STATE OF NEW YORK
SUPREME COURT **COUNTY OF RENSSELAER**

PHYLLIS ALLEN, as Parent, Natural Guardian and/or Legal Guardian of MATTHEW ALLEN, SERETHIA ALLEN and NICHOLAS ALLEN,

Plaintiffs,

-against-

Index No.: 213295
RJI No.: 41-0733-2005

JOHN CIANNAMEA, GREGORY A. YAMIN and LEONARD G. SCHLEICHER,

Defendants.

All Purpose Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

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DECISION/ORDER

George B. Ceresia, Jr., Justice

Plaintiffs commenced the instant action seeking to recover for lead poisoning suffered by the infant plaintiffs while they were residing in apartments owned by the defendants approximately 15 years ago. Defendants Ciannamea and Yamin have moved for an order compelling a further bill of particulars and compliance with outstanding discovery demands. Defendant Schleicher has cross-moved for similar relief. Plaintiffs have cross-moved for an order amending the caption to reflect that two of the named infant plaintiffs have reached the age of majority, dismissing numerous affirmative defenses of all defendants and the counterclaims interposed by defendants Ciannamea and Yamin and granting partial summary judgment on the issues of constructive notice with respect to defendants Ciannamea and Yamin and on the issue of liability with respect to defendant Schleicher.

Plaintiffs lived in an apartment owned by defendants Ciannamea and Yamin from early 1990 through November or December 1990. They then lived in a motel until they moved into the apartment owned by defendant Schleicher in May, 1991. They remained in that apartment until the fall of 1996. The infant plaintiffs' test results showed elevated lead blood levels starting in August, 1990. While there was a substantial reduction in lead levels after they moved out of the apartment owned by defendants Ciannamea and Yamin, they continued to have elevated lead blood levels through 1995.

Defendants Ciannamea and Yamin contend that plaintiffs have obstructed their discovery, which is made all the more difficult by the substantial passage of time and the loss of recollection with respect to many of the facts. While they have enumerated several issues, many have already been resolved and are not strictly relevant to the pending motions. They also contend that plaintiffs have been responsible for substantial delay in prosecution of the action by failure to provide a proper bill of particulars. However, defendants Ciannamea and Yamin received the challenged bill of particulars in July of 2005 and, despite its gross defects, did not make the instant motion for well over a year, disregarding correspondence indicating that plaintiffs were not interested in serving a proper bill of particulars without Court intervention. As such, plaintiffs are not totally responsible for the delay in discovery in this action.

A bill of particulars is directly related to the pleadings in an action and is not a form of discovery. Its purpose is to provide more detail with respect to the claims raised in a pleading, to limit the proof and prevent surprise at the time of trial (McKinney's Cons. Laws of N.Y., Book 7-B, Practice Commentaries, David D. Siegel, C3041:2, p. 478). It is not a means of obtaining evidentiary detail with respect to the issues in litigation (id.; see also Graves v County of Albany, 278 AD2d 578, 579 [3d Dept 2000]; Arroyo v Fourteen Estusia Corp., 194 AD2d 309 [First Dept., 1993]). Furthermore, a party is only entitled to a bill of particulars with respect to issues concerning which the opposing party has the burden of proof (McKinney's Cons. Laws of N.Y., Book 7-B,

Practice Commentaries, David D. Siegel, C3041:6, p. 482). Defendants Ciannamea and Yamin served a 26 page demand for a bill of particulars containing 135 separate items. Some of the demands improperly seek evidentiary material or are relevant to various defenses concerning which plaintiffs do not have the burden of proof. However, instead of complying with CPLR 3042 (a), which requires a specific statement of reasons for the objection to each item and compliance with the remaining items, plaintiffs served a boilerplate objection to the entire demand and then provided an exhaustive list of alleged negligence and injuries without regard to any of the items of the demand. Such "bill of particulars" was entirely unresponsive, warranting an order directing service of a further bill of particulars. On this record the Court will not review defendants' entire demand to determine which, if any, of plaintiffs' general objections are applicable to specific items. Accordingly, plaintiffs shall be required to serve a bill of particulars in compliance with the CPLR within 30 days of the date hereof.

