

MobStub, Inc. v www.staytrendy.com

2021 NY Slip Op 31375(U)

April 19, 2021

Supreme Court, Kings County

Docket Number: 512182/14

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 19th day of April, 2021.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.
-----X

MOBSTUB, INC.,
Plaintiff,

- against -

WWW.STAYTRENDY.COM,
DUCK RIVER TEXTILES, INC.,
JACK COHEN a/k/a JACK ALHAKIM,
RYSEN MEDIA, INC.,
WWW.MAXWELLSATTIC.COM,
"XYZ, INC." and "JOHN DOES 1-5,"
Defendants.
-----X

DECISION AND ORDER

Index No. 512182/14

Mot. Seq. No. 11

The following e-filed papers read herein:

NYSCEF No.:

| | | |
|---|------------|----------------|
| Notice of Motion, Affirmation, and Exhibits Annexed _____ | <u>198</u> | <u>187-197</u> |
| Affirmation in Opposition _____ | <u>198</u> | |
| Reply Affirmation _____ | <u>199</u> | |

In this action for, among other things, permanent injunctive relief and to recover damages for trademark infringement and unfair competition, defendants www.staytrendy.com and Jack Cohen, also known as Jack Alhakim (collectively, the ST defendants), move for an order: (1) pursuant to CPLR 3126, striking the amended complaint of plaintiff MobStub, Inc. (plaintiff), as against them, or, in the alternative (2) pursuant to CPLR 3124, compelling plaintiff to provide the documents and information sought in the ST defendants' Post-EBT Notice for Discovery and Inspection, dated Oct. 31, 2018 (the Post-EBT D&I Notice), and as indexed in the certified deposition transcript of plaintiff's president, Shnear Levitin, dated June 18, 2018, and further directing plaintiff to produce for a pretrial deposition Shnear Levitin's brother and partner, Shmuel Levitin, as well as to produce Chaia Liberow, as more fully requested in

the ST defendants' Notice for Depositions, both dated May 6, 2019 (the Deposition Notices). Plaintiff objects. The remaining defendant, Duck River Textiles, Inc. (Duck River) has filed no response.

Introduction

Plaintiff MobStub, Inc. was an e-commerce website, named www.MobStub.com, selling deeply discounted merchandise, in the form of daily or multi-daily deals, to consumers in the United States and worldwide. Plaintiff was owned and operated by two brothers, Shnear and Shmuel Levitin.

Defendant Duck River was plaintiff's vendor with a showroom in New York and a warehouse in New Jersey.

Defendant Jack Cohen whose legal name is Jack Alhakim (Jack Alhakim),¹ is a son of one of Duck River's co-owners, nonparty Nori ("Oury") Alhakim.² Jack Alhakim had access to Duck River's work computers at both of its locations. Unbeknownst to Duck River's chief operating officer (who happens to be Jack Alhakim's uncle), Jack Alhakim created a Duck River work email account (jack@duckrivertextiles.com) and, as a purported member of Duck River's sales force, executed a "Master Supplier Agreement" with plaintiff.³ Duck River's chief operating officer was emphatic in his pretrial testimony that Jack Alhakim was never employed by Duck River, nor was he ever its sales representative.⁴

As plaintiff's president explained at his pretrial deposition, he believes that Duck

¹ Jack's legal name is Alhakim, whereas Cohen is his "a/k/a" (see Jack Alhakim EBT tr [NYSCEF #173] at page 6, line 22 to page 7, line 9).

² Duck River is owned in equal shares by three Alhakim brothers: Nori ("Oury") Alhakim, Rahmon Alhakim, and Eli Alhakim. See Rahmon Alhakim EBT tr (NYSCEF #174) at page 14, lines 9-19.

³ See Rahmon Alhakim EBT tr at page 25, line 16 to page 30, line 10.

⁴ See Rahmon Alhakim EBT tr at page 30, line 18 to page 31, line 9.

River (or someone acting on its behalf) accessed the back end (or the administrative section) of plaintiff's website without authorization and, by using its then-operative (but since-disabled) "Export to Excel" function, downloaded (*i.e.*, copied) its entire customer database for use by the competing website named www.staytrendy.com (the ST website) which had been registered to Jack Alhakim. The ST website was built (unbeknownst to plaintiff) by plaintiff's website developer Robert Keogh on Jack Alhakim's behalf.

