

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

**American Board of Internal
Medicine,**

Plaintiff,

-v.-

Jaime Salas-Rushford, M.D.,
Defendant.

Civil No. 3:19-cv-01943 (FAB)

Objections to Deadlines due to Completion of Discovery

To the Honorable Court:

Comes now Defendant, Jaime A. “Jimmy” Salas Rushford, MD, and, pursuant to the Order of November 7, 2019 (Doc 191), respectfully objects to the deadlines set forth in that document. Specifically, for the reasons explained below, the deadlines in the following table should be removed as unnecessary, with the remainder moving forward:

Unnecessary deadlines	
December 3, 2019	Amend pleadings and add parties
December 3, 2019	Conclusion of pleadings stage
No later than 21 days before the Initial Scheduling Conference	Rule 26(f) conference
No later than 14 days after the Rule 26(f) Conference	Initial disclosures – Rule 26(a)(1)
January 17, 2020	Joint report of Rule 26(f) meeting Joint Case Management Memorandum
January 31, 2020 at 9:00 am	Initial Scheduling Conference
May 29, 2020	Motions to dismiss
October 30, 2020	Conclusion of discovery

Salas-Rushford Objections to Deadlines

The case at bar is old. It started as the Counterclaims and Third-Party Complaint, filed on September 22, 2015 (Doc 33),¹ for a case filed by the American Board of Internal Medicine (ABIM) against Dr. Jimmy Salas-Rushford on October 21, 2014. (Doc 1).

The joint Answer of ABIM and the ABIM Individuals (Third-Party Defendants Richard J. Baron, Christine K Cassel, David L Coleman, Eric S Holmboe, Lynn O Langdon, Naomi P. O'Grady, and Joan M Van Feldt) to the Counterclaims and Third-Party Complaint was filed on September 19, 2016. (Doc 121).

The facts surrounding the case are even older than the original filing date of October 2014 might imply at first glance. ABIM's malicious breach of contract and commercially disparaging conduct under 15 USC § 1125(a) against Dr. Salas Rushford, along with the tortious conduct of ABIM and the ABIM Individuals, started in the 2012-14 period with effects lasting to this day. But many of the crucial facts that provide context to the case, including Dr. Salas Rushford's first-rate professional behavior and ABIM's incompetent management of its board certification process, date as far back as 2009 or even earlier.

We worry that evidentiary problems, particularly witness memory problems, may arise or be exacerbated if we do not proceed to trial sooner than established in the deadlines of the November 7 Order.² Such loss of evidence, particularly of evidence in favor of Dr. Salas Rushford, is already a problem in this case because ABIM only apprised Dr.

¹ Pursuant to the Order of September 16, 2015. (Doc 31).

² The order contemplates a summary judgment stage in December 2020 and a trial process in March and April 2021.

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Salas Rushford of the alleged problems that gave rise to this controversy in May 2012, even though they were aware of the general issue in late 2009 and mid-2010.³

Dr. Salas-Rushford conclusively won ABIM's case against him in the District of New Jersey, although what we believe to be a frivolous appeal by ABIM is pending before the Third Circuit. Upon that victory, and because Dr. Salas-Rushford had always objected to the jurisdiction of the New Jersey District Court and considering that Puerto Rico law controls many of the claims, among other reasons, the District of New Jersey granted his motion to transfer his Counterclaims and Third-Party Complaint as an independent case to this District. (Doc 173 and see Doc 181 affirming). The caption may state otherwise, but Dr. Jimmy Salas-Rushford is in fact the plaintiff in this case.

The District of New Jersey already ruled on jurisdiction and venue as part of the transfer process, finding both proper in this District. (Doc 173, p. 5–7).

Discovery in this case was opened on April 6, 2015. (Doc 19). In the process, it was vigorously litigated, in the District of New Jersey. The Opinion and Order of September 8, 2017 (Doc 173) summarizes it as follows: “[t]he case then proceeded through discovery in this District, with the parties bringing a steady flow of disputes to the Court’s attention. E.g., ECF Nos. 40, 45-65, 69, 74-75, 78-86, 95-100, 103-16, 120-22, 125-26, 131.” Opinion and Order at p. 3. (Doc 173).

³ See for example, the Opinion of June 6, 2019 noting that “[t]he ABIM-Arora action settled and was dismissed in mid-2010.” (Doc 181, p. 2).

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Factual discovery was supposed to end on September 30, 2015. (Doc 19). The fact discovery deadline was postponed first to November 23, 2015 (Doc 31), then to February 29, 2016 (Doc 51), then to May 31, 2016 (Doc 62), and finally to September 15, 2016. (Doc 101).

A total of five depositions were held, two called by us and three by them:

1. Deposition of Dr. Rajender K. Arora (the ABIM board certified doctor who ran an ABIM board certification test review course for at least 15 years, of which Dr. Salas Rushford attended the one held at the Graduate Center of the City University of New York in May 2009 and to whom he continued asking exam advice until his test on August 2009), was held on January 21, 2016 and conducted by counsel for Dr. Salas Rushford.
2. Deposition of Dr. Jaime A. Salas Rushford, was held on June 28, 2016 and conducted by counsel for ABIM and the ABIM Individuals.
3. Deposition of Ariel Benjamin Mannes (a former police officer fired for misconduct and convicted of impersonating a police officer, who was serving as ABIM's head of exam security during all relevant times), was held on June 29, 2016 and conducted by counsel for Dr. Salas Rushford.
4. Deposition of Dr. Geraldine Luna (Dr. Salas Rushford's former colleague for about a year who paid ABIM \$15,000 to keep her board certification, promised to testify against others despite admitting to violating the certification exam rules), was held on September 14, 2016 and conducted by counsel for ABIM.

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5. Deposition of Mr. Daniel Lifton (in his capacity as CEO of Quality of Life Laboratories which put a contract with Dr. Salas Rushford on hold due to ABIM and the ABIM Individual's certification-related actions against him) was held on October 24, 2016 and conducted by counsel for ABIM.

Expert discovery was ordered to end on December 16, 2016. (Doc 101). Expert reports were exchanged. Motions to strike the expert reports were filed by both sides. ABIM and the ABIM Individuals filed one on November 17, 2016 which was fully briefed. (Docs 134, 139, 140). Dr. Salas Rushford filed another on the same date which was also fully briefed. (Docs 135, 137 or 138, 141). Finally, ABIM filed a third motion to strike on December 23, 2016, also fully briefed. (Docs 142, 143, 147). These motions were all terminated "without prejudice as unripe for disposition in light of the pending motions to dismiss and transfer" on June 29, 2017. (Doc 172). Dismissal and transfer having been resolved, we request that this Court take up ours at Doc 135 or allow us to refile it.

ABIM and the ABIM Individuals filed a Motion to Dismiss pursuant to Rule 12(c) on April 21, 2017. It was fully briefed by May 8, 2017 (Docs 164, 168, 169, 171), and is currently pending resolution by this Court.

Pursuant to the Order of June 6, 2016 (Doc 101), the Court a First Final Pretrial Conference on November 9, 2016. A second final pretrial conference was scheduled for January 11, 2017 (Doc 132), but it was later adjourned (Doc 144), and never rescheduled due to the dismissal of one claim and the transfer of the remainder.

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There being a few matters pending, and understanding that it will reasonably take the Court some time to become familiar with the voluminous docket, we suggest the following schedule:

Suggested Schedule	
On or before February 28, 2020	Court will consider outstanding matters, including those allowed to be refiled as described above.
March 31, 2020	Motions for Summary Judgment
June 30, 2020	Proposed Joint Pretrial Order Proposed <i>voir dire</i> Preliminary and final jury instructions
August 2020 (date according to Court's calendar)	Pretrial and Settlement Conference
August 2020 (dates according to Court's calendar)	Trial

DATED: November 26, 2019

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