SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **IAS MOTION 7EFM**

Justice

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SHELLEY RUBIN,

Plaintiff,

- v -

NISHA SABHARWAL, MOHIT SABHARWAL, VASTRA INC., OM VASTRA LLC, and OM VASTRA MIAMI LLC,

Defendants.

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INDEX NO. 650839/2017

MOTION DATE 10/09/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74

were read on this motion for DISCOVERY.

The Law Offices of Neal Brickman, P.C., New York City (Ethan Y. Leonard of counsel), for plaintiff.
Certilman Balin Adler & Hyman LLP, New York City (John H. Gionis and Nicole L. Milone of counsel), for defendants.

Gerald Lebovits, J.:

Plaintiff Shelley Rubin is the co-founder and co-chair of a museum specializing in Himalayan and Indian art. Rubin and defendants (principally defendant Nisha Sabharwal) engaged in approximately 80 transactions over several years, during which Rubin purchased hundreds of pieces of jewelry amounting to approximately $18 million. According to the allegations of the complaint, Rubin made these purchases from Sabharwal under the belief that the jewelry was of historical significance, "museum-quality," and valuable—and later discovered that this belief was mistaken. Rubin claims that Sabharwal was engaged in a "long con" to trick Rubin into buying modern, ordinary jewelry at vastly inflated prices.

Rubin sued Sabharwal and other defendants, asserting claims for fraud, breach of contract, and unjust enrichment. In an order issued in February 2018, this court dismissed Rubin's fraud-based claims. (*See Rubin v Sabharwal*, Index No. 650830/2017, 2018 NY Slip Op 30293 [U] [Sup Ct, NY County Feb. 20, 2018].) The Appellate Division, First Department, affirmed that order. (*See Rubin v Sabharwal*, 171 AD3d 580 [1st Dept 2019].)

This motion concerns various interrogatories and document demands that plaintiff served on defendants in aid of her remaining claims. Plaintiff asserts that defendants' responses and objections to those discovery requests are inadequate. She moves to strike defendants' answer for failing to respond properly to discovery (or to preclude defendants from offering evidence on the

topics covered by her discovery requests). In the alternative, she moves to compel defendants to supplement the responses they previously provided. Defendants, arguing that they have fully and completely responded to plaintiff's discovery requests, cross-move to compel plaintiff's deposition (previously held in abeyance pending the completion of paper discovery).

DISCUSSION

CPLR article 31 implements a strong policy for full disclosure of all evidence material and necessary in prosecuting or defending an action. "[M]aterial and necessary" is construed liberally to require disclosure, upon request, of any facts bearing on the controversy that will assist in sharpening the issues for trial. (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]. In short, the test is whether a given "request is reasonably calculated" to yield information relevant to a plaintiff's claims. (*Forman v Henkin*, 30 NY3d 656, 661 [2018].)

Here, the parties dispute whether a number of plaintiff's interrogatories and document requests seek relevant information without imposing an excessive burden on defendants. For simplicity, this order considers the disputed interrogatories and document requests separately, cross-referencing as needed.

I. Plaintiff's Interrogatories

Interrogatory No. 1: Plaintiff seeks information that, as she puts it, indicates "how, when, from whom and for what price Defendants obtained the items that they sold Plaintiff." (Reply Mem. of Law, NYSCEF No. 68, at 8.) Defendants objected on several grounds, including that the information that plaintiff seeks is several years old (and therefore putatively too burdensome to obtain); that questions about the jewelry's "provenance," and whether defendants sold pieces of jewelry to plaintiff "on commission," are too ambiguous to answer meaningfully; and that the information sought is irrelevant. (*See* NYSCEF No. 56, at 3.)

This court does not agree that this interrogatory is inherently too burdensome merely because it seeks information regarding jewelry sales from four to eight years ago—particularly given the substantial value of these transactions. And the information sought in this interrogatory about the age, provenance, and value of the jewelry plaintiff was purchasing appears relevant to her surviving causes of action, such as her claim for equitable rescission of the sales contracts based on a mistaken belief regarding the nature of the jewelry.

Defendants' initial response to this interrogatory stated that they somehow were "not in possession of records of these transactions." (*Id.*) The information defendants did provide was framed at a high level of generality, without specifying which responses (about source, supplier, consignment status, and so on) pertain to which piece or category of pieces of jewelry. And although defendants named several individuals who supplied to defendants jewelry later sold to plaintiff, defendants gave no details or contact information about these individuals.

Defendants are directed to search again for any records or information that might be responsive to Interrogatory No. 1. Defendants shall provide any responsive information or documents that this renewed search has uncovered on or before January 17, 2020. If no such

information or records are now in defendants' possession, defendants shall supply an affidavit of diligent search. That affidavit also shall specify (i) whether such records ever existed; (ii) whether defendants previously were in possession of the records; and (iii) if defendants previously possessed these records, how the records came to leave defendants' possession.

More broadly, to the extent that defendants have any additional information responsive to this interrogatory—for example, connecting particular suppliers or sources of supply to particular pieces or categories of pieces—they must provide it by January 17 as well. Defendants must also within that period provide any contact information they have for the three individuals named as suppliers in defendants' initial response to this interrogatory. To the extent that the information defendants provided in that response is all the information available to them upon a diligent search, they shall so specify by affidavit.

Interrogatory No. 2: Plaintiff asks defendant to identify any pieces of jewelry that defendants "created, fabricated, or otherwise fashioned" before selling them to plaintiff; and, as to each such item, to identify the source of the raw materials that defendants used to make the jewelry, the cost that defendants paid for the raw materials, and the date on which defendants obtained such raw materials. Defendants raised the same burden and relevance objections as in their response to Interrogatory No. 1. This court rejects these arguments for the same reasons, as well.

Defendants' initial response also again said that they have no records of the transactions. The only information they provided was that the "majority of pieces sold had been customized or redesigned in some manner," and that the "origin of these items is primarily India." As with Interrogatory No. 1, defendants must, by January 17, 2020, provide any other responsive information and supply an affidavit explaining their answer about their lack of records.

Interrogatory No. 3: Plaintiff asks defendant to identify "each officer and shareholder of Vastra, Inc." (NYSCEF No. 51, at 5.) Defendants responded by saying that there are no officers and shareholders, because Vastra was voluntarily dissolved in early 2016. (*See* NYSCEF No. 56, at 5.) Plaintiff now seeks to compel defendants to identify Vastra's officer and shareholders between 2009 and 2016, arguing that such individuals would have information relevant to Vastra's business, the jewelry sales to plaintiff, and the sources of the items sold to plaintiff. (*See* NYSCEF No. 68, at 10.)

This court concludes that defendants need not supplement their response to this interrogatory. The identity of Vastra's officers and/or shareholders is not itself relevant to plaintiff's claims. Rather, as plaintiff herself makes clear in her motion papers, she hopes that if she gets the responses she is looking for with this interrogatory, she would then be able to pursue other interrogatories which might in turn lead to the discovery of relevant information. Plaintiff may not, however, require defendants to respond to an interrogatory merely on speculation that relevant information ultimately will turn up down the line.

Interrogatory No. 5: Plaintiff asks for the dollar amounts of sales effectuated by Nisha Sabharwal and Vastra for 2010-2017 inclusive. She argues that this information is relevant to the "impetus" and "underlying motivations" for defendants' alleged conduct, and that it shows "the

depth of the improper acts and statements on the part of Defendants." (NYSCEF No. 68, at 10.) This court does not agree that the total sales figures for Nisha Sabharwal and Vastra shed any light on plaintiff's remaining claims against defendants.

Interrogatory No. 6: Plaintiff seeks the dollar amounts of income generated by Nisha Sabharwal and Vastra from sales to plaintiff in the period 2010-2017 inclusive. Plaintiff asserts that the amount of income generated from sales to plaintiff is integral to plaintiff's unjust-enrichment cause of action. (*See* NYSCEF No. 68, at 10.) But that income information would be relevant to unjust enrichment only to the extent that the income information would show how much money defendants (allegedly) gained *at plaintiff's expense—i.e.*, the amount of money that plaintiff paid to defendants for these pieces. (*See IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009].) And that information should already be in plaintiff's possession. Plaintiff has not established that defendants' responses to this interrogatory would produce any additional information relevant to the unjust-enrichment claim beyond what she already herself has.

Plaintiff also argues that obtaining income data from the sales to plaintiff would go to "whether unilateral or mutual mistake can be proven" for purposes of plaintiff's rescission cause of action. (NYSCEF No. 68, at 10.) But as with the unjust-enrichment cause of action, it remains unclear how the requested income data would shed any light on the question of mistake, at least beyond information that plaintiff should already have on how much she paid defendants for the various pieces at issue.

Interrogatory No. 7: Plaintiff seeks the dollar amounts of income generated by Nisha Sabharwal and Vastra from sales to *other* individuals or entities in the period 2010-2017 inclusive. Plaintiff argues that this information "would provide a context for the sales to Plaintiff" and should be turned over for the same reasons as in Interrogatory No. 5. This court again concludes that plaintiff has not shown how these sales figures would shed light on plaintiff's remaining claims against defendants.

Interrogatory No. 8: Plaintiff asks defendants to identify "any individuals" to whom defendants made more than $50,000 in aggregate sales between 2009 and 2017 inclusive. Plaintiff argues that a response to this interrogatory would "identify others with whom Nisha [Sabharwal] had similar dealings which would likely lead to the discovery of additional relevant information." (*Id.* at 11.) This speculative argument is unavailing for the same reasons as with Interrogatory No. 3, above.

Interrogatory No. 15: Plaintiffs seek information about which pieces sold to plaintiff by defendants originally came from Nisha Sabharwal's mother Padma. This court agrees with plaintiff that the requested information is relevant and discoverable. At a minimum, the information goes to whether plaintiff was mistaken about the nature of some of the pieces of jewelry she purchased, and that is relevant to plaintiff's rescission claim. Defendants shall clarify whether the photographs they provided to plaintiff in response to this interrogatory (marked as SABHARWAL 00000190) comprise the only information that is responsive to this interrogatory.

Additionally, plaintiff's Document Request No. 12 similarly seeks copies of any documents identifying which pieces of jewelry came from Nisha Sabharwal's mother Padma. As plaintiff notes, defendants' response to this demand was that they "are not in possession of any document that is responsive to this demand." (NYSCEF No. 57, at 8.) This answer appears to contradict defendant's production of photographs under Interrogatory No. 15. Defendants must explain the relationship between these two responses, and clarify whether they are, in fact, in possession of any documents responsive to Request No. 12.

Interrogatory No. 16: Plaintiff seeks additional details on the pieces of jewelry identified in defendants' response to Interrogatory No. 15. Defendants indicated in their response to the interrogatory that the "only information that the Defendants are *currently* in possession of in relation to the two items reflected in the attached photos in SABHARWAL 00000190 is that they both had origin in India." (NYSCEF No. 56, at 12-13 [emphasis added].) This court agrees with defendants that this answer is responsive. However, defendants are directed to clarify whether they were previously in possession of additional information about the items in the SABHARWAL 00000190 photographs, and, if so, how defendants came to lose possession of that information.

Interrogatory No. 17: Plaintiff asks defendants to identify "which pieces of jewelry," if any, sold by defendants to plaintiff were "(1) 'museum quality'; (2) 'part of an important collection'; (3) antiques; (4) of 'considerable value' either as an investment or for their cultural significance; and/or (5) created in the last twenty (20) years." (NYSCEF No. 51, at 7.) Plaintiff's motion to compel a response to this interrogatory is granted only to the extent that defendants must identify whether, to their knowledge, they represented to plaintiff that pieces of jewelry they were seeking to sell to plaintiff had one or more of attributes (1) through (4) listed above (museum quality, part of an important collection, and so on)—and, if so, which pieces were described as having which attributes.