Background

Plaintiff initially contracted with Dean Peterson (Peterson) to design the early version of its website which ultimately went live in 2011. At the inception of its business, plaintiff bought an email list from Peterson to solicit customers. Because that email list generated few leads, however, plaintiff resolved not to buy any additional email lists.

Sometime after plaintiff's website was up and running, it hired as an independent contractor another website developer, the aforementioned Robert Keogh (Keogh), to redesign its website. The redesigned version of plaintiff's website went live in 2012.

Plaintiff's website was initially hosted on a server account which Keogh set up for plaintiff. When plaintiff's web traffic increased, Keogh moved its website to another host named Rackspace. Thereafter, either in 2013 or 2014, plaintiff's website was moved to its current host, Amazon Web Services.

In the early part of its business operations, plaintiff used Reach Mail as an email-marketing service to solicit customers. In 2015, plaintiff switched to an Email Service Provider (ESP) named Mad Mini and later in the same year switched to SendGrid for, among other things, sending marketing emails to the existing and potential customers. One of the purposes of the ESP was to store the email addresses which visitors to plaintiff's website typed in when, as part of their purchase transactions, they created accounts with plaintiff or, in the absence of purchases, when they signed up on its website to receive email newsletters.

Starting in the early part of 2014, plaintiff switched to the drop-ship method of

fulfilling customers' orders. To ensure that the participating vendors had sufficient merchandise on hand to fulfill its customers' orders, plaintiff added to its website a vendor-management portal accessible with a user name and password which were unique to each vendor and were provided by plaintiff. Through that portal, the participating vendors kept track of the inventory which was available for plaintiff to sell on its website, as well as to fulfill customer orders. Overall, plaintiff's website had three access points: (1) the "front end" where consumers could place and track orders by using their own passwords; (2) the "back end" (or the administrative section), including the ESP, which was accessible by plaintiff's staff and its website developers through a secure, administrative-level password; and (3) the "vendor-management portal" which was accessible by the participating vendors with the plaintiff-provided user names and passwords. With respect to the vendor-management portal, the participating vendors' access to plaintiff's customers' names and addresses was limited to the as-needed, order-by-order basis for the sole purpose of fulfilling customer orders. The participating vendors lacked access to the entire customer database which was accessible only by plaintiff's owners, contractors, and website developers with a secure, administrative-level password at the back end of plaintiff's website.

Since February 2013, plaintiff was using the promotional tag line "stay trendy" alongside its name. The stay trendy concept originated with Shmuel Levitin, the brother of plaintiff's president, and was added to plaintiff's website by website developer Keogh. According to plaintiff's president (at page 63, lines 4-5 of his deposition), "[Shmuel Levitin] felt the website needed a tag line that best reflected what we [Mobstuf] were." The stay trendy tag line was also added to plaintiff's advertisements on Facebook. In January 2014, an application for the stay trendy tag line was filed with the United States Patent and Trademark Office (USPTO). In August 2014, the stay trendy tag line was

registered with the USPTO as a service mark. Aside from registering the stay trendy tag line with the USPTO, however, plaintiff made no attempt to acquire and register the www.staytrendy.com domain name.

Sometime in 2014 following plaintiff's registration of the stay trendy tag line, plaintiff became aware that a competing website named www.staytrendy.com was operating in the e-commerce sector. Plaintiff became so aware when its management and customers started receiving marketing emails from that website. In the second half of 2014, plaintiff concluded that its entire customer database had been illegally downloaded (*i.e.*, copied) from the back end of its website and was shared with the owner/operator of the ST website. Plaintiff considered the operation of the ST website to infringe on its previously registered stay trendy tag line. Plaintiff believed that the ST website, in addition to using plaintiff's stay trendy tag line as the web address, carried the majority of the same products which were offered by many of the same vendors on plaintiff's website, offered the daily specials (like plaintiff's website did), and generally resembled plaintiff's website in appearance.

While plaintiff, after changing the administrative-level password, was monitoring the subsequent log-ins into the back end of its website, it noticed two failed log-in attempts with the use of a no-longer valid administrative-level password. One of those two failed log-in attempts was traced to an IP address which was associated with Duck River.⁵ Thereupon, plaintiff confronted its website developer, Keogh, as to whether he had any connection with the ST website. Keogh admitted that he had been hired by Jack Alhakim to build, and he did build, the ST website for Jack.

⁵ As noted, no vendor, including Duck River, was permitted to have access to the back end of plaintiff's website.

In December 2014, plaintiff commenced this action against, among others,⁶ the ST defendants and Duck River for: (1) trademark infringement and unfair competition, in each instance, under the Lanham Act; (2) misappropriation of proprietary information and trade secrets; and (3) common-law unfair competition.⁷ The ST defendants jointly, and Duck River separately, answered the complaint.

By order to show cause, dated Dec. 24, 2014 (Schmidt, J.), plaintiff sought a preliminary injunction enjoining the ST defendants from, among other things: (1) using the stay trendy trade name in connection with their business; (2) operating the ST website; (3) representing to any customer that the ST website was in any way associated or affiliated with plaintiff's website; (4) advertising on any media, print, and/or the internet with the stay trendy trade name; (5) directing that the ST defendants discontinue all advertising which used the stay trendy trade name; and (6) using or disclosing any of plaintiff's proprietary information and trade secrets to third parties (§§ 1.A and 1.C) (NYSCEF #17). By order, dated Aug. 6, 2015, this Court granted the foregoing relief (the PI Order) (NYSCEF #64).⁸ On appeal, the Second Judicial Department, in relevant part, upheld the PI Order (*see Mobstub, Inc. v www.staytrendy.com*, 153 AD3d 809 [2d Dept. 2017]). In so holding, the Second Judicial Department found (at page 810) that "plaintiff established a likelihood of success on the merits."

Discovery

On June 18, 2018, Shnear Levitin was deposed on plaintiff's behalf. In the course

⁶ In August 2015, plaintiff settled and discontinued its claims against the remaining named defendants Rysen Media, Inc. and www.maxwellsattic.com (NYSCEF #68).

⁷ See Amended Verified Complaint, dated Jan. 2, 2015 (NYSCEF #20).

⁸ As noted in the PI Order, plaintiff withdrew its request for a preliminary injunction enjoining the ST defendants from competing with plaintiff and soliciting business from plaintiff's customers through electronic communications.

of Shnear Levitin's examination before trial, the ST defendants requested certain documents from plaintiff. The seven requested items, *to the extent they were not superseded by the ST defendants' subsequently served Post-EBT D&I Notice*, are as follows:⁹

(EBT-1) Insert in the Shnear Levitin's deposition transcript whether Raisi Rosenthal was a W-2 or 1099 employee (Shnear Levitin EBT tr at page 135).

(EBT-2) A copy of the supplier agreement between plaintiff and Duck River (*id.* at 149).

(EBT-3) Insert in the deposition transcript the location of "where the IP addresses [allegedly associated with Duck River] [were] written down [by plaintiff]" (*id.* at 163).

(EBT-4) Peterson's email address (*id.* at 180).

(EBT-5) Keogh's email address and telephone number (*id.* at 180).

(EBT-6) Any written purchase agreement between plaintiff and Peterson regarding email lists (*id.* at 181).

(EBT-7) The date when plaintiff hired its accountant (*id.* at 196).

On Nov. 1, 2018, the ST defendants served plaintiff with their Post-EBT D&I Notice. The eleven requested items, *in addition to those made by the ST defendants in the course of Shnear Levitin's examination before trial*, are as follows:¹⁰

(Post-EBT-1) "Any and all emails, text messages or other communication between and among the ownership, management staff and/or agents of [plaintiff] regarding the events complained of in the complaint."

⁹ For ease of identification, the requests, made by the ST defendants (but not by Duck River) at Shnear Levitin's examination before trial, are prefaced herein as "EBT-1," "EBT-2," etc. (collectively, the EBT requests).

¹⁰ For ease of identification, the requests, made by the ST defendants in their Post-EBT D&I Notice following Shnear Levitin's examination before trial, are prefaced herein as "Post-EBT-1," "Post-EBT-2," etc. (collectively, the Post-EBT requests).

(Post-EBT-2) “Any cease and desist letter sent by Plaintiff to any Defendant in this matter prior to the filing of this lawsuit.”

(Post-EBT-3) “A copy of any contract between Plaintiff and Robert Keogh.”

(Post-EBT-4) “A copy of any contract between Plaintiff and Dean Peterson.”

(Post-EBT-5) “Any and all emails or other communication, received by Plaintiff from any source whatsoever that Plaintiff believes evidences confusion between [plaintiff’s website] and [the ST website].”

(Post-EBT-6) “Copies of any and all 1099s that plaintiff provided Robert Keogh.”

