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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PASTOR STEVE SMOTHERMON,

Plaintiff,

v.

KEITH HODGE, an individual; **KEVIN HODGE**, an individual; **HODGETWINS, LLC**, a Nevada limited liability company;

Defendants.

Case No.: 2:25-cv-01858-APG-BNW

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER STAYING PLAINTIFF'S OBLIGATION TO RESPOND TO DEFENDANTS' EIGHTH, NINTH, AND TENTH REQUESTS FOR PRODUCTION, SECOND REQUESTS FOR ADMISSION, SIXTH AND SEVENTH INTERROGATORIES, AND TO SIT FOR A DEPOSITION ON SEPTEMBER 15, 2026 [ECF No. 79]

Plaintiff Pastor Steve Smothermon submits this Reply in support of his Motion for Protective Order (ECF No. 79) and in response to Defendants' Opposition (ECF No. 86).

INTRODUCTION

The Defendants have put forward an Opposition based on one claim alone, namely that the Plaintiff "lied" as to his medical condition because he delivered a sermon the day before he sought relief. Such an allegation does not hold up when measured against the record in this Court. Pastor Steve Smothermon's Declaration (attached) puts the matter into perspective: the video of the sermon fails to reveal the interpretation Defendants place on it and instead shows only that Plaintiff was at his own church and preached for some 35 minutes, sitting or standing as the occasion called for, struggling with mobility and pain. It is a far cry from the ordeal of a multi-hour deposition in Las Vegas and the air travel it entails.

Then there is the September 14, 2026, evaluation from the Plaintiff's treating physician, which attests to an incapacity the Defendants' Opposition leaves unchallenged. According to that document, the Plaintiff still experiences pain at an eight out of ten level, is unable to be on his feet or in a chair for more than ten minutes at a stretch, and cannot fly.

For their part, the Defendants are without any medical evidence to present. What they have is a lawyer's myopic reading of a church video, which they would have the Court put in place of the opinion of the Plaintiff's doctor. Rule 26(c) does not permit such a substitution. The good cause demonstrated by the Plaintiff is well documented and now backed by a sworn declaration. Accordingly, the Defendants should be summarily rebuffed in their call for the Court to deny the Motion and to sanction both the Plaintiff and his counsel for candor.

ARGUMENT

Rule 26(c) authorizes the Court, for good cause, to issue an order protecting a party from annoyance, oppression, or undue burden, on a showing "that specific prejudice or harm will result" if the order is not granted. *In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417 (9th Cir. 2011). That standard is

not in dispute since both parties cite to it. The difference is that Plaintiff has met the standard, and Defendants' Opposition supplies no basis to conclude otherwise.

I. A single, self-paced sermon does not disprove Plaintiff's documented inability to sit for a multi-hour deposition or to travel.

The entire Opposition is predicated on the sermon of September 2, 2026. Yet what the Defendants make of it is far more than the sermon warrants. In fact, Plaintiff's was a 35-minute affair, not the "45-minute" production they would have you believe, and he made use of both sitting and standing so as not to be fixed in one spot. Smothermon Decl. at 8. This was one of the first times Pastor Smothermon had been at the church and seen his congregation, let alone preached to them. Smothermon Decl. at 8.

The video the Defendants put forward may give an impression of how the Plaintiff looked for that one occasion, but it tells you nothing of the pain or the restrictions on bending and lifting he is under. Smothermon Decl. at 9. When Defendants resort to language like "fiery" or "animated" with "no apparent distress," they are making a lawyer's case about a video rather than offering medical proof. The Plaintiff has made clear why such characterizations are neither true nor indicative of his condition. Smothermon Decl. One must distinguish between delivering a prepared text in one's own church where the pace is your own and being grilled by opposing counsel for more than seven hours in a deposition. The latter is controlled by the examiner; the witness does not have that luxury.

What matters is the assessment of the treating physician following the event. On September 14, 2026, Dr. Diego Gonzalez noted at a follow-up that the Plaintiff's recovery is anything but swift. Ex. A. He put the pain level at some eight out of ten and recorded that the Plaintiff has trouble with sitting or standing beyond five or ten minutes, let alone 30 minutes even with repeated breaks. Smothermon Decl. at 10; Ex. A. Dr. Gonzalez has cautioned against air travel and long meetings on account

of the lower back strain they would cause. Smothermon Decl. at 11; Ex. A. A 35-minute service in Albuquerque squares with those findings; a day of flying to Las Vegas for a lengthy and contentious deposition does not. Smothermon Decl. at 11.

And while a remote option is not ruled out, it still demands the kind of sustained concentration and posture the doctor says the Plaintiff cannot handle at present. Ex. A. There is no gamesmanship in this. Under oath the Plaintiff has said he will testify truthfully when he is able to do so and will go remote if his physicians say he can before he is fit to travel. Smothermon Decl. at 12.

II. Plaintiff's medical showing is the specific, documented good cause Rule 26(c) requires; Defendants offer only characterization.

What the Plaintiff has put forward is not some sweeping, unsubstantiated claim that would not survive a Rule 26(c) inquiry. The prejudice here is specific and recorded, now under oath. *See In re Roman Cath. Archbishop of Portland in Oregon*, 661 F.3d 417 (9th Cir. 2011). Plaintiff has provided a detailed declaration from his treating physician setting out the contemporaneous restrictions and how they impact the deposition and written discovery in question.

This is precisely the sort of relief this Circuit is wont to give when good cause is shown; a court can and will order a postponement under Rule 26(c)(1)(B). *Petricevic v. Shin*, 2020 WL 13855976 (D. Haw. Nov. 17, 2020). In *Petricevic*, for instance, the court granted a defined delay after the party made a showing of good cause rooted in his own circumstances. An ongoing post-surgical incapacity, properly documented as it is here, is at least as persuasive a reason for a brief respite.

The Defendants have nothing to counter with in the way of medical evidence. They have not talked to Dr. Gonzalez and they do not present an opposing opinion or point to anything in the record to dispute his conclusions. Instead, they would have the Court read into a church video that the Plaintiff is "lying." Such an inference does not hold up under the scrutiny Defendants apply, let alone displace a written

evaluation from a treating doctor.

One might note that the Defendants were once amenable to accommodating the Plaintiff's condition. Before viewing the sermon, they offered to conduct the deposition remotely in several shorter sessions, on any date prior to the end of discovery and at a place convenient to the Plaintiff. ECF No. 86. The facts of the case are the same as they were then; only the Defendants' tone has altered.

III. Plaintiff has not "mooted" his own Motion; the deposition and the discovery disputes remain live.

The Defendants would have the Court believe the Motion has been rendered moot by virtue of Plaintiff's written responses of September 4, 2026. ECF No. 86. This is not the case. There are two areas of dispute to which the Motion is directed.

For one, the matter of the September 15, 2026, deposition is still in contention. While Plaintiff has put forward a medical showing and asked for a stay until his physician gives the all-clear, the Opposition urges the Court to make him sit for it (and a later filing asks for the extraordinary remedy that the Plaintiff be prohibited from testifying at trial ECF No. 91). ECF No. 86. That is a live controversy, independent of any written responses that may have been filed.

Then there are the requests involving experts. The Ninth and Tenth Requests for Production and the Seventh Interrogatories are admitted by the Defendants to be about Plaintiff's expert witnesses. ECF No. 86. Plaintiff has objected to the requests. ECF No. 79. While the objections might not call for the Plaintiff's personal involvement, that is no justification for forcing a response while cross-motions to alter the scheduling order (ECF Nos. 66 and 67) are before the Court; it is precisely why an orderly deferral is in order. ECF No. 79. In short, the fact that Plaintiff has objected to requests does not waive or moot the request to defer the discovery and stay the deposition.

IV. Defendants' request for sanctions is baseless and should be denied.

In closing, the Defendants would have this Court sanction the Plaintiff and his counsel on the grounds that they have "lied to the Court." ECF No. 86. Such an allegation is without merit. The Plaintiff's account of his condition is borne out by the contemporaneous findings of his treating doctor. Moreover, in his declaration he is forthright about the September 2 sermon and makes plain why a short one delivered at his own pace is no bar to his being unable to put up with a deposition or make the journey. Smothermon Decl.

One need only look to the Defendants' own field work to see the matter was not as they suggest; their investigation shows that when someone came to the Plaintiff's door on September 9, 2026, he was already at a medical appointment with Dr. Slaman as his calendar indicates. Ex. C. It is hardly sanctionable for a party to document his medical limitations, put forward the evidence his adversaries want to use and even proffer remote testimony once he is fit to do so. The charge is nothing more than rhetoric and should be dismissed as a basis for relief.

CONCLUSION

Plaintiff respectfully requests that the Court grant the Motion for Protective Order (ECF No. 79): stay Plaintiff's deposition until his treating physician clears him to participate; stay the response deadlines for the six sets of written discovery until the later of thirty days after that clearance or the Court's ruling on the pending scheduling motions (ECF Nos. 66 and 67); and, in the alternative, limit the cumulative damages discovery as set out in the Motion. Defendants' request to compel the September 15, 2026, deposition and for sanctions should be denied.

Respectfully submitted this 17th day of September, 2026.

/s/ Nicole A. Westbrook
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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which served all counsel of record, including:

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