

ELECTRONIC ORDER ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER, BERNSTEIN V. INDIAN MOUNTAIN SCHOOL, 16 CV 1277 (JBA)

10/17/17 – On October 12, 2017, defendant Indian Mountain School, Inc. filed the pending Motion for a Protective Order (Dkt. #87) seeking a protective order precluding plaintiff's counsel from (a) using discovery in this litigation to reopen discovery and seek testimony from witnesses plaintiff chose not to depose over the past several years in Brownville v. Indian Mountain School, 3:14 CV 1472(JBA); and (b) unduly burdening defendant by requiring it to prepare and represent six witnesses at depositions less than three weeks prior to trial in the Brownville case. The fact discovery deadline in this case is December 1, 2017, and the expert discovery deadline is December 15, 2017. (Dkt. #86). The six depositions at issue are scheduled for October 18-20, 2017. In light of the deposition schedule, this Magistrate Judge ordered an abbreviated briefing schedule; plaintiff filed his brief in opposition on October 13, 2017 (Dkt. #89), and defendant filed its reply brief on October 16, 2017 (Dkt. #93).

As defendant recites in its briefs, plaintiff was on notice of all six of the witnesses that plaintiff now seeks to depose on an emergency basis. (Dkt. #87, at 2-9; Dkt. #93, at 1-4). Plaintiff could have deposed them in the Brownville matter, but chose not to do so, and now, on the eve of the Brownville trial, seeks to depose these six witnesses for the Bernstein case, with the intent of gathering information to be used in Brownville. (Id.). In his brief in opposition, plaintiff admits that he seeks to depose these six witnesses prior to the Brownville trial, which is scheduled to commence on November 7, 2017, so that "the juries in both Brownville[] and Bernstein[] . . . have a full and fair evidentiary record upon which to decide these important cases." (Dkt. #89, at 7-8)(footnote omitted). Plaintiff also asserts that the timing of these depositions is necessary because the December 15, 2017 discovery deadline in this case cannot be extended "due to impending dispositive motion and trial dates." (Dkt. #89, at 6). However, on October 13, 2017, defendant filed its Motion for Summary Judgment (Dkt. #90), which is not impacted by these six additional depositions. Additionally, the trial in this case is scheduled for Spring 2018. (Dkt. #19; Dkt. #93, at 3).

Accordingly, defendant's Motion for a Protective Order (Dkt. #87) is granted. The deadline for fact discovery is extended to **December 15, 2017**, and expert depositions shall be completed by **January 16, 2018**, thereby allowing ample time for these depositions to be held after the Brownville trial.