This court does not agree with defendants' assertion in their objection to Interrogatory No. 17 that the listed attributes are "overly vague, ambiguous, and indefinite." (NYSCEF No. 56, at 13.) Nor does the court agree that this interrogatory is improper in that answering it would require defendants to create a writing that does not currently exist. (*See* NYSCEF No. 67, at 11.) That objection, properly speaking, applies only to notices for discovery and inspection issued under CPLR 3120, not to interrogatories propounded under CPLR 3130 and CPLR 3131. (*See Jonassen v A.M.F., Inc.*, 104 AD2d 484,485-486 [2d Dept 1984] [construing CPLR 3120]; *Welsh v New York City Transit Auth.*, 78 AD2d 550, 550 [2d Dept 1980] [addressing motion for protective order regarding notice for discovery and inspection].)

CPLR 3120 notices require production for copying or inspection of documents or things "which are in the possession, custody, or control of the party or person served." (CPLR 3120 [1] [i].) Thus, these notices are inherently limited to documents or things already in existence when the notice is served, rather than being vehicles for requiring creation of new documents. Interrogatories, on the other hand, by their very nature call for their recipients to create new writings to respond to the questions being propounded. It is difficult to see why any interrogatory calling for a detailed response in written form should thereby necessarily be improper. Whether a particular interrogatory goes too far in requiring the recipient to generate a long and detailed

writing to respond properly to the question(s) being asked is instead more accurately considered an issue of burden.

Here, defendants do object on the ground that "this voluminous request" is "unduly burdensome" in nature, "[g]iven the sheer volume of jewelry sold at issue in this case." (NYSCEF No. 67, at 11.) But the request itself is limited to a small number of representations that defendants may have made about the pieces at issue. Although defendants' *response* to the request may ultimately be voluminous, that result would be merely a function of the scope of the transactions between plaintiff and defendants, and thus of plaintiff's remaining claims in the action. Plaintiff is entitled to seek relevant discovery to support those claims. This is not to say, of course, that defendants must supply any particular response to this interrogatory. But defendants must at the very least attempt to respond accurately and completely.

Interrogatory No. 18: Plaintiff has asked defendants to describe what representations Nisha Sabharwal, in particular, made to plaintiff about the jewelry sold by defendants to plaintiff. (NYSCEF No. 51, at 7.) Defendants' response stated that the "only representations made were those described in the invoices that were given to plaintiff." (NYSCEF No. 56, at 14.) As plaintiff argues (*see* NYSCEF No. 68, at 13), defendants should clarify whether this statement is the only information that is responsive to this interrogatory. Defendants also should clarify whether they mean in this response to say (i) that the only representations in any form made by Nisha Sabharwal to plaintiff are contained in the invoices, or (ii) that the only representations in any form made by *any* defendant to plaintiff are contained in the invoices.

Interrogatory Nos. 19 and 20: In Interrogatory No. 19, plaintiff asks defendants which (if any) of the pieces of jewelry offered by defendants to plaintiff were not in the exclusive ownership and control of defendants when offered—*i.e.*, whether any of the jewelry was sold by defendants on consignment or other similar arrangement. In Interrogatory No. 20, plaintiff asks defendants to identify, for any item of jewelry covered by No. 19, to identify who *did* own that jewelry.

This court does not agree with defendants' objection (NYSCEF No. 56, at 14) that Interrogatory No. 19 is either irrelevant to plaintiff's claims or unduly burdensome. Nor does this court perceive the ambiguity that defendants decry in Interrogatory No. 19 (*see id.* at 15). It appears to the court that whether defendants exclusively owned and controlled the jewelry they were offering for sale—as opposed to, for example, offering jewelry in their possession for sale on behalf of a third party—is a fairly straightforward question.

Defendants asserted that although "a portion of the jewelry was held by Vastra on consignment," they somehow had no records of any such arrangement and lacked any other responsive knowledge or information. (NYSCEF No. 56, at 14-15.) As with Interrogatory Nos. 1 and 2, defendants are directed to search again for any records or information that might be responsive to Interrogatory No. 19. Defendants shall, by January 17, 2020, provide any responsive records or information uncovered in their renewed search, and supply an accompanying affidavit of diligent search. If defendants' renewed search identifies any items of jewelry that were sold on consignment (or were otherwise outside defendants' exclusive

ownership and control when offered for sale), defendants shall provide a response to Interrogatory No. 20 by January 17 as well.

Interrogatory No. 22: Defendants shall provide plaintiff with the identity of individuals whom defendant believes to be knowledgeable about the Eleventh Affirmative Defense in defendants' answer. If defendants are not presently aware of which individuals have knowledge bearing on the Eleventh Affirmative Defense, they shall so state.

II. Plaintiff's Document Requests

Document Request No. 3 (first)[1]: Plaintiff seeks documents on the same topics set forth in her Interrogatory No. 2, discussed above. Defendants objected on burden and relevance grounds. This court disagrees with these objections, for the reasons given above with respect to Interrogatory Nos. 1 and 2.

To be sure, as defendants point out, plaintiff has acknowledged that based upon communications between counsel, "it appears that Defendants have no responsive documents in their possession an[d] control." (NYSCEF No. 50, at 12.) Defendants argue that this acknowledgment "concedes . . . that no such responsive materials are in Defendants' possession" (NYSCEF No. 67, at 11), and therefore that they have fully responded to this document request. This court does not agree. If defendants have no responsive documents in their possession, plaintiff is entitled to a formal written statement to that effect from defendants, not merely an oral statement during a meet-and-confer or an email from one of defendants' attorneys. Thus, defendants must by January 17 provide any documents responsive to this request, notwithstanding defendants' relevance objection. If defendants have no such responsive documents, they shall so state.

Document Request No. 3 (second): Plaintiff seeks "copies of the corporate tax returns for Vastra, Inc. for the years 2009 through 2017, inclusive." (NYSCEF No. 52, at 5.) Defendants again objected on relevance and burden grounds. Plaintiff claims that these documents are relevant and should be produced because the returns would assertedly "reflect the purchase prices of Defendant Vastra inventory, the quantum of sales attributable to Plaintiff, the origin of the pieces . . . whether the items sold were on consignment or owned by Defendants, and other pertinent information to the provenance of the items in question." (NYSCEF No. 68, at 18-19.)

Plaintiff has not, however, attempted to articulate *how* these documents would reflect such information in a way that might make them discoverable here notwithstanding the higher threshold for production of tax returns—let alone done so with the requisite clarity and specificity. It is not enough merely to emphasize (as plaintiff does), the "dearth of any other responsive documents" about the "cost, provenance, ownership, or composition of the pieces at issue" (*id.* at 19, *see also id.* at 16), without also showing why and how the tax returns of Vastra and Nisha Sabharwal would remedy that lack.

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[1] Plaintiff appears inadvertently to have labeled two different document requests as No. 3. (*See* NYSCEF No. 52, at 5.) For clarity, this order refers to Document Request No. 3 (first) and No. 3 (second).

Document Request Nos. 4, 5, 6, and 7: Plaintiff states that these requests seek documents "correlat[ing] to the information sought in Interrogatories ## 5, 6, 7, and 8, respectively," based on the "same arguments" for production. (*Id.* at 16.) This court denies plaintiff's motion to compel production of these documents for the same reasons that it denied plaintiff's motion to compel responses to those interrogatories.

Document Request No. 8: Plaintiff seeks "copies of any invoice that Defendants assert was not paid in full by Plaintiff." (NYSCEF No. 52, at 6.) Defendants objected to this request, but also responded that they were "not aware of any document that is responsive to this demand." (NYSCEF No. 57, at 6.) Plaintiff argues that counsel for defendants has "since asserted that no such document[] exists," and that she is "entitled to a written statement from Defendants" to that effect. (NYSCEF No. 68, at 16.) Defendant claims that they need not provide such a statement because "[a]ny further confirmation of this [representation] can be handled at depositions." (NYSCEF No. 67, at 11.) This court agrees with plaintiff that she is entitled, prior to depositions, to a formal written statement from defendants that no unpaid invoice exists—rather than merely a statement to the effect that defendants presently are not aware of any unpaid invoices.

Document Request No. 12: See discussion of Interrogatory No. 15, above.

Document Request No. 14: Plaintiffs seek copies of any documents (including but not limited to a curriculum vitae) that reflect Nisha Sabharwal's "schooling, professional training, professional experience, degrees earned, and/or certificates earned or obtained." (NYSCEF No. 52, at 7.) Defendants initially objected to this demand on the ground that the terms "'schooling,' 'professional training,' and 'professional experience'" are overly broad and vague; and that the demand does not seek any relevant information. (NYSCEF No. 57, at 8.) Although the terms of plaintiff's document demand are admittedly broad, this court does not agree with defendants' apparent contention that these terms are so broad as to foreclose defendants from being able to respond meaningfully. Nor does this court agree that information regarding Ms. Sabharwal's education, training, and experience is irrelevant—among other things, such information may bear on plaintiff's understanding at the time of the purchases as to what it was that she was purchasing and whom it was that she was purchasing from, which would go to her claim for equitable rescission.

Defendants also responded (subject to their above objections) that they were "not in possession of *any* document that is responsive to this demand." (*Id.* [emphasis added].) Defendants now oppose plaintiff's motion to compel production of responsive documents on the ground that defendants "cannot be compelled to supply what they do not have." (NYSCEF No. 67 at 9.) This is true as an abstract principle. This court is not yet satisfied, though, that this principle applies here. Defendants are directed by January 17, 2020, to conduct a renewed search for any document responsive to plaintiff's Document Request No. 14, to produce responsive documents that this renewed search reveals (if any), and to provide plaintiff with an affidavit of diligent search.

Document Request No. 15: Plaintiff seeks "any documents that Defendants contend support—or upon which they relied on for—their denial of the allegations" of certain paragraphs of the complaint. (NYSCEF No. 52, at 7.) Defendants initially contended in November 2018 that the demand "clearly seeks attorney work product," and that any "documents beyond attorney work product are undetermined at this time." (NYSCEF No. 57, at 8.) Defendants also argue in opposition to the motion to compel that "[a]ny documents support any of Defendants' answer, denials, or defenses, that is not privileged has been supplied to Plaintiff in the 3,600 documents already served upon her," and that "[t]here are no further documents." (NYSCEF No. 67, at 9.)

This court is not persuaded by defendants' position on this document request. As an initial matter, plaintiffs are correct that it is defendants' burden to justify the withholding of documents as containing privileged material. (*New Line Stone Co. v BCRE Servs LLC*, 89 AD3d 581, 581 [1st Dept 2011].) Defendants' initial, conclusory statement that Document Request No. 15 "clearly seeks attorney work product" does not satisfy defendants' burden in this respect: it provides no meaningful information as to which responsive documents in their possession defendants believe to be privileged and why. Defendants must by January 17 supplement their response to clarify and specify the nature of their claims of privilege.

A tension also exists between defendants' initial objection to providing *any* response to this request on the ground that defendants had not yet determined which non-privileged documents supported their denials of the specified allegations in the complaint, and defendants' subsequent, broad-brush assertion in opposition to the motion to compel that they had already supplied plaintiff with any and all non-privileged documents supporting the denials and defenses in their answer.

If defendants did ultimately reach a conclusion as to which documents produced to plaintiff supported the specified denials in the answer, defendants now must supplement their response to Document Request No. 15 to provide further detail in this respect—i.e., which documents support which denials. If defendants have instead not yet determined which already-produced documents support the particular denials listed in Document Request No. 15, they must now do so and identify in their response which documents support which denials. (*See Gottwald v Geragos*, Index No. 162075/2014, 2018 NY Slip Op 51506 [U], at *5 [Sup Ct, NY County Oct. 17, 2018].) Defendants also must conduct a renewed review of the documents in their possession to ensure that they have, in fact, produced all non-privileged documents responsive to this request. If defendants conclude upon such a review that all such documents have been produced, they shall so state.

Document Request No. 16: Plaintiff seeks copies of "any documents that Defendants contend support—or upon which they relied in formulating—their Eleventh Affirmative Defense," namely that any unilateral mistake by plaintiff did not result in unjust enrichment. (NYSCEF No. 52, at 7; *see* NYSCEF No. 41, at 15.) Defendants' initial document response and their opposition to the motion to compel raise the same arguments as with respect to Document Request No. 15.

This court concludes, largely for the same reasons set forth above about Document Request No. 15, that defendants must supplement their response to Request No. 16. If defendants

wish to assert a privilege claim with respect to otherwise-responsive documents, they must set out that claim in more detail. If defendants believe that already-produced documents support the Eleventh Affirmative Defense, they must specify the documents. Defendants must conduct a renewed review of the documents in their possession to determine whether any non-privileged documents are responsive but have not yet been produced. If defendants conclude upon this review that they have produced all non-privileged responsive documents—or that no non-privileged responsive documents are in their possession—they shall so state.

III. Defendants' Cross-Motion to Compel Plaintiff's Deposition

Defendants cross-move to compel plaintiff to appear for a deposition. Plaintiff objects to appearing for a deposition at the present time on the ground that paper discovery is ongoing. In response, defendants argue that they are not foreclosed from noticing plaintiff's deposition prior to the completion of paper discovery—particularly since plaintiff has all of the information needed to be prepared for her own deposition.

Defendants' argument is not persuasive in the circumstances of this case. In particular, as defendants acknowledge, they previously agreed to hold off on conducting plaintiff's noticed deposition because paper discovery was ongoing. Defendants' decision to re-notice plaintiff's deposition (and to seek to compel her appearance) seemingly flowed from defendants' conclusion that no more pre-deposition written discovery remained to be exchanged. (*See* NYSCEF No. 67, at 16.) For the reasons set forth above, however, this court disagrees with that conclusion. And defendants' contention that compelling plaintiff to appear now for deposition is necessary to move the case along loses force in light of defendants' obligation under the terms of this order to produce further substantial written discovery.

Thus, rather than compel plaintiff to appear now for a deposition, the court directs the parties to meet and confer as to appropriate future deposition dates—taking into account defendants' outstanding written-discovery obligations under this order. The court notes that defendants also have noticed the deposition of plaintiff's husband; and that plaintiff's motion for a protective order against that deposition has now been fully submitted. Should this court ultimately deny the motion for a protective order—a matter on which the court currently expresses no opinion—upon the issuance of the court's ruling on the motion the parties also shall meet and confer as to appropriate dates for the deposition of plaintiff's husband.

Accordingly, for the foregoing reasons it is

ORDERED that the branch of plaintiff's motion to strike defendants' answer or to preclude is denied; and it is further

ORDERED that the branch of plaintiff's motion seeking in the alternative to compel defendants to provide supplemental responses to plaintiff's first set of interrogatories (dated June 15, 2018) is granted in part and denied in part as set forth above; and it is further

ORDERED that the branch of plaintiff's motion seeking to compel defendants to provide supplemental responses to plaintiff's first request for documents (dated June 15, 2018) is granted in part and denied in part as set forth above; and it is further

ORDERED that defendants' cross-motion to compel plaintiff to appear for a deposition is denied without prejudice.

11/22/2019
DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE