

<b>Jose v Consolidated Edison Co. of N.Y., Inc.</b>
2026 NY Slip Op 31115(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 161615/2023
Judge: Matthew V. Grieco
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

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INDEX NO. 161615/2023
MOTION DATE 10/31/2025, 11/05/2025, 12/12/2025, 01/20/2026, 01/21/2026
MOTION SEQ. NO. 010 011 012 013 014

LUIS JOSE,

Plaintiff,

- v -

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ALLIED XXVIII LLC, NETWORK INFRASTRUCTURE INC.,

Defendants.

DECISION + ORDER ON MOTIONS AND CROSS-MOTIONS

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 199, 200, 201, 202, 203, 204, 205, 206

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 011) 209, 210, 211, 212, 213, 214, 215, 219, 220, 221, 222, 223, 224, 225

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 012) 236, 237, 238, 239, 240, 241, 242, 243, 244, 247, 248, 249, 250, 251, 252, 253, 254

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 013) 258, 259, 260, 261, 268, 273, 274, 275, 276, 277, 278, 279, 280

were read on this motion to/for CONTEMPT and cross-motion to QUASH

The following e-filed documents, listed by NYSCEF document number (Motion 014) 262, 263, 264, 265, 269, 272, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290

were read on this motion to/for CONTEMPT and cross-motion to QUASH

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motions are denied and the non-parties' cross-motions are granted.

Plaintiff, Luis Jose, brings these five motions to compel depositions and for contempt for failure to attend depositions; non-parties Vincent Vota and Liridon Qosaj cross-move to quash the subpoenas served on them.

This personal injury action arises out of an alleged trip and fall on a sidewalk defect where defendant Network Infrastructure Inc. (“Network”) had performed excavation and utilities installation work (NYSCEF Doc. No. 125 [amended complaint]).

### 1. Motions 10 and 11

In Motion 10, plaintiff seeks to compel defendants to conduct a further (post-surgery) deposition and medical examination of him, or to deem them to have waived such rights (NYSCEF Doc. Nos. 199-206). In Motion 11, plaintiff moves to strike Network’s answer or to preclude testimony, and for sanctions, for failure to appear for a deposition (NYSCEF Doc. Nos. 209-215). Those depositions/examinations have been completed, rendering the two motions effectively moot (*see* NYSCEF Doc. Nos. 219, 222). Plaintiff nevertheless contends that, with respect to Motion 11, the deposition “did not go forward as scheduled” (NYSCEF Doc. No. 222 ¶ 4), and maintains his requests for discovery sanctions. Network asserts that its deposition was originally scheduled for November 6, 2025, but its witness, Craig Lusardi, the project manager, was unavailable on that date, and the deposition was conducted to completion on November 20, 2025 (NYSCEF Doc. No. 219 ¶¶ 4, 11).

In light of the completion of the depositions/examinations, the absence of even the mention of any prejudice from the two week postponement of Lusardi’s deposition, and the lack of any indication of bad faith on the part of Network (*see* 22 NYCRR 130-1.1[c]), Motions 10 and 11 are denied in full.

## 2. Motion 12

In Motion 12, plaintiff moves to compel the depositions of M. Benios and J. Sandoval, two “laborers” employed by Network (NYSCEF Doc. Nos. 236-244).

Plaintiff has not made any showing, let alone the requisite “detailed showing” that “(1) the representative already deposed had insufficient knowledge or otherwise provided inadequate information, and (2) there is a substantial likelihood that the person or persons sought for depositions can supply information that is material and necessary to the prosecution of the case” (*Filpo v Linemaster Switch Corp.*, 244 AD2d 454 [1<sup>st</sup> Dept 1997]; see *Ayala v City of New York*, 169 AD2d 530 [1<sup>st</sup> Dept 1991] [where one officer deposed, plaintiff failed to make a detailed showing for the deposition of another officer and a captain]; *Faber v New York City Tr. Auth.*, 177 AD2d 321 [1<sup>st</sup> Dept 1991] [where three employees deposed, plaintiff failed to make a detailed showing to depose the other seven who worked the day of the accident]). Moreover, Network states that time sheets reflect that Sandoval did not perform any work at the accident site, and thus he has no pertinent information (NYSCEF Doc. No. 246 ¶¶ 12-13).

