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Case Number CJ-2025-135

Case No. CJ-2025-135

**DEFENDANT STATE FARM FIRE AND CASUALTY
COMPANY'S RESPONSE AND OPPOSITION TO
PLAINTIFFS' MOTION FOR DISCOVERY SANCTIONS**

Plaintiffs' July 28, 2026 Motion for Discovery Sanctions ("Motion"), filed a day after State Farm's Motion for Entry of a Deposition Protocol ("Protocol Motion") based on Plaintiffs' counsel's improper conduct at Nicole Manduca's deposition, is apparently designed to distract from the seriousness of counsel's misconduct or perhaps attempt to excuse it.¹ It does neither, and the Motion's absence of merit is apparent on its face—and more compellingly apparent on a reading of Ms. Manduca's deposition.

Plaintiffs' Motion only underscores the need for the protocol requested by State Farm. Ms. Manduca fully answered Plaintiffs' counsel's questions throughout her deposition—despite being repeatedly interrupted, shouted at, demeaned, and threatened. Plaintiffs' Motion reflects only continued frustration that Ms. Manduca's answers did not align with counsel's false narrative, which he built into most of his questions. To the extent Plaintiffs contend, incorrectly, that any question their counsel posed to Ms. Manduca remains unanswered, the proper procedure was for Plaintiffs to bring a motion to compel further responses. They did not; and cannot now seek sanctions premised on Ms. Manduca's supposed noncompliance with a nonexistent Court order on that nonexistent motion to compel. The Court should deny Plaintiffs' Motion.

¹ Plaintiffs' counsel knew State Farm's Protocol Motion was imminent. Counsel for State Farm emailed Plaintiffs' counsel with a request to confer about its Protocol Motion on Friday, July 24, attaching the draft protocol, but was advised that counsel for Plaintiffs was "tied up" and not available to do so until the following Wednesday. State Farm's filing was time sensitive because Your Honor had taken under advisement State Farm's Motion to Quash the depositions of four current or former senior claim personnel, and the Protocol Motion needed to be decided before those depositions occurred. *See* Ex. 1. When, on Monday, State Farm received the ruling from the Court allowing those depositions to proceed, it went forward with filing the Protocol Motion in the hope of having it decided before those depositions occurred. Nonetheless, State Farm advised counsel for Plaintiffs of its continued willingness to confer in an effort to agree to a protocol. In contrast, counsel for Plaintiffs filed their Motion with no effort to confer at all. The Court should deny Plaintiffs' Motion for that reason alone.

BACKGROUND

On June 23, 2026, Plaintiffs deposed Ms. Manduca for a full day - which was 6 hours of actual questions and answers and (improperly) additional time off the record to have her review documents before questioning continued. The deposition was beyond the pale due to conduct by Plaintiffs' counsel that violated Local Rule 28 and the Oklahoma Bar Association's Standards of Professionalism, as detailed in State Farm's Protocol Motion. *First*, counsel continuously interrupted Ms. Manduca, shouted at her, and accused her of being dishonest when she disagreed with his assumptions. (See Protocol Mot. at 3–6.) *Second*, counsel repeatedly - and incorrectly - instructed Ms. Manduca that she could answer his questions only with “yes” or “no,” and threatened to call the Court when she attempted to clarify her answers. (See *id.* at 6–9.) *Third*, he attempted to mislead Ms. Manduca by showing her only selected excerpts of exhibits on screen (placed on a wall far from the witness)—after failing to bring complete hard copies of exhibits to the deposition or to otherwise make full copies visible to her, failing to provide copies to Defendants' counsel, and refusing to allow Ms. Manduca to review the entirety of the exhibits on the record. (See *id.* at 9–11.) This conduct violated Local Rule 28, the Oklahoma Bar Association's Standards of Professionalism, and authority from courts across the country. (See *id.* at 13–20.)

Yet another of counsel's improper questioning was to insist that Ms. Manduca - a lay witness who has not been designated as an expert on the law or on any other matter in this case - answer “yes” or “no” to *legal* hypotheticals with no relation to the facts of the case. As just one of dozens of examples, Plaintiffs' counsel—after being informed by Ms. Manduca that counsel's interpretation of the meaning of a certain phrase in an email was incorrect—insisted that Ms. Manduca admit that, *hypothetically*, if his misinterpretation of the email was in fact correct, that State Farm would have been acting in “bad faith”:

Q: And I'm asking you now a hypothetical question. If [my] statement is true, that would be bad faith.

MR. LEFFEL: Form.

Q: Yes or no?

MR. LEFFEL: Form. Go ahead.

A: Sir, we want to ---

Q: Please.

A: ---pay every claim that we owe---

Q: Please answer my question.

A: ---in good faith.

Q: Yeah.

A: We want to pay every claim---

MR. LEFFEL: Please don't interrupt the witness---

A: --that we owe in good faith, and that is my testimony.

MR. WHITTEN: Objection.

Q: You are not being responsive to the question I am asking. I'm asking you a hypothetical question. You are an insurance expert. That is proper under the Oklahoma rules. So if this says what I stated, that you meant State Farm's opportunity for saving money on future claims was to lower total roof replacements, that would be bad faith; yes or no?

MR. LEFFEL: Objection. Form and to the characterization of the witness as an expert as to the fact. You can go ahead. . . .

A: There should not ever be an intent to reduce indemnity payments. We should pay what we owe.

(Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 102:6–103:21.) Plaintiffs' counsel continued to insist that Ms. Manduca answer other "hypotheticals" throughout the day, and repeatedly instructed Ms. Manduca that she "ha[d] to answer the hypothetical questions." (*See, e.g., id.* at 70:2–71:3.) At one point, counsel threatened to "go to the judge, and ask for an instruction from the judge" that Ms. Manduca was "not cooperating" by purportedly not answering his hypothetical

question whether an insurance company would be operating in “good faith” if it intentionally underpaid some claims after it overpaid others:

Q: You – well, we’re going to come back here. I’m going to go to the judge, and I’m going to ask for an instruction from the judge – you’re not cooperating – but I’m also going to ask for a second deposition. All you have to do is answer the question. You’ve reworded my question. You’ve said, I’ve never seen that. I didn’t ask that.

Isn’t it true that because you owe – you being the insurance company – a duty of good faith and fair dealing? You cannot underpay the claim on Friday, 50 percent, because you allegedly overpaid the claim on Monday, 50 percent? You cannot do that, can you?

MR. LEFFEL: Objection to the commentary and the attempt by this lawyer to intimidate this witness, and I object to the form. Go ahead.

A: Again, what you’re describing is not anything I’ve ever experienced.

(*Id.* at 71:6–24.) Likewise, Plaintiffs’ counsel pressed Ms. Manduca to admit that, hypothetically, denying claims “in whole or in part” could be “fraud”:

Q: Will you answer my question? It started with the word “if” so it is a hypothetical. If State Farm denies claims, either in whole or in part, refuses to pay money that they owe the insureds, that too, can be fraud?

MR. LEFFEL: Form. Go ahead.

A: Again, we should pay every claim that we owe.

(*Id.* at 189:19–190:2.) Plaintiffs now insist that Ms. Manduca and State Farm should be sanctioned because she did not opine about the application of legal principles to made-up facts that have no relation to any evidence in this case.²

² Ms. Manduca’s declination to simply avoid the confrontation and agree to the improper hypotheticals was not only correct procedurally but prudent. As is evident from every brief and oral argument in this case, counsel for Plaintiffs take statements of State Farm and its personnel out of context and convert them to sound bites that do not reflect the truth. So, here, if Ms. Manduca agreed that any hypothetical was fraud, briefing and oral presentation going forward would include claims that State Farm had admitted to fraud.

Despite that Plaintiffs' counsel repeatedly threatened during the deposition to "go to the Court" or "seek sanctions" against Ms. Manduca, Plaintiffs made no motion to such effect for over a month—when they apparently rushed to file it immediately after the filing of State Farm's Protocol Motion. That is, on July 23, 2026, counsel for State Farm notified Plaintiffs' counsel that State Farm intended to request the Court enter a deposition protocol to govern future depositions. On July 24, 2026, counsel for State Farm followed up via email, requesting that Plaintiffs notify State Farm of Plaintiffs' position on that motion and offering to meet and confer. (See Exhibit 1, July 24, 2026 Email from T. Rother.) In response, Plaintiffs' counsel stated that they were "tied up" and could not meet and confer regarding State Farm's proposed motion until "Wednesday" July 29. (See *id.*, July 24, 2026 Email from R. Whitten.) Plaintiffs then filed their Motion on July 28—without notifying State Farm or offering to meet or confer regarding it—one day before the first date they had offered to meet and confer regarding State Farm's Protocol Motion.

ARGUMENT AND AUTHORITY

I. PLAINTIFFS' MOTION FOR SANCTIONS IS PROCEDURALLY IMPROPER.

As an initial matter, the Court should deny Plaintiffs' Motion as being completely without merit but, even more fundamentally, because it is procedurally improper—it seeks sanctions under § 3237 for Ms. Manduca's purported failure to comply with a Court order to answer certain questions that does not exist.

That is, while referencing a number of provisions in their Motion, Plaintiffs specifically request that the Court award sanctions against Ms. Manduca "[u]nder § 3237(A)(3)." (Mot. at 4 (emphasis in original).)³ This is indecipherable. Section 3237(A)(3) is a subsection of Section

³ While Plaintiffs also reference 12 O.S. § 3230(E)(1) at other points in their Motion (which Plaintiffs appear to miscite in places as "3230(D)(1)"), that section addresses "objection[s] to evidence during a deposition." See 12 O.S. § 3230(E)(1). It does not provide an independent basis for sanctions for a deponent who allegedly fails to answer a question. Rather, Section 3237

3237(A), which concerns a “MOTION FOR ORDER COMPELLING DISCOVERY.” *See* 12 O.S. § 3237(A). That section permits a party to “move for an order compelling an answer” where “[a] deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title,” and subsection 3237(A)(3) clarifies that “[f]or purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.” 12 O.S. § 3237(A)(3) (emphasis added). In short, Plaintiffs are seeking sanctions under a Code provision regarding a motion to compel discovery—a provision that, as previously discussed, requires that Plaintiffs first meet and confer and certify compliance (which they did not do). *See* 12 O.S. § 3237(A)(2).

While § 3237(B) provides for sanctions, it does so only where a party “FAIL[S] TO COMPLY WITH COURT ORDER.” *See* 12 O.S. § 3237(B). This is a critical prerequisite that Plaintiffs have entirely failed to satisfy. As courts throughout the country have recognized,⁴ where a deponent allegedly fails to answer questions posed at a deposition, “the proper remedy [is] to file a motion to compel discovery,” *not* a motion for sanctions. *See, e.g., Ramirez v. Olympic Health Mgmt. Sys., Inc.*, No. CV 07-3044-EFS, 2009 WL 10670878, at *3 (E.D. Wash. Aug. 14, 2009) (denying motion to prevent a witness from testifying at trial on a topic where she purportedly “refused to answer questions about the same at her deposition,” holding that “the proper remedy for Plaintiff’s dissatisfaction with [the deponent’s] deposition answers was for [Plaintiff] to file a motion to compel”).

addresses such misconduct, as Plaintiffs recognize by seeking sanctions specifically “under § 3237(A).” (*See* Mot. at 4.)

⁴ Because “[t]he Oklahoma Discovery Code mirrors the Federal rules,” *Meritor, Inc. v. State ex rel. Bd. of Regents of Univ. of Okla.*, 2019 OK CIV APP 64, 451 P.3d 914, 922 n.15, Oklahoma courts often look to “discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code.” *Crest Infiniti, II, LP v. Swinton*, 2007 OK 77, ¶ 2, 174 P.3d 996, 999. *See also A-Plus Janitorial & Carpet Cleaning v. Employers’ Worker’s Comp. Ass’n*, 1997 OK 37, 936 P.2d 916, 928 (“The terms of 12 O.S.1991 § 2018(C) and (D) are identical to Federal Rule 42, Fed. R. Civ. P.”).

For example, in *R.W. International*, the trial court improperly awarded a dismissal sanction under Federal Rule of Civil Procedure 37(b)(2)⁵ against plaintiffs for, *inter alia*, plaintiff's sole shareholder's "refus[al] to answer certain questions that were asked [at his deposition] regarding the tax-exempt status of plaintiff." *R.W. Int'l Corp. v. Welch Foods, Inc.*, 937 F.2d 11, 14 (1st Cir. 1991). The First Circuit Court of Appeals reversed, holding that the trial court *had no authority to impose sanctions under Rule 37(b)(2) where there was no order compelling answers to the questions in dispute*—despite that the Court had previously entered a scheduling order including the deponent's deposition. *See id.* at 14–16. As the First Circuit held, "[t]he rule's language clearly requires two things as conditions precedent to engaging the gears of the rule's sanction machinery: a court order must be in effect, and then must be violated, before the enumerated sanctions can be imposed." *Id.* at 15. "The taxonomy of Rule 37 is progressive. If an order to answer is issued under Rule 37(a), and then disobeyed, Rule 37(b)(2) comes into play, authorizing the trial court to impose further sanctions." *Id.* In *R.W. International*, because "no Rule 37(a) order to compel answers to [the deposition questions] was extant," defendants' motion for sanctions was premature, and "the district court's premature resort to Rule 37(b)(2) cannot be upheld." *Id.* The same analysis applies here:⁶ Plaintiffs are improperly seeking sanctions under § 3237(B) for purported violation of a nonexistent Court order—and any reconceptualization of their Motion as a "motion

⁵ Plaintiffs concede that 12 O.S. § 3732(B)(2) is "patterned after Rule 37(b)(2) of the Federal Rules of Civil Procedure" and that "federal jurisprudence [regarding Rule 37(b)(2)] is instructive when interpreting the Oklahoma provisions." (Mot. at 3, quoting *Barnett v. Simmons*, 2008 OK 100, ¶ 16.)

⁶ Notably, the First Circuit in *R.W. International* also rejected the argument that a general scheduling order could substitute for "an order to answer specific deposition questions." *See* 937 F.2d at 16. As such, Plaintiffs cannot point to the order compelling Ms. Manduca's deposition as a substitute to the requirement that they move to compel answers to specific questions under § 3237(A) before seeking sanctions under § 3237(B).

to compel” under Rule 3237(A) fails because, as previously discussed, they have failed to satisfy the Section’s unambiguous meet-and-confer requirement. *See* 12 O.S. § 3237(A)(2).

Oklahoma law interpreting § 3237 is in accord. For example, in *Helton v. Coleman*, the Oklahoma Supreme Court addressed a situation in which sanctions were imposed on defendant’s counsel “under the discovery code” for purported misconduct during trial. 1991 OK 43, ¶¶ 2, 8. The Supreme Court held that the trial court was “without authority under the discovery code to impose [such sanctions],” because “[t]here is no indication that [plaintiff] first moved for and obtained a court order compelling discovery as is required by the statute.” *Id.* ¶¶ 10, 11.

Indeed, the sole case Plaintiffs cite in the portion of their motion discussing “The Appropriate Sanction,” *Barnett* (*see* Mot. at 7), involves a situation in which defendants sought sanctions under § 3237 *after* defendants first “filed a motion to compel production of plaintiff’s hard drive” and *after* the trial court “orally granted the motion to compel” and “a minute order was entered.” *See id.* 2008 OK 100 ¶¶ 4, 5. In *Barnett*, the Oklahoma Supreme Court specifically recognized that “[a] motion to compel is a prerequisite to sanctions being imposed under § 3237.” *Id.* ¶ 14, citing *Helton*, 1991 OK 43. Further, the Supreme Court made clear that “§ 3237 sanctions must be based upon the failure to obey an order of the court.” *Id.*, citing *Martin v. Johnson*, 1998 OK 127 ¶ 37, 975 P.2d 889, 899.⁷ *Barnett*, which controls here, requires denial of Plaintiffs’ procedurally improper motion under Section 3237.

⁷ While the *Barnett* court also recognized that a trial court also “has the power to sanction for abusive litigation practices or for abuse of judicial process, even if an order compelling discovery has not been made,” *see* 2008 OK 100, ¶ 14, Plaintiffs premise their sanctions motion as to Ms. Manduca on a purported failure to answer questions under § 3237(A), and have not provided any evidence supporting the assertion that State Farm, its counsel, or Ms. Manduca engaged in “abuse of the discovery process.”

II. THE COURT SHOULD DENY PLAINTIFFS' MOTION BECAUSE THERE IS NO OBLIGATION FOR A LAY WITNESS TO ANSWER HYPOTHETICAL LEGAL QUESTIONS WITH NO RELATION TO THE FACTS OF THIS CASE.

