Plaintiff subpoenaed Jonathan Spence, Marion Fox, Lily Chandler, and Tabitha Rose Marks seeking to depose these parties. Non-parties Jonathan Spence and Marion Fox filed separate motions for protective orders on August 31, 2017, and October 20, 2017, respectively. Non-parties Lily Chandler and Tabitha Rose Marks filed their joint motion for a protective order on June 12, 2017.

Fox seeks a protective order under Code of Civil Procedure sections 2017.020, 2019.030, 2023.010, and 2025.420 requesting that the deposition of Marion Fox: (1) be taken at a different time after the December 5, 2017 hearing on Defendants' pending motion for summary judgment (Code of Civil Procedure Section 2025.420(b)(1)); (2) that matters protected by Fox's right to privacy not be inquired into (Code of Civil Procedure Section 2025.420(b)(9)); and (3) all of the writings or tangible things designated in the deposition notice not be produced (Code of Civil Procedure Section2025.420(b)(11)).

Spence seeks a protective order under Code of Civil Procedure sections 2017.020, 2019.030, 2023.010, and 2025.420 requesting that Spence's deposition: (1) be taken at a different time, after the December 5, 2017 hearing on Defendants' pending motion for summary judgment (Code of Civil Procedure Sections 2025.420(b)(l)); (2) be taken at the offices of Spence's counsel in Los Angeles (Code of Civil Procedure Sections 2025.420(b)(4)); and (3) matters protected by Spence's right to privacy not be inquired into (Code of Civil Procedure Sections 2025.420(b)(9)).

Lily Chandler and Tabitha Rose Marks seek a protective order pursuant to Code of Civil Procedure section 2025.420, on the grounds that justice requires the issuance of such an order for the following reasons: (1) to protect Lily and Tabitha from unwarranted annoyance, embarrassment, or oppression; (2) to allay legitimate fears for their personal safety based upon documented current and historical events; and (3) to prevent the unwarranted invasion of their constitutional privacy rights. (Britt v. Sup. Ct. (1978) 20 Cal.3d 844.) Chandler and Marks request a protective order that the depositions not go forward at all.

LEGAL STANDARD

General protective order

"The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc., § 2017.020(a).)

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2017.020(b).)

Protective order for depositions

"Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc., § 2025.420 (a).) "The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2025.420(b).)

Finally, "[t]he court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.420(h).)

ANALYSIS

A. Meet and confer

Counsel for Chandler and Rose Marks filed a declaration in support of the motion for a protective order. Counsel asked Plaintiff to withdraw the subpoenas as they violated non-parties Chandler and Rose Marks' constitutional right to privacy. On October 18, 2016, Plaintiff informed counsel that he would not withdraw the subpoenas, but did not agree to meet and confer as to privacy issues.

Counsel for Fox met and conferred with Plaintiff outside of the Department M courtroom. (Hardy Decl. ¶ 5.) Plaintiff refused to limit the scope of the deposition and refused to reschedule the deposition until after the hearing on the motion for summary judgment, and thus failed to reach an agreement on the subpoena.

Counsel for Spence attempted to meet and confer with Plaintiff prior to filing this motion. Counsel for Plaintiff refused to engage in telephonic meet and confer efforts.

A. *Whether moving parties have shown that there is good cause to issue a protective order to prevent unwarranted annoyance, embarrassment, or oppression, or undue burden and expense*

In general, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) "[T]he party opposing discovery has an obligation to supply the basis for this determination." (Williams v. Superior Court (2017) 3 Cal.5th 531, 549; Nativi v. Deutsche Bank National Trust Co. (2014) 223 Cal.App.4th 261, 318 ["Where a party must resort to the courts, "the burden is on the party seeking the protective order to show good cause for whatever order is sought. [Citation.]""]. "Code of Civil Procedure section 2025.420, subdivision (b), provides a *nonexclusive* list of permissible directions that may be included in a protective order. (Cf. Code Civ. Proc., § 2031.060, subd. (b).)" (Nativi v. Deutsche Bank National Trust Co. (2014) 223 Cal.App.4th 261, 316.). '"The concept of good cause . . . calls for a factual exposition of a reasonable ground for the sought order.' [Citations omitted.]" (Goodman v. Citizens Life & Cas. Ins. Co. (1967) 253 Cal.App.2d 807, 819.)

Fox and Spence

Non-parties Fox and Spence both argue that there is good cause to grant the requested protective orders because Plaintiff seeks information that is protected by their constitutional right to privacy. The California Constitution expressly provides that all people have the inalienable right to privacy. (Cal. Const., art. I, § 1; see also American Academy of Pediatriacs v. Lungreen, (19970 16 Cal. 4t§h 307, 325-26 (the California Constitution expressly recognizes a right to privacy and is considered broader than the implied federal right to privacy.) When a person objects on the grounds of privacy, he or she must demonstrate disclosure of the requested information would invade a legally protected privacy interest. (See Alch v. Superior Court (2008) 165 Cal.App.4th 1412, 1423.) If the discovery invades a cognizable privacy interest, the proponent of the discovery must demonstrate the information sought is directly relevant to a claim or defense so that the court can evaluate the extent that the requested information would further legitimate and important competing interests. (Id. at 1426-1427, 1433.) If the information sought is directly relevant, the court must balance the right to privacy against the countervailing right to discover relevant information to litigate the case in determining whether to permit discovery. (Id. at 1426-27.) Discovery of medical, psychotherapeutic, and sexual histories are within a person's constitutionally protected zone of privacy. (Bearman v. Superior Court (2004) 117 Cal.App.4th 463, 473 [medical history]; Scull v. Superior Court (1988) 206 Cal.App.3d 784, 788-789 [information as to psychotherapy protected under the California Constitution]; Barbara A. v. John G. (1983) 145 Cal.App.3d 369, 380 [while not absolute, the constitutional right to privacy extends to all matters relating to marriage, family, and sex].) Nonlitigants are afforded more protection than litigants from discovery of private information. (Britt v. Superior Court (1978) 20 Cal.3d 844, 858-859.)

Here, Wade Robson's deposition subpoena is silent as to the information it seeks from Jonathan Spence. The deposition subpoena for Marion Fox contains two document requests: (1) "Any and all photographs in your possession, custody or control of your son, Jonathan Spence, taken while he was 3 through 18 years age;" and (2) "Any and all photographs in your possession, custody or control depicting Michael Jackson." (See Ex. 1 to Hardman Decl. ISO Marion Fox's motion for protective order.) In the oppositions to the Spence and Fox motions, Plaintiff Robson states that he seeks information related to whether Spence knew or interacted with Michael Jackson during childhood and onward, including alleged sexual interactions. This information is constitutionally protected. The burden therefore shifts to Plaintiff to demonstrate that the information sought is directly relevant to a claim or defense and essential to the fair resolution of their lawsuit. (See Alch, 165 Cal.App.4th at 1426-1427, 1433; Brit, 20 Cal.3d at 859.)

The Court sustained all objections to the Finaldi and Reilley declarations based upon hearsay, lack of foundation, lack of personal knowledge and speculation. As such, Plaintiff fails to present admissible evidence demonstrating that he seeks information from these witnesses that is directly relevant to his own claims. Therefore, Plaintiff fails to meet his burden as to information sought from Spence and Fox. Even if this evidence was admissible, however, the Court would still conclude that Plaintiff has failed to demonstrate that he seeks information directly relevant to his own claims of sexual abuse. Plaintiff's do not contend that these witnesses are percipient witnesses or have direct knowledge of his sexual abuse, but are seeking evidence that would corroborate his own allegations. This is an insufficient basis to compel third parties to discuss such highly sensitive and protected private information. The Court is hard pressed to identify information that is more sensitive or private than childhood sexual abuse. Even if the evidence submitted by Plaintiff was admissible, the Court would still grant Spence and Fox's motions for a protective order because the stated desire for corroboration of Plaintiff's own sexual abuse is not directly relevant to his claims or essential to the resolution of his case.[1]

As to the request that the deposition be taken after the summary judgment hearing, that request is moot since the motion was heard in December of 2017 and since the Court of Appeal reversed the ruling on statute of limitations grounds.

Here, non-parties Spence and Fox have shown good cause to prevent their depositions from covering topics that infringe upon their rights to privacy. Since Plaintiff has failed to show that the information sought is directly relevant, and since Fox and Spence demonstrated that Plaintiff seeks to discover information that is constitutionally protected, the motions for a protective order as to Spence and Fox are GRANTED. Fox is not required to produce the documents request in the subpoena since those requests are overly broad and irrelevant. Plaintiff may not inquire into any matters that are protected by Fox or Spence's constitutional rights to privacy, including but not limited to their medical, psychotherapeutic, and sexual histories.

In addition, the Court denied the motion for contempt as to Marion Fox on November 16, 2017. The Court stated, "It is clear to the Court that she was unable to appear and Plaintiff was advised." (See 11/16/2017 Minute Order.) The Court continued the motion to the extent that the deposition needed to be compelled. Given the global pandemic, to the extent that the depositions go forward, the deposition should be conducted remotely as permitted by Emergency Rule 11, i.e. that the deponent is not required to be in the same room as the deposition officer, or depositions should be conducted with social distancing, or if agreeable to the parties, they can occur at the moving parties' counsel's offices. The OSCs re contempt are MOOT/DENIED as to Spence and Fox.

Sanctions re Fox and Spence motions

Fox and Spence separately seek sanctions against Plaintiff and/or counsel in the amount of $5,135.00 pursuant to Code of Civil Procedure section 2025.420(h) for opposing the motion without substantial justification. In opposition, Plaintiff argues that Plaintiff is entitled to sanctions under Code of Civil Procedure section 2020.240 for misuse of the discovery process and seeks sanctions in the amount of $5,536.50 against Spence, Freedman + Taitelman, LLP and Sean M. Hardy, Esq. (See opp. to Spence Mot. at 14-15.) Section 2024.420(h) provides that "[t]he court *shall* impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, *unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.*" (Code Civ. Proc., § 2025.420(h) [emphasis added].) Plaintiff has not demonstrated that he acted with substantial justification in opposing the Fox and Spence motions and certainly did not participate in any meaningful meet and confer attempts initiated by the non-parties, especially Spence. Therefore, Fox's motion for sanctions is GRANTED and Spence's motion for sanctions is GRANTED. Plaintiff is ordered to pay sanctions in the reduced amount of $3,135.00 to Fox and $3,135.00 to Spence within 60 days of this order.

Lily Chandler and Tabitha Rose

Non-Party deponents Lily Chandler and Tabitha Rose Marks ("Chandler and "Rose Marks") seek a protective order precluding their depositions. Chandler and Rose Marks argue that Plaintiff served them individually with subpoenas and seeks to depose them concerning the whereabouts of Jordan Chandler, Jordan's interactions with Michael Jackson in the early 1990's, and with respect to Chandler and her families' interactions with Jackson. Neither moving party nor opposing party present the subpoenas at issue. Instead, both cite the cover letters that were attached to the deposition subpoenas. (See Ex. H & I to April 17, 2017 Finaldi Decl. [cover letters dated September 8, 2016].) In the cover letter, Plaintiff's counsel expressed that Plaintiff is open to a protective order over the deposition transcript. (Ibid.)

Chandler and Rose Marks argue that their depositions should not be allowed to go forward because Plaintiff seeks information that is protected by their rights to privacy. They argue that Plaintiff cannot meet his burden in showing that the information that Plaintiff seeks is directly relevant and essential to determining the truth of the matters. Chandler and Rose Marks argue that Rose Marks is not a percipient witness to the facts of this case, and that both Rose Marks' and Chandler's constitutional right to privacy is implicated because Plaintiff seeks to obtain information about the alleged sexual relationship between Jordan Chandler and Michael Jackson. Both also argue that they fear for their safety.

In her motion, Rose Marks declares under penalty of perjury that she does not have any knowledge as to what happened between Jordan Chandler and Michael Jackson. (Rose Marks Decl. ¶ 6.) Rose Marks also declares that she does not have any information as to Jordan Chandler's whereabouts. (Id. ¶ 10.) Rose Marks admits that she was engaged to Jordan Chandler but, around February 2016, they decided to end the engagement. (Id. ¶ 7.) This declaration was executed in October 2016, and nearly four years have passed since Rose Marks and Jordan Chandler were engaged. To the extent that Plaintiff seeks to depose Rose Marks as to the location of Jordan Chandler, Plaintiff cannot possess a reasonable belief that Rose Marks has information relevant to this inquiry. Furthermore, there is no dispute that Rose Marks has no direct knowledge of any conduct involving Michael Jackson and either Jordan Chandler or Plaintiff. To the extent that Rose Marks possesses information, that information would necessarily have come from her former fiancée, which would be protected by their right to privacy as to sexual conduct and their own intimate relationship.

Lily Chandler also presents a declaration in support of her motion. Chandler declares that she is the half-sister of Jordan Chandler. (Chandler Decl. ¶ 3.) She also states that she has no specific memories of any interaction with Michael Jackson even though she has seen picture of herself, Jordan Chandler, and their mother with Michael Jackson. (Id. ¶ 5-6.) Chandler has no memory of any individuals that might have been employed by Michael Jackson when she was a child. (Id. ¶ 8.) Both Chandler and Rose Marks have, or had, a connection to Jordan Chandler, either familial in the case of Chandler, or romantically in the case of Rose Marks. Chandler's relationship to Jordan Chandler implicates the familial right to privacy.

Here, both Chandler and Rose Marks have met their burden in demonstrating that Plaintiff seeks information that is constitutionally protected. Therefore, the burden shifts to Plaintiff to demonstrate that the information sought is directly relevant to a claim or defense. In opposition, Plaintiff argues that the depositions of Chandler and Rose Marks are necessary to find and obtain information on Jordan Chandler, a child that reported and filed a civil suit against Michael Jackson in the 1990s. Plaintiff argues that he needs to depose Jordan Chandler because his credibility bears on Plaintiff's credibility. Plaintiff also argues that Jordan Chandler is necessary for determining the issue of whether Defendants MJJ Productions or Ventures were, or should have been, on notice of any ongoing sexual abuse.

The ultimate goal appears to be for Plaintiff to find and depose Jordan Chandler for the purpose of using evidence of Jordan Chandler's sexual abuse to assist in proving his own case of sexual abuse. To the extent Plaintiff seeks to admit character evidence, it would be inadmissible under Evidence Code section 1102(a). With respect to the corporate defendant's liability, the October 7, 2016, Fourth Amended Complaint ("4AC") alleges intentional infliction of emotional distress, negligence in various forms, and breach of fiduciary duty against MJJ Productions, Inc., MJJ Ventures, Inc., and Doe Defendants. (See 4AC.) The 4AC alleges that numerous agents and employees of these defendant companies actively participated in, and witnessed, Jackson's child sexual abuse conduct. As such, the Court does not conclude that even the ultimate goal – the deposition of another alleged victim, Jordan Chandler – would be essential to his claims.

Finally, the Court is in complete agreement with Plaintiff's claim that there is an overriding public interest in preventing child sexual abuse. Plaintiff, however, fails to connect this overriding public interest with the depositions at issue.

The Court has balanced the privacy rights of Chandler and Rose that implicate their familial relationships as well as Jordan Chandler's alleged childhood sexual abuse history along with the inherent intrusiveness of these lines of inquiries, against the interests of Plaintiff in obtaining this information from nonparties who have no direct knowledge of any sexual abuse, including alleged abuse of Plaintiff and Jordan Chandler. As a result, the Court determines that Plaintiff has failed to demonstrate the compelling need for their depositions. The motion for a protective order is GRANTED. Plaintiff cannot depose Lily Chandler and Tabitha Rose Marks in this matter.

Motion for Protective Order re Conduct of Counsel and Sanctions

In March 2017, Plaintiff filed a motion for a protective order regarding the conduct of defense counsel during the deposition of third party Leroy Whaley. Plaintiff seeks $8,194.38 in monetary sanctions against Suann MacIsaac and Kinsella, Weitzman, Iser, Kump & Aldisert LLP.

LEGAL STANDARD

Protective order for depositions

"Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040." (Code Civ. Proc., § 2025.420(a).)

"The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Proc., § 2025.420(b).)

Finally, "[t]he court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.420(h).)

A. Meet and confer

The Court finds that Plaintiff did not meet and confer in good faith with defendants as to the resolution of the issues presented by this motion. (See Ex. C to Motion.) In their motion, Plaintiff relies on the meet and confer letter of Alex Cunny, an attorney who did not take the deposition and had no personal knowledge of the events at the deposition. As such, the Court finds the letter inadequate. In addition, the letter is not a good faith meet and confer letter but an ultimatum that requires counsel to simply agree to the terms of the letter, or the motion for a protective order will be filed. Counsel was given approximately 25 hours to respond to Plaintiff's unilateral demand, assuming that they reviewed their email immediately upon it being sent by Plaintiff. Finally, counsel rejected efforts at the deposition to meet and confer regarding these issues, which is further evidence that counsel has failed to meet and confer in good faith. Failure to meet and confer in good faith is an abuse of the discovery process, and as such, an independent basis for the court to impose monetary sanctions. (Code Civ. Proc. § 2023.020; Moore v. Mercer (2016) 4 Cal. App. 5th 424, 448.)

A. ***Whether moving parties have shown that there is good cause to issue a protective order to prevent unwarranted annoyance, embarrassment, or oppression, or undue burden and expense***

The motion for a protective order is DENIED. Plaintiff has failed to meet his burden in showing that he is entitled to the relief requested. Moreover, Plaintiff did not engage in a good faith meet and confer process prior to filing this motion.

As to the substance of the motion, Plaintiff argues, "by commenting upon evidence, unilaterally limiting questions for Whaley to answer, and repeatedly interrupting the questioning by Mr. Finaldi with speaking objections, Plaintiff's counsel was subjected to 'unwarranted annoyance, embarrassment, or oppression.'" Plaintiff relies upon Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, in support of its position, but the cases are not analogous. In Stewart, "[a]t the direction of Mrs. Wolfe, Wiskow refused to answer numerous questions pertaining to Hall on the ground that they were not calculated to lead to the discovery of admissible evidence. [Footnote omitted.] Doberman concluded his questioning and stated his intention to move to compel further answers." (Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1010.) Here, Plaintiff does identify a single time when Ms. MacIsaac *instructed* third-party witness Whaley to not answer a question. In fact, there is only one instance where Mr. Whaley refused to answer a question, stating, "I decline to answer," and despite this statement, he later answered it. (Whaley Depo. 11:8.) Moreover, Plaintiff presents no caselaw for the argument that Code Civil Procedure section 2025.420 is intended to protect *counsel*. The majority of the deposition did not have objections from counsel. (See generally Whaley Depo.) At one point, Ms. MacIsaac asked for a copy of an exhibit, and Mr. Finaldi noted that he only had one copy. (Whaley Depo., 58:24-59:5 [introducing exhibit], 61:25-62:2; see also 63:7-13 [exhibit D, and back and forth between counsel on speaking objections].) At another point, Ms. MacIsaac attempted to object as to the question being compound, Mr. Finaldi ruled on the objection, and then when Ms. MacIsaac attempted to respond to Mr. Finaldi's
"ruling," he threatened to end the deposition and seek sanctions. (Whaley Depo. 82:8 – 23.) As to the witness swearing, Ms. MacIsaac reminded Mr. Whaley not to swear during the deposition the first time it occurred. (Whaley Depo. 10:4-5.)

Moreover, counsel for Plaintiff, Mr. Finaldi, called opposing counsel Ms. MacIsaac "obstreperous and unprofessional" various times during the deposition sometimes for merely stating an objection and the basis for the objection. (Whaley Depo. 76:4 - 23.) Name-calling opposing counsel is unprofessional. Upon reviewing the filings and the deposition transcripts in this case, the Court further determines that civility is an issue that needs to be addressed immediately. In support of this motion, Plaintiff submitted evidence of conduct at another deposition where it appears to the Court that Plaintiff's Counsel attempted to "shut up" opposing counsel Ms. MacIsaac by offering to "stipulate to all possible objections" during the deposition of Blanca Francia. Counsel offers, "I'll tell you what, Counsel, you have — I will stipulate right now, every objection under the sun, including privilege, is preserved. **You don't have to say a word**." Ms. MacIsaac then makes various objections and Mr. Manly responds, "Why are you objecting? I just stipulated. Why are you objecting? In the middle of my question, Counsel. Just let me finish. And why are you objecting if I stipulated to everything?" (See Francia Depo Vol. II, Exhibit "M" to DVF, 367:2—9; 368:14-369:7.) The Court reads this back and forth as the equivalent of Mr. Manly telling Ms. MacIsaac: "Why are you still talking? Why don't you shut up?" Similarly, at the Whalen deposition, Ms. MacIsaac made a reasonable objection to a poorly worded and compound question from Mr. Finaldi, which, without more, does not make Ms. MacIsaac "rude." (Whaley Depo., 47:17 - 48:9.)

In addition, Plaintiff's counsel's statements made at other depositions regarding Ms. MacIssac, including statements regarding her alleged lack of legal experience or ability as an attorney, belittling her appearance ("red in the face"), making allegations regarding her emotional state and excessive breathing, and general dismissiveness will not be tolerated by the Court and smack of gender incivility. As a reminder to all counsel in this case:

> The California Code of Judicial Ethics compels us to require lawyers in proceedings before us "to refrain from ... manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation ...." (Cal. Code Jud. Ethics, canon 3B(6)(a).) That goes for unconscious as well as conscious bias. Moreover, as judicial officers, we can and should take steps to help reduce incivility, including gender-based incivility. [Footnote omitted.] One method is by calling gendered incivility out for what it is and insisting it not be repeated. In a more extreme case we would be obliged to report the offending lawyer to the California State Bar. (Martinez v. O'Hara (2019) 32 Cal.App.5th 853, 854, 244 Cal.Rptr.3d 226.)

(Briganti v. Chow (2019) 42 Cal.App.5th 504, 511–512, reh'g denied (Dec. 11, 2019).) The outcome of this motion serves as a reminder and the only warning that the Court will give that Plaintiff's counsel must comport himself as an officer of the Court. While speaking objections are not generally allowed, neither is conduct that manifests gender bias or incivility. "Zeal and vigor in the representation of clients are commendable. So are civility, courtesy, and cooperation. They are not mutually exclusive." (In re Marriage of Davenport (2011) 194 Cal.App.4th 1507, 1537.) Plaintiff's counsel's reactions to Ms. MacIsaacs objections and conduct were not even closely proportionate to the underlying alleged misconduct.

Furthermore, Plaintiff was not robbed of the opportunity to depose Leroy Whaley as Plaintiff's counsel was the one who cut the deposition short and ended it. Plaintiff's counsel did not state that he was ending the deposition to seek a protective order. (See Code Civ. Proc., § 2025.470 ["The deposition officer may not suspend the taking of testimony without the stipulation of all parties present unless any party attending the deposition, including the deponent, demands that the deposition officer suspend taking the testimony to enable that party or deponent to move for a protective order under Section 2025.420 on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party."].) Instead, Plaintiff's counsel stated that he would "include it in my motion for sanctions" against Ms. MacIsaac. (See Whaley Depo. 99:14-15.) Ms. MacIsaac offered to meet and confer during the deposition and take a break to resolve issues, but Plaintiff's counsel refused. Plaintiff ended the deposition without justification or explanation, and without stating that he was ending it in order to seek a protective order. As such, Plaintiff is not entitled to reopen the deposition of Leroy Whaley. The motion for protective order is DENIED.

Plaintiff requests sanctions in connection with this motion. Defendants do not request sanctions. Although Defendants have not requested sanctions, the Court is obligated to impose sanctions pursuant to section 2025.420(h) against "any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.420(h).) Plaintiff's counsel has not acted with substantial justification and there are no circumstances presented to the Court where the imposition of sanctions would be unjust. The Court is also authorized to order sanctions when a party fails to meet and confer in good faith prior to filing a motion for a protective order. (Code Civ. Proc. § 2023.020.) The Court will discuss the amount of sanctions at hearing and give Defendants an opportunity to file a declaration in support of any award.

[1] Moving parties argue that, at best, this type of evidence would be inadmissible character evidence under Evidence Code section 1102(a). In determining that this evidence is not directly relevant or essential, the Court has further considered the potential admissibility on other grounds, including but not limited to modus operandi evidence, notice or imputed knowledge.