Defendants Ciannamea and Yamin have also raised objections to the form of the authorizations supplied by plaintiffs in that they did not contain the full and correct names of the non-party providers or schools and did not contain their addresses. While defendants have shown that these defects caused significant extra work to process the authorizations, they have failed to provide sufficient detail with respect to any remaining authorizations which have not yet been served and for which additional information is necessary so as to allow the Court to fashion a remedy. The request for generalized relief

with respect to authorizations shall be denied.

Plaintiffs have refused to provide authorizations for the records of the Department of Social Services, claiming that such records are privileged. Indeed, Social Services Law § 372 renders such records confidential (see Catherine C. v Albany County Dept. of Social Servs., __ AD3d ___, 2007 NY Slip Op 01647 [3d Dept 2007]). However, they are subject to disclosure if material and relevant to the issues in the litigation (id.). Plaintiffs contend that the provisions for discovery in Social Services Law § 372 (4) (a) are inapplicable because the infant plaintiffs are not abandoned, delinquent, destitute, neglected or dependent children within the meaning of Social Services Law § 372 (1) and that therefore the statute is not applicable. However, the records provided so far clearly indicate that the infant plaintiffs come within the scope of such terms as defined by Social Services Law § 371. Moreover, plaintiffs have not shown any other applicable statutory provision rendering the records confidential if Social Services Law § 372 does not apply.

The record before the Court shows that the infant plaintiffs' parent and guardian has very poor recollection of the places where the infant plaintiffs resided, went to school and received medical, psychological and other similar services or the dates of such events, occurrences or periods. Such information is clearly critical to a defense of the plaintiffs' claims and at this time it does not appear that such information can be obtained from any other source. The defendants are and have been aware of the fact that plaintiffs received public assistance and essentially every other privilege with respect to such records has

been waived by commencement of the instant litigation. As such, defendants Ciannamea and Yamin have shown that their interests in disclosure are sufficient to warrant further discovery with respect to such records.

The procedures for obtaining such discovery were recently set forth in Catherine C. v Albany County Dept. of Social Servs., supra. First, the records must be provided to the Court for *in camera* inspection, and then a hearing must be held to determine the extent of the disclosure. Accordingly, defendants Ciannamea and Yamin are directed to submit a subpoena duces tecum requiring the production of such records to the Court. The Court shall thereafter schedule a conference to define the scope of the required hearing.

The record also shows that at least one of the infant plaintiffs may be receiving Social Security disability benefits. Defendants Ciannamea and Yamin requested an authorization to obtain such records for Serethia Allen with cover letter dated April 5, 2006. No other demands for Social Security records have been submitted by defendants. Certainly, such records are material and relevant to said plaintiff's current medical condition and the extent of injuries sustained. Plaintiffs have not raised any specific objection to providing such authorization. Accordingly, plaintiff Serethia Allen shall be required to execute and serve such authorization within 30 days of the date hereof.

Defendants Ciannamea and Yamin also seek to compel plaintiffs to provide authorizations for the records of Cora Allen, the mother of plaintiff Serethia Allen. Cora

Allen is not a party to this action. There has been no showing that plaintiffs have any control over said Cora Allen and no basis to require plaintiffs to provide authorizations for any of her records. Moreover, defendants Ciannamea and Yamin have not complied with the provisions for obtaining discovery from a non-party. Accordingly, such relief shall be denied.

Defendants Ciannamea and Yamin also object to the fact that they are missing medical and school records for various years for various infant plaintiffs. They have not indicated whether these gaps are found in records produced directly by plaintiffs or whether they relate to records obtained by authorizations. There is no indication that plaintiffs have possession of the missing records nor is there any other information which would allow the Court to fashion a remedy with respect to such records. Accordingly, the general request for relief with respect to such records shall be denied.

Defendants Ciannamea and Yamin have shown that plaintiffs have interfered with at least one of the authorizations provided. They received a letter from Parsons Child and Family Center which stated "[t]he information does not include Nick Allen's entire record, but rather documents, which Ms. Phyllis Allen chose to include." Such interference with an unrestricted authorization is clearly improper. Plaintiffs have not submitted an affidavit from Phyllis Allen denying the interference. Accordingly, plaintiffs shall be required to prepare and provide additional authorizations for all providers and schools which correctly name the recipient and provide an address, and

which further expressly state that the authorizations are unrestricted and irrevocable, authorizing the release of any and all records not already provided.

Defendants Ciannamea and Yamin further object to the response to their demand for witnesses as no addresses have been provided and the responses do not indicate whether the witnesses have knowledge with respect to notice, the occurrence or damages. While there is no specific provision in article 31 of the CPLR authorizing a demand for the names and addresses of witnesses, it has regularly been held that such a demand is appropriate (see Hunter v Tryzbinski, 278 AD2d 844 [4th Dept 2000]; Parsons v Borden Inc., 273 AD2d 749 [3d Dept 2000]; Culbert v City of New York, 254 AD2d 385, 387 [2d Dept 1998]). Failure to provide such disclosure has been held to constitute grounds for a new trial due to the substantial interference with the demanding party's rights to investigate all of the circumstances surrounding the occurrence (see Humiston v Rochester Inst. of Technology, 195 AD2d 961 [4th Dept 1993]). Defendants Ciannamea and Yamin are therefore entitled to an order directing plaintiffs to provide both the names and addresses of all witnesses, including Cora Allen, if known or if they may be ascertained upon reasonable inquiry.

Defendants Ciannamea and Yamin also seek a statement of the subject of the witnesses' knowledge. The Appellate Division, Third Department, has affirmed a trial court denial of such disclosure (see Parsons v Borden Inc., 273 AD2d at 751). However, the Court need not reach such issue as defendants' demand does not seek such

information. The demand, as written, merely requests the names and addresses of all witnesses with knowledge of the occurrence, the cause of the occurrence or notice of the condition. Accordingly such relief shall be denied without prejudice to service of a new demand separately seeking the names and addresses of witnesses in each category.

Defendants Ciannamea and Yamin further seek an order compelling the inspection of any equipment used to test for lead as well as any samples of paint chips or dust taken from places where the plaintiffs resided. Plaintiffs responded to defendants' demand by stating that they have no such items in their possession. The response is silent with respect to such items within their custody or control. Given plaintiffs' history of obfuscating defendants' attempts at discovery, defendants are entitled to a full response to the demand addressing possession, custody and control, as well as a statement of explanation to the effect that plaintiffs will rely solely upon governmental records for proof of the presence of lead if that is the case.

Defendants Ciannamea and Yamin also seek an order directing further examinations before trial of the plaintiffs at plaintiffs' expense. That portion of the motion is based upon entirely conclusory claims that the depositions were rendered excessively long due to plaintiffs' failure to disclose essential information before the depositions and due to interference by plaintiffs' counsel. Defendants have failed to indicate precisely what additional information is necessary nor have they shown specifically how they were prevented form obtaining such information in the first

deposition. Accordingly, such relief shall be denied without prejudice to renew following completion of discovery of documentary evidence.

Defendants Ciannamea and Yamin have also requested an order allowing them to conduct independent medical examinations of the infant plaintiffs after they have obtained all relevant records and also seek to compel plaintiffs to agree to and participate in depositions of non-party witnesses. There is no indication that defendants have served a notice for any examinations before trial of non-party witnesses nor any other stated basis for relief with respect to non-party witnesses. There is also no indication, other than generalized, conclusory assertions of difficulty in finding expert witnesses, that any relief is necessary with respect to scheduling independent medical examinations. Such relief shall therefore be denied.

Finally, defendants Ciannamea and Yamin seek an extension of the current scheduling order. It appearing that an extension is warranted, all deadlines contained in the current order shall be extended by six months.