(Post-EBT-7) “Any and all emails, text messages or other communication between and among the ownership, management staff and/or agents of [plaintiff] and Robert Keogh or any other person or entity regarding the addition of, and changes to the Stay Trendy ‘tag line’ on plaintiff’s website, including but not limited to the addition of the trademark notification.”

(Post-EBT-8) “Any and all emails, text messages or other communication between and among the ownership, management staff and/or agents of [plaintiff] and any person or entity regarding the design and implementation of any and all design elements of Plaintiff’s website including but not limited to Mobstub’s logo as well as the layout and configuration of the website’s header[;] [such] demand is limited to all such communications prior to 2015.”

(Post-EBT-9) “Copies of Plaintiff’s tax returns for 2012 through the present.”

(Post-EBT-10) “Copies of any and all data, available to the plaintiff, in any form whatsoever regarding Plaintiff’s email campaigns for 2012 through 2015, showing customer engagement including but not limited to open rates, click throughs and page views.”

(Post-EBT-11) “Copies of any and all data, available to the plaintiff, in any form whatsoever regarding total sales figures for 2012 through 2015.”

By order, dated Jan. 24, 2019, the Court, among other things, directed plaintiff to respond to the ST defendants’ outstanding demands by Feb. 25, 2019, and scheduled a compliance conference (NYSCEF #164).

By order, dated Mar. 29, 2019, the Court, among other things, directed all parties

to respond to the outstanding discovery demands by Apr. 25, 2019, permitted all parties to notice further depositions by May 7, 2019, and scheduled a further compliance conference (NYSCEF #165).

On May 6, 2019, the ST defendants served Deposition Notices for Shmuel Levitin and Chaia Liberow.

By order, dated June 21, 2019, the Court, among other things: (1) directed all parties to respond to post-deposition demands within 30 days; (2) permitted the ST defendants to move to compel plaintiff to produce Shmuel Levitin for a deposition within 30 days of plaintiff's post-deposition responses; (3) reserved the right of the ST defendants to conduct a deposition of plaintiff's witness, Chaia Liberow, following Shmuel Levitin's deposition upon further notice, with plaintiff reserving the right to object; and (4) scheduled a further compliance conference (NYSCEF #166) (the June 21, 2019 order).

By order, dated Nov. 1, 2019, the Court, among other things, directed all parties to comply with the directives of the June 21, 2019 order (with one exception not relevant herein) within 30 days, and scheduled a further compliance conference (NYSCEF #181) (the Nov. 1, 2019 order).

By order, dated Feb. 28, 2020, the Court, among other things, directed all parties to comply with the directives of the Nov. 1, 2019 order within 30 days and scheduled a further compliance conference for May 1, 2020 (NYSCEF #181).

In March 2020, the COVID-19 health crisis began in earnest in the United States and, since then, has created significant disruptions throughout the country.

On Jan. 21, 2021, this action again became active when the parties signed – and

plaintiff's counsel e-filed with the Kings County Clerk – a proposed compliance conference order (NYSCEF #185).

By Compliance Conference Order, dated Jan. 22, 2021, the Court, in light of the COVID-19 pandemic, *reset* the discovery schedule by, among other things, directing that: (1) “[p]laintiff shall serve responses to [d]efendant Jack Cohen’s post EBT demands [*i.e.*, the ST defendants’ Post-EBT D&I Notice] within 45 days hereof [*i.e.*, by Mar. 8, 2021]”; (2) Duck River produce Nori (“Oury”) Alhakim (Cohen), for a deposition to be held within 45 days; and (3) scheduled a future compliance conference for Mar. 26, 2021 (NYSCEF #186) (the Jan. 22, 2021 order). The Jan. 22, 2021 order was signed by all of the parties’ respective counsel.¹¹

On Mar. 9, 2021 (*i.e.*, one day after plaintiff’s responses to the Post-EBT D&I Notice were due in accordance with the Jan. 22, 2021 order), the ST defendants’ counsel emailed plaintiff’s counsel (without copying Duck River’s counsel) inquiring when he could expect to receive plaintiff’s response to the Post-EBT D&I Notice (NYSCEF #196) (the Mar. 9, 2021 email).

One week later, on Mar. 16, 2021, the ST defendants served the instant motion. The pro forma “good faith” affirmation annexed to the ST defendants’ motion (NYSCEF #197) maintained that plaintiff’s counsel’s one week’s failure to respond to

¹¹ Although The Law Office of Matthew E. Schaeffer, Esq. (Attorney Schaeffer), signed the Jan. 22, 2021 order on behalf of Jack Alhakim only, the instant motion is made on behalf of Jack Alhakim *and* the ST website. Since Attorney Schaeffer continues to represent both of them, the Court considers the Jan. 22, 2021 order to have been signed by Attorney Schaeffer on behalf of both Jack Alhakim *and* the ST website.

their counsel's Mar. 9, 2021 email substantively complied with the requirements of 22 NYCRR 202.7 (c).¹²

As a result of the ST defendants' service of the instant motion, the compliance conference which, in accordance with the Jan. 22, 2021 order, was originally scheduled for Mar. 26, 2021 had to be rescheduled to May 7, 2021. The Court reserved decision on the instant motion on Apr. 9, 2021.

Discussion

The ST Defendants' Request To Strike The Complaint Under CPLR 3126

CPLR 3126 authorizes the court to sanction parties who "refuse[] to obey an order for disclosure or wilfully fail[] to disclose information which the court finds ought to have been disclosed." "The nature and degree of the penalty to be imposed pursuant to CPLR 3126 lies within the sound discretion of the Supreme Court" (*Lazar, Sanders, Thaler & Assocs., LLP v Lazar*, 131 AD3d 1133, 1133 [2d Dept 2015]). "Nevertheless, public policy strongly favors the resolution of cases on their merits" (*Gelin v New York City Tr. Auth.*, 189 AD3d 789, 792 [2d Dept 2020]). Therefore, a drastic remedy of striking a pleading is "not appropriate absent a clear showing that the failure to comply with discovery demands was willful and contumacious" (*id.* at 792-793).

Under the circumstances of this case as summarized above, the initial branch of the ST defendants' motion which is for an order pursuant to CPLR 3126 striking plaintiff's

¹² 22 NYCRR 202.7 (c) provides that "[t]he affirmation of the good faith effort to resolve the issues raised by the motion shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held."

amended complaint as against them is denied in the Court's discretion (*see e.g. Pesce v Fernandez*, 144 AD3d 653, 654 [2d Dept 2016]; *New York Timber, LLC v Seneca Cos.*, 133 AD3d 576, 577 [2d Dept 2015]; *Holand v Cascino*, 122 AD3d 575, 576 [2d Dept 2014]; *see also Bronstein v Charm City Hous., LLC*, 175 AD3d 454, 455 [2d Dept 2019]; *Matter of Greenfield v Board of Assessment Review for Town of Babylon*, 106 AD3d 908 [2d Dept 2013]).

The ST Defendants' Request To Compel Plaintiff To Respond Under CPLR 3124

CPLR 3124 provides, in relevant part, that “[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article . . . , the party seeking disclosure may move to compel compliance or a response.” In general, “the supervision of disclosure is left to the broad discretion of the trial court, which must balance the parties’ competing interests” (*Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d 1283, 1283 [2d Dept 2011]) and take into account “any special burden to be borne by the opposing party” (*Matter of Malitz Family Tr.*, 187 AD3d 915, 915 [2d Dept 2020] [internal quotation marks omitted]). Thus, “[i]t is incumbent on the party seeking disclosure that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*id.* [internal quotation marks omitted]). Accordingly, “[a] motion to compel responses to discovery demands and interrogatories is properly denied where the demands and interrogatories seek information that is irrelevant, overly broad, or burdensome” (*JPMorgan Chase Bank, Nat. Assn. v Levenson*, 149 AD3d 1053, 1054 [2d Dept 2017]). “Where discovery demands are overbroad, the appropriate remedy is to

vacate the entire demand rather than to prune it" (*Bennett v State Farm Fire & Cas. Co.*, 189 AD3d 749, 750 [2d Dept 2020] [internal quotation marks omitted]).

The remaining branch of the ST defendants' motion which is for an order pursuant to CPLR 3124 compelling plaintiff to respond to their EBT requests and the Post-EBT D&I Notice, as well as to respond to their Deposition Notices, is determined as set forth in the decretal paragraphs below. In addition, the decretal paragraphs address what appears to be an outstanding deposition of Nori ("Oury") Alhakim (Cohen) who is Jack Alhakim's father and Duck River's co-owner.

Conclusion

Accordingly, it is

ORDERED that the initial branch of the ST defendants' motion which is for an order pursuant to CPLR 3126 striking plaintiff's amended complaint as against them is *denied* in the Court's discretion; and it is further

ORDERED that the remaining branch of the ST defendants' motion which is for an order pursuant to CPLR 3124 compelling plaintiff to respond to their EBT requests and their Post-EBT D&I Notice, as well as to respond to their Deposition Notices, is *granted to the extent* that:

- (1) With respect to the ST defendants' information requests made at Shnear Levitin's examination before trial, plaintiff shall respond only to the following items: (a) Peterson's email address (EBT-4); (b) Keogh's email address and telephone number (EBT-5); and (c) any written purchase agreement between plaintiff and Peterson regarding email lists (EBT-6);

provided that where the information is unavailable, plaintiff shall respond with a properly subscribed affirmation from Shnear Levitin, attesting that plaintiff has no such documents or cannot find documents related to the subject requests after a diligent search; and *provided further* that *plaintiff's response with respect to the foregoing items is due within fifteen (15) days* after electronic service of this decision and order with notice of entry by the ST defendants' counsel on the other parties' respective counsel;

- (2) With respect to the ST defendants' information requests made in their Post-EBT D&I Notice, plaintiff shall respond only to the following items:
- (a) any cease and desist letter sent by plaintiff to any defendant in this matter before filing this action (Post-EBT-2);
 - (b) a copy of any contract between plaintiff and Keogh (Post-EBT-3);
 - (c) a copy of any contract between plaintiff and Peterson (Post-EBT-4);
 - (d) copies of MobStub, Inc.'s corporate federal tax returns for the tax years 2012 through 2015, with the exception, for each fiscal year, of schedules or other forms indicating how or to whom it made corporate distributions, *subject to the prior execution and delivery of a mutually agreed-upon confidentiality stipulation* (Post-EBT-9, as modified herein); and
 - (e) MobStub, Inc.'s gross sales for the tax years 2012 through 2015, *subject to the prior execution and delivery of a mutually agreed-upon confidentiality stipulation* (Post-EBT-11, as modified herein);
- provided* that where the information is unavailable, plaintiff shall respond with a properly subscribed affirmation from Shnear Levitin,

attesting that plaintiff has no such documents or cannot find documents related to the subject requests after a diligent search; and *provided further* that *plaintiff's response with respect to items Post-EBT-2, Post-EBT-3, and Post-EBT-4 is due within fifteen (15) days* after electronic service of this decision and order with notice of entry by the ST defendants' counsel on the other parties' respective counsel; and *provided further* that MobStub, Inc.'s response with respect to items Post-EBT-9 (as modified herein) and Post-EBT-11 (as modified herein) is due within fifteen (15) days after execution and delivery of a mutually agreed-upon confidentiality stipulation; and

- (3) With respect to the ST defendants' Deposition Notices, plaintiff shall only produce Shmuel Levitin (but not Chaia Liberow) for a deposition to be held within forty-five (45) days after electronic service of this decision and order with notice of entry by the ST defendants' counsel on the other parties' respective counsel;

and the balance of the ST defendants' motion is denied; and it is further

ORDERED that in the event that the deposition of Nori ("Oury") Alhakim, also known as Nori ("Oury") Cohen, as required by the Jan. 22, 2021 order, has not been held to date, the same shall be held within forty-five (45) days after electronic service of this Decision and Order with notice of entry by the ST defendants' counsel on the other parties' respective counsel; and it is further

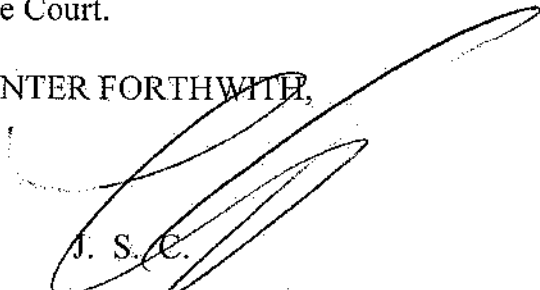
ORDERED that in light of the continuing health risk posed by the COVID-19 pandemic, each deposition set forth herein shall be held by video conference, unless all

parties involved in that particular deposition agree that such deposition may be held face to face with the appropriate social distancing; and it is further

ORDERED that the ST defendants' counsel shall electronically serve a copy of this decision and order with notice of entry on the other parties' respective counsel, and shall electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

ENTER FORTHWITH,



J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE