

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**MICHAEL BRANDNER, JR.,
ET AL.**

CIVIL ACTION

NO. 17-454-BAJ-RLB

VERSUS

**STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, ET AL.**

ORDER

Before the Court is Plaintiff's Motion for Protective Order to Quash Subpoena and Deposition Notice (R. Doc. 40) filed on December 14, 2017. The motion is opposed. (R. Doc. 47).

Plaintiff seeks an order quashing a subpoena and notice served by defendant State Farm Automobile Insurance Company ("State Farm") requiring Plaintiff to testify at a deposition in Baton Rouge, Louisiana on January 4, 2018, at 1:00 p.m. (R. Doc. 40-3). Plaintiff asserts that the subpoena and notice should be quashed because they were issued "without any conference with the undersigned or request for availability," and prior to defendant Mirna Velasquez's "compliance with Rule 26(f), her provision of initial disclosures, and her filing an Answer to the Petition for Damages." (R. Doc. 40-1 at 1). Plaintiff further asserts that Plaintiff's counsel "has a conference/hearing in Civil District Court on January 4, 2018 as well as witness and expert meetings to prepare for a jury trial in January 2018 in the USDC for the Eastern District of Louisiana." (R. Doc. 40-1 at 4).

In opposition, State Farm provides evidence that it originally noticed the deposition of Plaintiff to take place on May 5, 2017, but Plaintiff unilaterally cancelled the deposition on the

basis that he would be out of town. (R. Doc. 47-1; R. Doc. 47-2). State Farm also provides evidence that it attempted to reschedule the deposition on several occasions, but Plaintiff stated he would not appear for a deposition until he received all documents sought in discovery from State Farm. (R. Doc. 47-3; R. Doc. 47-4; R. Doc. 47-5; R. Doc. 47-6; R. Doc. 47-7). Finally, State Farm provides evidence that when it issued the instant subpoena and deposition notice, it offered to modify the deposition date and time in accordance with Plaintiff's counsel's availability. (R. Doc. 47-8). State Farm requests the Court to require Plaintiff's deposition to take place on the date and time noticed or, in the alternative, to permit it to take the deposition within 30 days of the Court's ruling on the instant motion. (R. Doc. 47 at 8).

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). Rule 26(c)'s “good cause” requirement indicates that the party seeking a protective order has the burden “to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.” *In re Terra Int'l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)).

Given Plaintiff's counsel's conflicts with the January 4, 2018 deposition date and time, the Court finds good cause for issuing a protective order precluding the deposition of Plaintiff from taking place on the date and time noticed. The Court will not, however, quash the subpoena and deposition notice in their entirety. The correspondence submitted by State Farm indicates that it has been diligent in attempting to secure the deposition of Plaintiff. The Court finds no basis for allowing Plaintiff to suspend his deposition until State Farm has produced

certain documents,¹ or Ms. Velasquez has participated in discovery or filed a responsive pleading.² See Fed. R. Civ. P. 26(d)(3).

Based on the foregoing,

IT IS ORDERED that Plaintiff's Motion for Protective Order to Quash Subpoena and Deposition Notice (R. Doc. 40) is **GRANTED IN PART and DENIED IN PART**.

IT IS FURTHER ORDERED that State Farm's subpoena and deposition notice are modified to require Plaintiff to testify at a deposition to take place on **February 8, 2018 at 1:00 p.m.** at 4880 Bluebonnet Blvd., Ste. A, Baton Rouge, LA 70809, or an alternative time and place agreed upon by the parties.

Signed in Baton Rouge, Louisiana, on January 2, 2018.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE

¹ Plaintiff has filed a motion to compel certain discovery from State Farm (R. Doc. 29). The motion, which is opposed (R. Doc. 34), remains pending before the undersigned.

² Ms. Velasquez has filed a motion to dismiss for insufficient service of process (R. Doc. 41). The motion, which is opposed (R. Doc. 48), remains pending before the district judge.