Defendant Schleicher has cross-moved for similar relief with respect to the bill of particulars served by plaintiffs and with respect to discovery issues. Said defendant merely states that he joins in the co-defendants' motion. There is no specificity as to objectionable responses to the demand for a bill of particulars or discovery demands. Defendant Schleicher's demands are substantially different from the demands of defendants Ciannamea and Yamin and the bill of particulars served by plaintiffs in

response to defendant Schleicher's demand does in fact respond to the individual items of the demand. Defendant Schleicher has also failed to provide any specificity or detail establishing that any other discovery demands have not been complied with. Accordingly, the cross-motion shall be denied without prejudice to renew.

Plaintiffs have cross-moved to amend the caption to reflect that Matthew and Serethia Allen are no longer infants, to dismiss the fourth, fifth, tenth, and eleventh affirmative defenses of defendants Ciannamea and Yamin, the counterclaim of defendants Ciannamea and Yamin, the first, second, and sixth affirmative defenses of defendant Schleicher and granting partial summary judgment on the issues of constructive notice with respect to defendants Ciannamea and Yamin and on the issue of liability with respect to defendant Schleicher. There being no opposition to that portion of the motion seeking to amend the caption, such relief shall be granted. Henceforth, the caption shall read: MATTHEW ALLEN, SERETHIA ALLEN and PHYLLIS ALLEN, as Parent, Natural Guardian of NICHOLAS ALLEN, Plaintiffs, against JOHN CIANNAMEA, GREGORY A. YAMIN and LEONARD G. SCHLEICHER, Defendants.

Summary judgment is a drastic remedy which should only be granted when it is clear that there are no triable issues of fact (see Andre v Pomeroy, 35 NY2d 361, 364 [1974]). "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hosp., 68

NY2d 320, 324 [1986]; see also Bush v St. Clare's Hosp., 82 NY2d 738, 739 [1993]). In order to meet this burden when seeking dismissal of a cause of action or defense, a party must submit evidence which negates any meritorious cause of action or defense encompassed by the pleadings (Franceschi v Consolidated Rail Corp., 142 AD2d 915 [1988]; see also Hirsh v Bert's Bikes and Sports, 227 AD2d 956 [1996]; Wilder v Rensselaer Polytechnic Inst., 175 AD2d 534 [1991]). It is only when the movant has established a right to judgment as a matter of law that the burden shifts to the opponent of the motion to establish, by admissible proof, the existence of genuine issues of material fact (see Zuckerman v City of New York, 49 NY2d 557 [1980]). The Court will then view the evidence in a light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference, and determine whether there is any triable issue of fact (see Boyce v Vazquez, 249 AD2d 724, 726 [1998]; Martin v Briggs, 235 AD2d 192, 196 [1997]; Simpson v Simpson, 222 AD2d 984, 986 [1995]).

The fourth, fifth, tenth, and eleventh affirmative defenses of defendants Ciannamea and Yamin assert contributory negligence, assumption of risk, acceptance of the risk and failure to mitigate damages, respectively. The first, second, and sixth affirmative defenses of defendant Schleicher assert culpable conduct of the plaintiffs, assumption of the risk and culpable conduct by some third party, respectively. Plaintiffs seek to dismiss so much of defendant Schleicher's sixth affirmative defense which is addressed to conduct of the infant plaintiffs' parents.

At all relevant times, the infant plaintiffs were between one and eight years old. The highest elevated lead blood levels occurred when the infant plaintiffs were between two and four years old. The affirmative defenses of contributory negligence, assumption of risk, acceptance of the risk and failure to mitigate damages "are not available *** because infants of such young age are non sui juris as a matter of law (see Verni v Johnson, 295 NY 436, 437-438; Boyd v Trent, 297 AD2d 301, 302- 303; Smith v Sapienza, 115 AD2d 723, 724; cf. Estate of Pesante v County of Seneca, 1 AD3d 915, 917-918)." (M.F. v Delaney, 37 AD3d 1103 [4th Dept 2007]).

Defendants oppose dismissal of their defenses claiming that additional discovery is needed. In order successfully to oppose the motion to dismiss on the ground that additional discovery is needed, defendants must make an evidentiary showing that facts essential to justify opposition may exist but can not as yet be stated. Speculation or conjecture are not sufficient to warrant denial or a continuation of the motion (see Green v Covington, 299 AD2d 636 [3d Dept 2002]; Firth v State of New York, 287 AD2d 771, 773 [3d Dept 2001] affd 98 NY2d 365 [2002]; Pank v Village of Canajoharie, 275 AD2d 508, 509 [3d Dept 2000]). Defendants have not offered any factual showing that discovery is likely to reveal any evidence that the affirmative defenses have merit. Accordingly, plaintiffs are entitled to dismissal of the fourth, fifth, tenth, and eleventh affirmative defenses of defendants Ciannamea and Yamin and the first and second affirmative defenses of defendant Schleicher.

In general, a parent will not be liable to third parties for negligent supervision of his or her children. This serves to prevent the assertion of counterclaims or affirmative defenses which would reduce the infant's recovery. The rule has been applied to prevent claims against parents of children who have sustained lead poisoning (see M.F. v Delaney, 37 AD3d at 1105; Ward v Bianco, 16 AD3d 1155 [4th Dept 2005]). However, claims relating to lead poisoning may be brought against the parent when there has been an unreasonable delay in obtaining medical treatment for the infant (see Cantave v Peterson, 266 AD2d 492 [2d Dept 1999]; Arriaga v Michael Laub Co., 233 AD2d 244 [1st Dept 1996]; Alharb v Sayegh, 199 AD2d 229 [2d Dept 1993]). Plaintiffs in support of the instant cross-motion have failed to offer proof of when and to what extent medical care was provided to the infant plaintiffs when the existence of lead poisoning was discovered. As such, they have failed to meet their burden of conclusively establishing the absence of merit of defendant Schleicher's sixth affirmative defense. Therefore relief with respect to such defense shall be denied.

The counterclaims of defendants Ciannamea and Yamin allege that Phyllis Allen knew of the dangers of lead paint, and was negligent, entrusted the infant plaintiffs with a dangerous substance, failed to prevent the infant plaintiffs from engaging in dangerous activity, created the dangerous condition, and failed to give the infant plaintiffs instructions to stay away from a dangerous condition which was known to her. For the most part, such counterclaims merely allege failure of supervision, and as noted above,

such claims are unavailable. Defendants Ciannamea and Yamin seek to rely upon the exception to the general rule for entrustment of a dangerous instrument to an infant. However, while lead paint is clearly a dangerous substance, the Court can not find that the apartment, owned by the defendants, is a dangerous instrument within the meaning of the exception. Therefore the second through fifth counterclaims shall be dismissed.

The first counterclaim alleges general negligence by plaintiff. As noted above, plaintiff has failed to show that she provided prompt and adequate medical attention to the infant plaintiffs when she learned of the lead poisoning. Moreover, the record indicates that plaintiff continued to live in the apartment for several weeks after it had been declared unfit for human habitation. She was issued a summons for failure to comply with an order to leave the premises. Such conduct could be considered an interference with defendants' duty and ability to remediate the condition (see Cooper v County of Rensselaer, 182 Misc 2d 487 [Sup Ct, Rensselaer County 1999]). It is therefore determined that there are issues of fact concerning possible liability of Phyllis Allen as raised in the first counterclaim. The cross-motion to dismiss such counterclaim shall therefore be denied.