Even if Plaintiffs' Motion were procedurally cognizable, the Court should deny it because it is entirely too vague to demonstrate precisely what Ms. Manduca failed to answer and leaves it to the Court and State Farm to sort it out, though State Farm does not believe she failed to answer questions at all. Much of what Plaintiffs point to appears based on Ms. Manduca's refusal to answer hypothetical questions calling for a legal conclusion (*see, e.g.*, Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 102:6–103:21; *id.* at 71:6–24; *id.* at 189:19–190:2)—but the law has no such requirement.

It is improper to ask a lay witness such as Ms. Manduca to opine about hypothetical questions regarding facts not in evidence. That is, 12 O.S. § 2701 provides that where a witness “is not testifying as an expert, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences which are” (1) “[r]ationally based on the perception of the witness,” (2) “[h]elpful to a clear understanding of his testimony or the determination of a fact in issue,” and (3) “[n]ot based on scientific, technical or other specialized knowledge within the scope of Section 2702 of this title [for witnesses qualified as an expert].” 12 O.S. § 2701. Asking Ms. Manduca—who is not an expert, and who State Farm is not offering as an expert—questions about whether hypothetical situations would constitute “bad faith” or “fraud” is not a good faith attempt to obtain evidence that would be admissible at trial.⁸

Nor are counsel's hypothetical legal scenarios ones that Ms. Manduca was required to answer. While “[t]here is no prohibition against asking hypothetical questions of a lay witness

⁸ Indeed, Plaintiffs' counsel suggested he was well aware of this rule—insisting, wrongly, that he could ask hypothetical questions because Ms. Manduca was an “insurance expert.” (*See* Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 103:3–6.) But a deponent does not become an “expert” simply on counsel's say so.

during a deposition,” *Miller v. Vill. of Pinckney*, No. A 07-CV-10928-DT, 2008 WL 4190619, at *1 (E.D. Mich. Sept. 9, 2008), “such questions ‘must be **based upon facts of record.**’” *Id.*, quoting *Williams v. Thomas Jefferson Univ.*, 54 F.R.D. 615, 617 (E.D. Pa. 1972) (emphasis added). “Questions based upon facts not established or an incomplete statement of the facts are not proper.” *Miller*, 2008 WL 4190619, at *1, citing *Williams*, 54 F.R.D. at 617. Where counsel asks a lay deponent hypothetical questions based on an incomplete statement of the facts or facts not established in the record, **the deponent is not required to answer.** See, e.g., *Miller*, 2008 WL 4190619, at *1 (denying “Plaintiff’s request to have Defendant appear at another deposition” where the Defendant purportedly failed to answer incomplete hypotheticals).

For example, in the recent *Howira v. New York City Health and Hospital Corporation*, the appellate court upheld a lower court’s denial of a motion for sanctions nearly identical to Plaintiffs’ here. See 249 A.D. 3d 506, 507 (N.Y. App. Div. 2026). In *Howira*, the plaintiff sought sanctions for “defense witness’s purported refusal to answer deposition questions.” *Id.* The trial court denied the motion, finding the deposition questions “inappropriate, either because they were vague, confusing, or of unclear or marginal relevance; because they called for the deponent medical professional to opine about a conduct or standard of care applicable not to themselves but to other medical professionals; or **because they asked hypothetical scenarios not before the deponents.**” *Id.* (emphasis added). The appellate court upheld the trial court’s determination, finding that the trial court had “properly denied plaintiff’s motion that was directed at deposition testimony.” *Id.* The same reasoning applies here. Asking Ms. Manduca to opine on the legal import of factual scenarios that Plaintiffs’ counsel admitted were **not** based on record evidence is improper, and there is no basis to support sanctions for alleged failure to answer such questions. See *id.*

III. PLAINTIFFS FAIL TO IDENTIFY ANY QUESTIONS THAT MS. MANDUCA DID NOT ANSWER.

Finally, and in any event, Plaintiffs' Motion fails to identify *any* specific question Ms. Manduca failed to answer.⁹ Despite claiming that there were "numerous occasions" on which Ms. Manduca purported were "evasive" or "provid[ed] no answer at all" (Mot. at 4), Plaintiffs cite only three specific examples of Ms. Manduca's purported failure to answer. As to each, Plaintiffs omit important context confirming that Ms. Manduca properly answered the question:

- **First**, Plaintiffs incorrectly assert that Ms. Manduca failed to answer whether "State Farm cannot lower claims before they happen." (Mot. at 4, citing N. Manduca Dep. Tr. at 106:18–25.) As previously noted, such question is an improper hypothetical question to a lay witness, and no answer was required. *See supra* at Section III. Regardless, Plaintiffs omit that upon follow-up questioning, Ms. Manduca confirmed that "[State Farm] cannot operate in that manner." (See Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 108:1–109:3.) Plaintiffs' counsel may not have been satisfied with the precise wording of that answer, but there can be no dispute that Ms. Manduca answered counsel's question.
- **Second**, Plaintiffs point to a question from counsel regarding whether Ms. Manduca wrote explanatory information in an email. (See Mot. at 4, citing N. Manduca Dep. Tr. at 275:12–15.) To be sure, the email (which Plaintiffs' counsel used as an

⁹ Plaintiffs also suggest that they are seeking sanctions against State Farm's counsel for "speaking, coaching, and suggestive objections." (See Mot. at 2 n.1.) But similarly, they fail to identify any such improper objections—let alone provide evidence that any objection was sanctionable. Further, it is inappropriate to sanction counsel for objections where "nothing in the deposition transcript demonstrates . . . that counsel acted for [an] inappropriate purpose." *See, e.g., Ollison v. Wexford Health Sources, Inc.*, 337 F.R.D. 165, 173 (C.D. Ill. 2010) (declining to award sanctions for defending counsel's improper objections where there was no evidence counsel's objections were "made in bad faith or for some other, illegitimate reason").

exhibit) speaks for itself, and a question about what is or is not written in the email is completely unnecessary. But again, Ms. Manduca answered the question—in *the very next follow-up question*, in which Plaintiffs’ counsel asked Ms. Manduca to confirm that “[t]he context is not written on the page.” Ms. Manduca responded, “It’s not written on the page that our claim volume was down and the severity of that claim volume was lower.” (See Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 275:16–23.)

- Finally, Plaintiffs point to an example of one (of many questions) at the deposition in which Plaintiffs’ counsel insisted, wrongly, that Ms. Manduca was required to answer a compound, vague, and confusing question with a “yes or no” answer. (See Mot. at 4–5, citing N. Manduca Dep. Tr. at 327:13–16.) Plaintiffs’ Motion omits the full question, which vaguely and confusingly states:

Q: And what I said isn’t commentary. It’s true. I’m saying to you today because I can read it and the jury can read it, “Results are reflective of improved quality claim handling behaviors in identifying wind and hail damage to roof surfaces.” So I have a couple of points I want to ask you about separately. Number one, the words you just said in your defense, oh, the numbers are going down. It doesn’t say that. Your explanation is not reflected in this document, is it? Yes or no, please, ma’am?

(Protocol Motion at Ex. 2, N. Manduca Dep. Tr. at 327:1–11.) Plaintiffs further omit that any cognizable question from this diatribe *was already asked and answered*—counsel’s prior question demanded that Ms. Manduca confirm whether the email in question “doesn’t say anything about claim volume went down,” and Ms. Manduca answered, “It does not state that there.” (*Id.* at 326:17–24.) Plaintiffs’ counsel’s attempt to “gild the lily” by asking the same question a different way does not entitle him to a different answer.

To the extent Plaintiffs are complaining about any other purported “failure to answer” or “evasive” answer, it is incumbent upon Plaintiffs to identify the specific question and answer about which they are complaining, rather than simply labeling unidentified answers as “evasive” or “nonresponsive.” In this vein, it is telling that Plaintiffs’ apparent best “examples” of Ms. Manduca’s answers only underscore counsel’s misconduct and do not show any failure to answer by Ms. Manduca—and certainly nothing that rises to the level of sanctionable misconduct.¹⁰

IV. IN THE ALTERNATIVE, THE COURT SHOULD SUMMARILY DENY PLAINTIFFS’ MOTION BECAUSE PLAINTIFFS FAILED TO MEET AND CONFER OR SUBMIT A CERTIFICATION IN ACCORDANCE WITH 12 O.S. § 3237.

Finally, and in the alternative, the Court should deny Plaintiffs’ Motion outright because Plaintiffs failed to meet or confer with State Farm, or certify they had done so, before filing their Motion. Plaintiffs contend that they are seeking relief under “12 O.S. § 3237.” (Mot. at 1; *see also id.* at 4 (seeking sanctions “under § 3237(A)”).) In particular, they assert that they are entitled under Section 3237 “to move for an order compelling discovery when ‘a deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title.’” (*Id.* at 2, citing 12

¹⁰None of the cases Plaintiffs cite in their Motion are at all applicable—and they concern egregious misconduct unlike the answers here. *See, e.g., GMAC Bank v. HFTC Corp.*, 248 F.R.D. 182, 189–90 (E.D. Pa. 2008) (awarding sanctions where deponent repeatedly failed to respond to questions, derided and insulted counsel taking the deposition, and used inappropriate language); *Van Pilsum v. Iowa State Univ. of Sci. & Tech.*, 152 F.R.D. 179, 180 (S.D. Iowa 1993) (awarding sanctions where counsel defending the deposition, *inter alia*, “engaged in *ad hominem* attacks on [opposing counsel’s] ethics, litigation experience, and honesty” and due to the defending counsel’s interruptions “there are numerous instances where the reporter is required to read back a question due to the length of time between the question and the witness’ opportunity to answer”); *Unique Concepts, Inc. v. Brown*, 115 F.R.D. 292, 293–94 (S.D.N.Y. 1987) (awarding sanctions where counsel defending the deposition engaged in “outrageous obstructions,” including “*ad hominem* attacks on opposing counsel,” “constant interruptions,” “speech[es],” and improper “question[s] to the examiner”); *DeVillie v. Givaudan Fragrances Corp.*, 419 F. App’x 201, 204 (3d Cir. 2011) (upholding sanctions against an attorney defending an expert’s deposition where the attorney “went beyond suggesting an answer [to the deponent] and amounted to testifying for the expert witness throughout the deposition testimony.”) (alterations and quotations omitted).

O.S. § 3237(A)(2).) Plaintiffs omit, however, that Section 3237(A) contains a meet-and-confer requirement, providing that any such motion “*must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action.*” 12 O.S. § 3237(A)(2) (emphasis added).

Plaintiffs’ Motion contains no such certification. Nor could it, because Plaintiffs’ counsel made no effort whatsoever to confer with State Farm regarding the Motion before they filed it. In fact, Plaintiffs’ counsel, when they learned on July 23 and 24 of State Farm’s intent to move for entry of a deposition protocol due to Plaintiffs’ counsel’s misbehavior at Ms. Manduca’s deposition, insisted that *they could not meet and confer regarding State Farm’s motion until July 29th at the earliest.* (See Ex. 1, July 24, 2026 Email from R. Whitten.) Plaintiffs then filed their Motion on July 28—a day that Plaintiffs’ counsel claimed they were “tied up” and *not* available to meet or confer. (See *id.*)

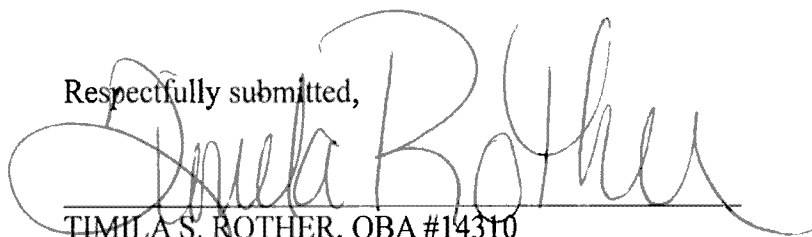
This is the conduct that § 3237 was designed to prevent. Federal courts interpreting the equivalent Federal Rule of Civil Procedure 37(a) have routinely denied discovery motions where the movant failed to certify compliance with the meet-and-confer requirement. See, e.g., *Blackburn v. United States*, No. CIV-22-983-G, 2026 WL 937941, at *1 (W.D. Okla. Apr. 7, 2026) (denying plaintiff’s motions to compel that “include no such [meet-and-confer] certification”); *Mathis v. Standard Fire Ins. Co.*, No. CIV-25-207-SLP, 2026 WL 373248, at *6 (W.D. Okla. Feb. 10, 2026) (denying plaintiff’s motion to compel where plaintiff “failed to demonstrate meaningful compliance” with the meet-and-confer requirement); *Rigdon v. Flowserve Corp.*, No. 16-CV-81-GKF-FHM, 2017 WL 2821939, at *1 (N.D. Okla. June 29, 2017) (agreeing “it would be appropriate to deny [movant’s] motion for its failure to engage in the good faith conference

required” and “denying the motion on its merits”); *Johnson v. Old Republic Ins. Co.*, No. 10-CV-460-JHP-FHM, 2012 WL 1672995, at *2 (N.D. Okla. May 14, 2012) (denying plaintiff’s motion to compel where plaintiff’s counsel did not “personally [meet] and confer[] in good faith in a sincere attempt to resolve their differences over discovery”). As these courts have noted, “[t]he failure to engage in a meaningful meet and confer process is wasteful of the parties’ resources and those of the court.” *Bush for Est. of Garland v. Bowling*, No. 19-CV-98-GKF-FHM, 2020 WL 3073093, at *1 (N.D. Okla. June 10, 2020). Plaintiffs’ Motion should likewise be denied.

CONCLUSION

For the reasons set forth herein, State Farm thus respectfully requests that the Court deny Plaintiffs’ Motion for Discovery Sanctions.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served by U.S. Mail, postage prepaid, this 17th day of August, 2026, to:

Reggie N. Whitten
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Timila S. Rother

Timila S. Rother

From: Timila S. Rother
Sent: Monday, July 27, 2026 2:42 PM
To: Reggie N. Whitten
Cc: Michael Burrage; Blake Sonne; Hannah Whitten; John Sanders; Brad Burgess; Colby Stephenson; Lance Leffel; Mike Angelovich; Brad Beskin
Subject: RE: West v. State Farm - Deposition Protocol

Reggie,

Thank you for your email especially if you were out of the office and I hope you had a good weekend.

I wish we had the benefit of more time. However, we received the Court's Order denying our Motion to Quash the depositions of Ress, Herbert, Moss and Welsh today and we need to start the process for decision on the Deposition Protocol in the event we are unable to reach agreement, which seems a possibility given the history here. I can confer on Wednesday afternoon and I think Lance can as well. However, we will go ahead and file in *West* and then we can amend if we reach a partial or full agreement. What time Wednesday works for your team? Lance and I are available after 2:00.

Also, we need to file portions of the brief and exhibits under seal given the inclusion of discussion of confidential documents. Given your pending motion to set aside the PO I assume you will object to that but I wanted to confirm.

Thanks
Timila



Timila S. Rother
Shareholder/Director
405.235.7757



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From: Reggie N. Whitten <rwhitten@whittenburrage.com>
Sent: Friday, July 24, 2026 4:06 PM
To: Timila S. Rother <timila.rother@crowedunlevy.com>

Cc: Michael Burrage <mburrage@whittenburrage.com>; Blake Sonne <bsonne@whittenburrage.com>; Hannah Whitten <hwhitten@whittenburrage.com>; John Sanders <jsanders@whittenburrage.com>; Brad Burgess <brad@burgess-hightower.com>; Colby Stephenson <colby@burgess-hightower.com>; Lance Leffel <lleffel@gablelaw.com>; Mike Angelovich <mangelovich@npraustin.com>; Brad Beskin <bbeskin@whittenburrage.com>
Subject: Re: West v. State Farm - Deposition Protocol

ALERT: Email contains attachments from external sender. Be cautious.

Timila, most of us are off today. Blake and Hannah are both out of state.

We are all tied up Monday and Tuesday, but are happy to meet and confer Wednesday. What time Wednesday works for you?

Reggie

Sent from my iPad

On Jul 24, 2026, at 1:10 PM, Timila S. Rother <timila.rother@crowedunlevy.com> wrote:

Counsel,

I mentioned at the hearing yesterday that we intend to ask the Court to enter a deposition protocol to govern future depositions. Given the pending request for depositions of several other senior level individuals and not knowing how the Court will rule on our motions to quash (and given the anticipated future deposition of claim personnel either way), we believe this is time sensitive and so plan to file a motion for its entry on Monday. A draft is attached. Please let me know if you agree to the entry of this protocol. We are happy to confer about it by phone this afternoon if productive. Of note, and Lance is copied as Hursh may be the most imminent example, State Farm anticipates it may file for the entry of this protocol in other cases where senior level depositions are pending or where they are ordered in the future, and also perhaps more broadly for claim handling personnel depending on the case and circumstances.

Thanks
Timila

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Timila S. Rother

Shareholder/Director

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<2026-07-23 Proposed Deposition Protocol(6306931.1).docx>