

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER in his individual capacity

Defendant.

**DEFENDANT'S OPPOSED MOTION FOR PROTECTIVE ORDER REGARDING
DEPOSITION OF PLAINTIFF AND REQUEST FOR EXPEDITED DETERMINATION**

Defendant RANDALL KLAMSER, submits the following Opposed Motion for Entry of a Protective Order Regarding the Deposition of Plaintiff and Request for Expedited Determination:

CERTIFICATE OF CONFERRAL UNDER D.C.COLO.LCivR.7.1

Defendant notes that Judge Neureiter's Practice Standards require parties to argue discovery disputes orally. However, Defendant does not believe that the following constitutes a discovery dispute. Regardless, Counsel for the Defendant has conferred with Plaintiff's Counsel on the requested relief, which Plaintiff opposes.

I. INTRODUCTION AND ARGUMENT

According to the allegations of the Complaint, this matter arises out of the arrest of the Plaintiff, on April 6, 2017 (ECF No. 1 at ¶ 1). Generally, the Plaintiff claims her Fourth Amendment rights were violated, when she was purportedly subjected to excessive force during her arrest by Officer Klamser.

Plaintiff's deposition is noticed for **March 12, 2020**. **Exhibit A**. Counsel for the Plaintiff has indicated the parents of the Plaintiff may attend her deposition. (See email string dated March 5, 2020, attached hereto as **Exhibit B**). As the Court may recall, Plaintiff took the same position for Defendant Randall Klamser's deposition. The Court heard oral arguments and ultimately entered a protective order precluding attendance by Plaintiff's parents (See ECF No. 82). Here, no additional rationale has been provided by Plaintiff's Counsel, which might yield a different result.

The Defendant objects to Plaintiff's parents attending Plaintiff's deposition, and therefore seek a protective order precluding them from doing so. As stated in Defendants' previous Motion for Protective Order regarding Officer Klamser's deposition, pursuant to Fed. R. Civ. P. 26(c)(1)(E), this Court may issue a protective order "to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including ... designating the persons who may be present while the discovery is conducted." Fed. R. Civ. P. 26(c)(1)(E). Any party to a litigation may move for a protective order under Fed. R. Civ. P. 26(c). **SEC v. Dowdell**, 144 Fed. Appx. 716, 723 (10th Cir. 2005).

When it comes to non-parties attending depositions, courts have found that members of the public are “not necessarily entitled to attend the private depositions held” in a case. **EEOC v. Original Honeybaked Ham Co. of Ga.**, 11-cv-02560-MSK-MEH, 2012 U.S. Dist. LEXIS 114206 at *3-4 (D. Colo. Aug. 13, 2012). This is because “pretrial depositions and interrogatories are not public components of a civil trial.” **Id.** (quoting **Seattle Times Co v. Rhinehart**, 467 U.S. 20, 33 (1984)). As such, “[d]epositions ‘are not a judicial trial, nor a part of a trial, but a proceeding preliminary to trial, and neither the public nor representative of the press have a right to be present at such taking.” **Id.**, (quoting **Kimberlin v. Quinlan**, 145 F.R.D. 1, 2 (D.D.C. 1992)).

As with the protective order entered by the Court for Officer Klamser’s deposition, Plaintiff has presented no legitimate basis for allowing an adult-Plaintiff’s parents to attend her deposition. Plaintiff’s counsel previously stated that her parents attendance at depositions was because Plaintiff wants “her parents’ support”. This time, Plaintiff provides no reason for their attendance, but Defendants assume the same rationale applies. As previously determined by the Court, however, any such rationale is insufficient to overcome the presumption that members of the public do not have a right to be present at depositions. Overall, as Ms. Surat’s parents are members of the public, they do not have a right to be present at a non-public portion of this matter and the Court should exclude them from attending the deposition as explicitly allowed under Fed. R. Civ. P. 26(c)(1)(E).

WHEREFORE, the Defendants respectfully request the entry of an order precluding Michaella Surat's parents, or any other non-party fact witness, from attending the deposition of Plaintiff.

Furthermore, as Plaintiff's deposition is a week away, the Defendant asks for an expedited determination regarding their request.

Dated this 6th day of March 2020.

Respectfully submitted,

s/ Mark S. Ratner
Mark S. Ratner, Esq.
Gillian Dale, Esq.
Brenden Desmond, Esq.
Hall & Evans, L.L.C.
1001 Seventeenth St., Suite 300
Denver, CO 80202
Phone: 303-628-3300
Fax: 303-628-3368
ratnerm@hallevans.com
daleg@hallevans.com
desmondb@hallevans.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 6th day March, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system as follows:

David Lane, Esq.
Andrew McNulty, Esq.
Helen S. Oh, Esq.
Killmer, Lane & Newman, LLP
1543 Champa St, Suite 400
Denver, CO 80202
303-571-1000 Phone
303-571-1001 Fax
dlane@kln-law.com
amcnulty@kln-law.com
hoh@kln-law.com
Attorneys for Plaintiff

s/Cindy Blanton
Cindy Blanton, Legal Assistant