbitrary, capricious, whimsical, or manifestly unreasonable judgment." Id. The notes in question that Plaintiff relies upon for the relief sought in the subject motion (docket no. 94) were identified on May 23, 2008, in Defendants' Supplemental Disclosure Statement as being those of Barbara McDonnell, not Nancy McCallin's notes. See exhibit A. p. 2 attached - "Handwritten Notes of McDonnell" to Plaintiff's subject motion (docket no. 94). Ms. McDonnell was not deposed until a month later on June 23, 2008, and Plaintiff had an opportunity to question Ms. McDonnell on the notes. In addition, Plaintiff has had the opportunity to depose both Dr. McCallin and Ms. McDonnell on the circumstances and reasons for Plaintiff's termination and has further had the opportunity to depose Plaintiff's replacement, Mr. Ritchey. Moreover, the deadline to complete discovery was over two months ago on November 25, 2008. Accordingly, the Plaintiff has failed to demonstrate "good cause (reason)" for a second deposition. See Sentry Ins. v. Shivers, 164 F.R.D. 255, 256 (D. Kan 1996).

Date: January 27, 2009

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