Plaintiffs also seek partial summary judgment on certain issues concerning constructive notice with respect to defendants Ciannamea and Yamin and with respect to liability against defendant Schleicher. The instant action is governed by general principles applicable to premises liability. Plaintiffs have not shown that defendants

Ciannamea and Yamin had actual notice of the existence of a lead paint hazard in the apartment at the time plaintiffs took possession. Plaintiffs may also make a prima facie showing of constructive notice by showing that defendants Ciannamea and Yamin "(1) retained a right of entry to the premises and assumed a duty to make repairs, (2) knew that the apartment was constructed at a time before lead-based interior paint was banned, (3) [were] aware that paint was peeling [or chipping] on the premises, (4) knew of the hazards of lead-based paint to young children and (5) knew that a young child lived in the apartment" (Chapman v Silber, 97 NY2d 9, 15 [2001]; see also Wynn v T.R.I.P. Redevelopment Assoc., 296 AD2d 176, 180 [3d Dept 2002]; Patterson v Brennan, 292 AD2d 582, 583 [2d Dept 2002]).

However, the Court finds that in order to establish constructive notice of a condition, there must be proof that the condition actually existed. The only proof plaintiffs have submitted in support of the claim that there was lead paint in the apartment belonging to defendants Ciannamea and Yamin is a copy of a "memo to file" from Katherine Johnson, PHS. There is no proof as to the identity of Ms Johnson or her office or position. Moreover, the memo does not appear to be a report within the meaning of Public Health Law § 10 (2), which provides that the written reports of governmental officials and employees concerning violations of the sanitary code or local health regulations constitute presumptive evidence of the facts stated therein. Plaintiffs have therefore failed to make a prima facie showing that there was a hazardous lead paint

condition in the apartment belonging to defendants Ciannamea and Yamin.

Plaintiffs have also failed to offer any proof that defendants Ciannamea and Yamin knew of the hazards of lead paint to young children when the apartment was rented to plaintiffs. While plaintiffs have offered the deposition testimony of Phyllis Allen to the effect that defendants were aware of the existence of chipping and pealing paint in the apartment, the record also establishes that defendants Ciannamea and Yamin have no recollection of the specific condition of the apartment or whether they received any complaints about the condition of the paint. Under such circumstances, plaintiffs' claims are within the exclusive knowledge of Phyllis Allen. Defendants are entitled to have a jury determine the credibility of Ms. Allen's claims, rendering summary judgment inappropriate (see Tenkate v Moore, 274 AD2d 934, 935 [3d Dept 2000]; Antunes v 950 Park Ave. Corp., 149 AD2d 332, 333 [1st Dept 1989]).

Defendants Ciannamea and Yamin have admitted in their depositions that they retained a right of entry to the premises and assumed a duty to make repairs, knew that the apartment was constructed at a time before lead-based interior paint was banned and knew that young children lived in the apartment. However, pursuant to CPLR 3212 (e), whether to grant partial summary judgment is left to the discretion of the Court on such terms as may be just. It does not appear that granting judgment on these issues will have any noticeable impact on the conduct of the trial, nor would it sharpen the remaining issues or provide any other significant benefit. Therefore, plaintiffs' motion for partial

summary judgment against defendants Ciannamea and Yamin shall be denied.

Plaintiffs also seek summary judgment of liability against defendant Schleicher. The record indicates that the premises were inspected by the Rensselaer County Health Department before plaintiffs moved in. Initially, there were findings of chipping and peeling lead paint. However, defendant Schleicher remediated all lead hazards in the apartment, which passed a health department inspection before plaintiffs moved in. There is some indication in the record that the infant plaintiffs chewed on woodwork and picked at the paint, revealing encapsulated lead paint. As above, defendant Schleicher has no recollection of when or if he received any complaints from the plaintiffs about the condition which they created. The record also indicates that defendant Schleicher performed all necessary abatement procedures when required by the health department. Under such circumstances, there are clearly questions of fact with respect to constructive notice and negligence, if any, in abatement. Therefore, the cross-motion for summary judgment of liability against defendant Schleicher shall also be denied.

Accordingly it is

ORDERED that plaintiffs shall be required to serve a bill of particulars in compliance with the CPLR within 30 days of the date hereof, and it is further

ORDERED that defendants' Ciannamea and Yamin request for generalized relief with respect to authorizations shall be denied, and it is further

ORDERED that defendants Ciannamea and Yamin are directed to submit a

subpoena duces tecum requiring the production of Department of Social Services records to the Court, and it is further

ORDERED that plaintiff Serethia Allen shall be required to execute and serve an authorization for release of Social Security records within 30 days of the date hereof, and it is further

ORDERED that the motion to compel plaintiffs to provide authorizations for the records of Cora Allen is hereby denied, and it is further

ORDERED that the general request for relief with respect to missing records is hereby denied, and it is further

ORDERED that plaintiffs are directed to prepare and provide additional authorizations for all providers and schools which correctly name the recipient and provide an address, and which further expressly state that the authorizations are unrestricted and irrevocable, authorizing the release of any and all records not already provided, and it is further

ORDERED that plaintiffs are directed to provide both the names and addresses of all witnesses, including Cora Allen, if known or if they may be ascertained upon reasonable inquiry within 30 days of the date hereof, and it is further

ORDERED that the motion to compel production of a statement of each witness's expected testimony is hereby denied, and it is further

ORDERED that plaintiffs are hereby directed to provide a response to the demand

for discovery and inspection of testing equipment and samples addressing possession, custody and control, as well as a statement of explanation to the effect that plaintiffs will rely solely upon governmental records for proof of the presence of lead if that is the case, and it is further

ORDERED that the motion to compel further examinations before trial of the plaintiffs is hereby denied without prejudice to renew following completion of discovery of documentary evidence, and it is further

ORDERED that the motion with respect to independent medical examinations and depositions of non-party witnesses is hereby denied, and it is further

ORDERED that the motion for an extension of the current scheduling order is hereby granted to the extent that all deadlines contained in the current order shall be extended by six months, and it is further

ORDERED that the cross-motion of defendant Schleicher is hereby denied without prejudice to renew, and it is further

ORDERED that the cross-motion to amend the caption is hereby granted. The caption shall read:

MATTHEW ALLEN, SERETHIA ALLEN and PHYLLIS ALLEN, as Parent, Natural Guardian of NICHOLAS ALLEN, Plaintiffs, against JOHN CIANNAMEA, GREGORY A. YAMIN and LEONARD G. SCHLEICHER, Defendants, and it is further

ORDERED that the fourth, fifth, tenth, and eleventh affirmative defenses of

defendants Ciannamea and Yamin and the first and second affirmative defenses of defendant Schleicher are hereby dismissed, and it is further

ORDERED that the cross-motion to dismiss defendant Schleicher's sixth affirmative defense is hereby denied, and it is further

ORDERED that the cross-motion to dismiss the second, third, fourth and fifth counterclaims asserted in the answer of defendants Ciannamea and Yamin is hereby granted, and it is further

ORDERED that the cross-motion to dismiss the first counterclaim asserted in the answer of defendants Ciannamea and Yamin is hereby denied, and it is further

ORDERED that the cross-motion for partial summary judgment in favor of plaintiffs is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: Troy, New York
May 3 ,2007

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

Notice of Motion dated September 13, 2006;
Affirmation of Nannette R. Kelleher, Esq. dated September 13, 2006 with Exhibits A-AA annexed;
Affidavit of Erika L. Peat sworn to September 13, 2006 with Exhibits A-D annexed;
Memorandum of Law dated September 13, 2006;

Notice of Cross-Motion dated September 27, 2006; Affirmation of Joseph W. Buttridge, Esq. dated September 27, 2006 with Exhibits A-C annexed;

Notice of Cross-Motion dated December 8, 2006;
Affirmation of Mo Athari, Esq. dated December 8, 2006 with Exhibits A-S annexed;

Affidavit of Nannette R. Kelleher, Esq., sworn to January 31, 2007 with Exhibits A-D annexed;
Memorandum of Law dated January 31, 2007;

Affirmation of Steven J. Rice, Esq. dated February 7, 2007 with Exhibits A-D annexed;

Affirmation of Mo Athari, Esq. dated February 19, 2007.