Accordingly, Motion 12 is denied.

## 3. Motions 13 and 14 and Cross-Motions

Plaintiff seeks in Motions 13 and 14 to hold non-party witnesses Vincent Vota and Liridon Qosaj, respectively, in contempt, pursuant to Judiciary Law § 753 and CPLR 2308, for not appearing for depositions in compliance with plaintiff’s subpoenas (NYSCEF Doc. Nos. 258-261, 262-265, 268-269).

Vota and Qosaj cross-move to quash the subpoenas or for a protective order (NYSCEF Doc. No. 274-280, 281-287). They are both former employees of Network, and

point to deposition testimony of Lusardi that the company last performed work at the location three months before the accident (NYSCEF Doc. No. 249 at 40-42).

When a party serves a subpoena on a non-party for a deposition (*see* CPLR 3101[a][4]) and the non-party moves to quash (*see* CPLR 2304, 3103[a]):

the subpoenaing party must first sufficiently state the “circumstances or reasons” underlying the subpoena (either on the face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is “utterly irrelevant” to the action or that the “futility of the process to uncover anything legitimate is inevitable or obvious.” Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought is “material and necessary” to the prosecution or defense of an action, i.e., that it is relevant [*Matter of Kapon v Koch*, 23 NY3d 32, 34 (2014)].

The subpoenaing party does not need to demonstrate that it cannot obtain the requested disclosure from any other source, just that it is material and necessary (*see id.* at 38).

The “words ‘material and necessary’ as used in [CPLR] 3101 must ‘be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity’” (*id.*, quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]).

It is also true, however, there are no “distinctions between disclosure required of parties and nonparties” (*Matter of Kapon*, 23 NY3d at 36; *see Forman v Henkin*, 30 NY3d 656, 661 [2018]). Against that backdrop, plaintiff essentially wishes to depose two additional Network employees because they currently wear the hat of ex-employees; as noted, plaintiff has already deposed the Network project manager, and the company last performed work at the site three months before the accident. Under those circumstances, the requested depositions will not yield material and necessary information, and the non-parties’ cross-motions to quash the subpoenas are granted (*see Bene LLC v New York SMSA Ltd. Partnership*, 2019 NY Slip Op 31805[U] [Sup Ct,

NY County 2019] [information sought from non-party irrelevant as duplicative], *affd* 184 AD3d 538 [1<sup>st</sup> Dept 2020], *lv dismissed* 36 NY3d 1079 [2021]; *see also Haron v Azoulay*, 132 AD3d 475 [1<sup>st</sup> Dept 2015] [subpoena on non-party quashed as tantamount to a fishing expedition where subpoenaing party had already received all relevant documentation]). Consequently, plaintiff's motions for contempt are denied.

It is therefore

ORDERED that plaintiff's motion to compel defendants to conduct a further (post-surgery) deposition and medical examination of him, or deem the right to conduct such examinations waived (Motion Seq. 10), is denied; and it is further

ORDERED that plaintiff's motion to strike defendant Network's answer or to preclude testimony, as a sanction for failure to appear for a deposition (Motion Seq. 11), is denied; and it is further

ORDERED that plaintiff's motion pursuant to 22 NYCRR 130-1.1 for sanctions for frivolous conduct (Motion Seq. 11) is denied; and it is further

ORDERED that plaintiff's motion to compel the depositions of two additional Network employees (Motion Seq. 12) is denied; and it is further

ORDERED that plaintiff's motion to hold non-party witness Vincent Vota in contempt for not appearing for a deposition in compliance with plaintiff's subpoena (Motion Seq. 13) is denied; and it is further


ORDERED that plaintiff's motion to hold non-party witness Liridon Qosaj in contempt for not appearing for a deposition in compliance with plaintiff's subpoena (Motion Seq. 14) is denied; and it is further

ORDERED that non-party Vincent Vota's cross-motion to quash the subpoena

served on him is granted; and it is further

ORDRED that non-party Liridon Qosaj's cross-motion to quash the subpoena served on him is granted.

This constitutes the decision and order of the Court.

3/23/2026		
DATE		MATTHEW V. GRIECO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE