

Fanning v Hudson Val. Oral Surgery, PLLC
2020 NY Slip Op 35062(U)
December 1, 2020
Supreme Court, Westchester County
Docket Number: Index No. 59863/2019
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER: COMPLIANCE PART

-----X
JULIA FANNING,

Plaintiff,

- against-

DECISION AND ORDER

Index No. 59863/2019
Motion Seq. Nos. 1 and 2

HUDSON VALLEY ORAL SURGERY, PLLC and
RANDALL G. WISTON, D.M.D.,

Defendants.

-----X
LEFKOWITZ, J.

The following papers were read on motion sequence 1 by plaintiff for an order (1) compelling defendant Randall G. Wiston, D.M.D. (“Wiston”) to appear for a continued deposition to answer questions that defense counsel advised him not to answer at his depositions; (2) compelling defendants to produce the residence addresses of two employees of Hudson Valley Oral Surgery, PLLC (“HVOS”) “Dorine” and “Victoria”, in compliance with plaintiff’s April 27, 2020 notice for discovery and inspection (Exhibit “H”); (3) compelling defendants to provide the information sought in plaintiff’s notices for discovery and inspection dated May 27, 2020 (Exhibit “I”) and July 2, 2020 (Exhibit “J”), or, in the alternative, precluding defendants from testifying at trial that Wiston’s opinions are supported by readings, literature, continuing education courses, textbooks, and other material; (4) compelling defendants to properly and fully answer plaintiff’s demand for a bill of particulars regarding defendants’ affirmative defenses (Exhibit “B”), or, in the alternative, precluding defendants from asserting these affirmative defenses; and (5) granting such other and further relief that this Court shall deem just and proper; and on motion sequence 2 by defendants pursuant to CPLR 3103 granting a protective order in favor of, and protecting discovery against including the further deposition of Wiston, plaintiff’s demand to question “Dorine” and “Victoria” outside the presence of counsel, a demand for further answers to plaintiff’s notices for discovery and inspection, and a demand for a further bill of particulars as to defendants’ affirmative defenses, as well as such other and further relief as the Court deems just, proper and reasonable:

Motion sequence 1:

- Notice of Motion; Affirmation of Good Faith; Affirmation in Support; Exhibits A-U;
- Affirmation in Opposition
- Letter/Correspondence from the Court
- Affirmation in Reply; Exhibit A

Motion sequence 2:

Order to Show Cause; Affirmation in Good Faith; Affirmation in Support; Exhibits A-B
Affirmation in Opposition; Exhibits A-B
Letter/Correspondence from the Court
Affirmation in Reply

Upon the foregoing papers these motions are determined as follows:

Facts & Relevant Procedural History

Plaintiff commenced the present action by the filing of a summons and verified complaint on June 28, 2019 seeking damages for personal injuries and alleging dental malpractice, lack of informed consent, and negligence (Plaintiff's Exhibit A). Defendants interposed an answer on July 1, 2019 asserting various affirmative defenses, including in part, culpable conduct, reduction of any recovery for economic losses pursuant to CPLR 4545 (c) (the "collateral source rule"), failure to mitigate damages, and Public Health Law 2805-d(4) (Plaintiff's Exhibit A). On July 2, 2019 plaintiff served a demand for Verified Bill of Particulars on Affirmative Defenses (Plaintiff's Exhibit B). Defendants served responses to plaintiff's demand on July 17, 2019 and November 7, 2019 (Plaintiff's Exhibits B and C, respectively).

A preliminary conference was held on September 16, 2019 (Plaintiff's Exhibit D). A compliance conference was held on February 11, 2020 (Plaintiff's Exhibit E). Plaintiff appeared for her deposition on January 13, 2020. Wiston appeared for his deposition on April 3, 2020 (the "first deposition") and April 30, 2020 (the "second deposition"). Plaintiff served defendants with a Notice of Discovery and Inspection on April 27, 2020 which sought, inter alia, the full names and residential addresses of "Dorine" and "Victoria" (Plaintiff's Exhibit H). Plaintiff served another Notice of Discovery and Inspection on May 27, 2020 which sought, inter alia, materials referred to by Wiston during his second deposition (Plaintiff's Exhibit I). On July 2, 2020 plaintiff served a Notice for Discovery and Inspection requesting materials referenced during the first and second depositions (Plaintiff's Exhibit J).

On or about June 26, 2020, defendants served responses to the April 27, 2020 and May 27, 2020 discovery demands (Plaintiff's Exhibit K), which included the last names for Dorine (DeLuca) and Victoria (Santasiero) (hereinafter "DeLuca" and "Santasiero", respectively), but objected to providing their addresses on the grounds that they were employees of HVOS and that HVOS would respond to any discovery requests served upon them as employees of a represented party. Defendants also refused to identify the readings, continuing dental education courses, and literature as requested by the May 27, 2020 discovery notice on the grounds that Wiston had provided deposition testimony during his second deposition concerning these materials and any demands seeking to identify these items constituted an interrogatory (Exhibit "I").

On or about July 8, 2020, defendants served a response to plaintiff's July 2, 2020 discovery demand (Plaintiff's Exhibit L) which, inter alia, objected to demands for the production of readings, literature, courses, and general information that formed the basis for Wiston's opinion or knowledge as he testified to during his second deposition. Defendants based their objections on the grounds that Wiston had responded to such questioning during his deposition and that these demands were the equivalent to an interrogatory following a deposition.

The parties appeared for a compliance conference on July 8, 2020. The Compliance Conference Referee Report & Order (Plaintiff's Exhibit O) directed plaintiff to serve a good faith demand on defendants to cure any deficiencies in their discovery responses and defendants to respond to that good faith demand. A further conference was scheduled for August 12, 2020.

On July 14, 2020 plaintiff filed a "position paper" with exhibits¹ in support of a motion briefing schedule (Plaintiff's Exhibit P). On July 15, 2020 defendants filed their response (Plaintiff's Exhibit Q). On July 16, 2020, plaintiff filed a reply to defendants' response (Plaintiff's Exhibit R). At the August 12, 2020 compliance conference, the parties were provided briefing schedules for the present motions (Plaintiff's Exhibit S).

Presently, plaintiff seeks supplementation of the bill of particulars relating to defendants' affirmative defenses, the residential addresses of DeLuca and Santasiero; the literature and other materials referenced during Wiston's depositions and requested in plaintiff's May 27, 2020 and July 2, 2020 discovery demands; and a further deposition of Wiston concerning questions which were allegedly improperly blocked by defense counsel. Defendants oppose the motion and seek a protective order concerning this discovery on the grounds that such discovery is overly burdensome, impermissible, overbroad, duplicative, and/or seeks privileged information.

Bill of Particulars for Affirmative Defenses

Plaintiff's July 2, 2019 demand sought supplementation of defendants' bills of particulars concerning the aforementioned affirmative defenses. Plaintiff contends that defendants' responses are insufficient and do not amplify the pleadings, narrow the issues, or prevent surprise at trial. Plaintiff argues that defendants must serve a proper bill of particulars with respect to the affirmative defenses or be precluded from asserting those defenses.

Defendants contend that they have appropriately responded to plaintiff's demand for a bill of particulars concerning their affirmative defenses. Defendants state that they have responded to the extent of the knowledge in their possession and have provided a general statement of plaintiff's negligence with sufficient particularity to allow plaintiff to ascertain the basis of those defenses and that these responses are sufficient pursuant to CPLR 3043. Defendants also contend that plaintiff's demand for a bill of particulars improperly sought evidentiary information and other information that was not properly the subject of a bill of particulars. Defendants state that at the preliminary conference they were only requested to supplement questions 1(c) and 1(d) which they did, and that plaintiff did not request nor did the court direct any further supplementation. Defendants state that plaintiff has only now raised issues with the sufficiency of defendants' bill of particulars with respect to the affirmative defenses of collateral source and Public Health Law 2805-d[4].

In reply, plaintiff contends that this issue was raised at the February 11, 2020 compliance conference at which time counsel was advised to hold any objections pending any information provided during Wiston's deposition.

Disclosure of residential addresses of DeLuca and Santasiero

Plaintiff asserts that DeLuca and Santasiero are witnesses to Wiston's treatment of plaintiff and of conversations between Wiston and plaintiff. Plaintiff argues that since these employees are witnesses

¹ Plaintiff's position paper as originally filed included exhibits A-G [NYSCEF Doc. #'s 38-44] not included on this motion.

and not defendants, plaintiff is entitled to interview these employees. Plaintiff further argues that these witnesses are not dental professionals who could be responsible for dental negligence or of conferring informed consent to HVOS.

Defendants contend that DeLuca, a receptionist, and Santasiero, a dental assistant, are employees of HVOS and as such plaintiff may not informally interview them outside the presence of defense counsel. Defendants concede that these employees are not parties to this action but maintain that if during the course of interviewing them plaintiff discovers some culpability on their part, defendants would be prejudiced if counsel was not present. Defendants further contend that these employees are agents of HVOS, and their acts or omissions serve as a basis of liability for HVOS. Defense counsel has agreed to receive service on behalf of these employees and to produce them for deposition if requested. Defendants state that in the event the Court denies the protective order with respect to providing these addresses, any notice to them must clearly state that they are not required to speak with plaintiff's counsel if they choose not to and that they are entitled to have counsel present in the event they agree to engage in such informal conversations.

Literature and Other Materials Requested in Plaintiff's Notices for Discovery and Inspection

The May 27, 2020 Notice for Discovery and Inspection (Exhibit I) sought defendants to identify the readings, continuing education courses, and literature that supported Wiston's opinions that: plaintiff did not have a permanent injury (Exhibit G, pages 22 – 25); the microsurgical repair of the lingual nerve for paresthesia has been standard treatment and can decrease paresthesia (Exhibit G, pages 62 – 64); the best time for a referral to a microsurgeon for a lingual nerve injury is within four to six months of the injury (Exhibit G, page 73); nerves, like the lingual nerve or the chorda tympani, can attempt to repair themselves, but, after a time, the repair process of these nerves can fail (Exhibit G, pages 93-98); and, nerves on the left side of plaintiff's tongue collateralized or took over the sensory nerves on the right side of her tongue (Exhibit G, pages 102-103).

The July 2, 2020 Notice for Discovery and Inspection (Exhibit J) sought identification of the literature, readings, courses, general information, textbooks, or a combination thereof that supported Wiston's opinions that the likelihood of permanent damage to the lingual nerve from the removal of an impacted wisdom tooth is 1% to 3% (Exhibit F, pages 84-85); permanent damage to the lingual nerve can occur during the removal of a lower impacted wisdom tooth by a crush injury (Exhibit F, pages 97-98); and that tooth 32 would not have erupted into the plaintiff's oral cavity (Exhibit F, pages 148-153) and the basis of Wiston's opinion about plaintiff's complaints of numbness (Exhibit G, pages 24-25). Plaintiff states Wiston testified that his expert opinions were based on material outside of his personal knowledge. The material outside of defendants' personal knowledge is hearsay. Plaintiff further argues that for hearsay to be the basis for an opinion, it must be disclosed and proven to be reliable, and accepted in the dental community. This demand also sought defendants to identify the witnesses to plaintiff's signature on the consent form for the removal of plaintiff's lower wisdom teeth. In defendants' July 8, 2020 responses defendants stated that the consent form was witnessed by Wiston and, upon information and belief, Victoria Santasiero. Plaintiff contends that an answer at this stage of the litigation of "upon information and belief" is unacceptable.

Defendants state that Wiston was questioned about the readings, literature, and continuing education courses which played roles in formulating some of his opinions. Defendants state that Wiston

often responded he could not recall specific articles and that his opinion was based on his cumulative or general knowledge. When he stated that certain information came from sources identified during the deposition, defendants state that plaintiff's counsel did not inquire further about the specific sources of his knowledge. Defendants contend that the discovery notices impermissibly seek information that was already disclosed during the depositions and therefore constitute impermissible interrogatories. Defendants argue that pursuant to CPLR 3130 a party may not serve interrogatories and conduct a deposition of the same party without leave of court. Defendants also contend that the interrogatories are unduly burdensome in that they seek production of everything Wiston has read that has informed his knowledge as a practicing oral surgeon for over twenty years. Lastly, defendants state that plaintiff has mischaracterized the concept of hearsay in order to justify plaintiff's demands and that Wiston has only stated that he reached his opinions/conclusions based on certain literature but is not quoting or offering that literature for the truth of the matter asserted.

Blocked Deposition Questions

During the first deposition plaintiff's counsel asked Wiston if he had heard about plaintiff's deposition testimony or her microsurgery (Exhibit F, pages 19-22). Defense counsel objected to these questions to the extent that they were asking whether Wiston had heard about plaintiff's testimony or her microsurgery from counsel as seeking privileged attorney-client communications. Plaintiff's counsel also asked, "As far as you know, does he [Dr. Daniel Laskin] have a -- does he have a respected reputation in the oral surgery community?" [Exhibit F, Page....]. Defense counsel objected to this question and stated that Wiston could only speak for himself, not for other oral surgeons.

During the second deposition, Wiston was again asked whether he was aware that plaintiff had undergone microsurgery (Exhibit G, Pages 48- 51). Defense counsel again objected that his client could not answer if he was aware of the microsurgery as a result of conversations with his attorney because of attorney-client privilege. When Wiston stated that he had discussed the operative report of Dr. Proothi dated August 7, 2018 with his attorney, plaintiff's counsel asked him "What does that mean you discussed it?" at which point defense counsel objected on the grounds of attorney-client privilege (Exhibit G, page 52).

Plaintiff then asked, "Dr. Wiston, I want you to assume that the plaintiff had anesthesia as a symptom when she saw Dr. Michael Proothi? (Exhibit G, Pages 77-79). Defendants state that this question was objected to on the grounds that plaintiff's counsel had failed to present a good faith factual basis to support the hypothetical question. Defendants state that Wiston had testified that he had not interpreted plaintiff's complaint about tongue numbness to mean anesthesia and plaintiff's counsel failed to read anything into the record that would support the hypothetical question and this was an improper question.

Plaintiff contends that whether defendants' counsel read Dr. Proothi's surgical report does not violate the attorney-client privilege.

Defendants argue that asking Wiston whether he discussed certain information with his attorney violates the attorney-client privilege. Defendants state that plaintiff impermissibly asked Wiston whether he heard certain information from his attorney. Defendants argue that asking Wiston if his lawyer told him something is a blatant infringement of the attorney-client privilege. Defendants state that plaintiff's counsel was given an opportunity to rephrase his questions but chose not to. Defendants contend that it is unduly burdensome to require Wiston, who has an active surgical practice, to appear for a third

deposition and that it will create unreasonable expense to be away from his business and presents additional delays, which have already occurred due to the COVID-19 pandemic, for those patients who would have to be rescheduled. With respect to the hypothetical question, defendants state that Wiston had testified that he had not interpreted plaintiff's complaint about tongue numbness to mean anesthesia. Defendants' state that the hypothetical question assumed plaintiff did have anesthesia a fact not personally known to Wiston, who had been established as an expert. Defendants argue the fact of anesthesia would need to have been inferable from the facts adduced from the record, which plaintiff's counsel had failed to establish.

In reply, plaintiff further argues that she is entitled to question Wiston about how he came to know certain facts related to this action concerning plaintiff's deposition testimony and Dr. Proothi's surgical report. Plaintiff states that she is entitled to know what materials Wiston used to prepare for his deposition testimony. Plaintiff's counsel contends that his presentation to Wiston of a hypothetical question was proper, as it was based on facts known to the defendant and testimony given by plaintiff at her deposition: plaintiff testified she had anesthesia of her right tongue almost immediately after the removal of tooth 32. Plaintiff argues that although defendants deny this statement, this denial of plaintiff's testimony does not render the hypothetical question improper, as the hypothetical question is based on testimony given by plaintiff at her deposition which is an official record of this litigation.

Analysis:

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to 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. The test is one of usefulness and reason" (*see Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether the information sought is material and necessary in light of the issues in the matter (*see Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

"The nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is a matter generally left to the discretion of the Supreme Court" (*Carbajal v Bobo Robo*, 38 AD3d 820, 821 [2d Dept 2007] [internal quotation marks omitted]). To invoke the drastic remedy of striking a pleading a court must determine that the party's failure to disclose is willful and contumacious (*see Maiorino v City of New York*, 39 AD3d 601 [2d Dept 2007]). "Willful and contumacious conduct can be inferred from repeated noncompliance with court orders ... coupled with either no excuses or inadequate excuses" (*Russo v Tolchin*, 35 AD3d 431, 434 [2d Dept 2006]; *see Prappas v Papadatos*, 38 AD3d 871, 872 [2d Dept 2007]).

Bill of Particulars for Affirmative Defenses

The long-recognized purpose of a bill of particulars is to amplify the pleadings, limit proof and prevent surprise at trial (*see Suits v Wyckoff Hgts. Med. Ctr.*, 84 AD3d 487 [1st Dept 2011]; *Harris v Ariel Transp. Corp.*, 37 AD3d 308 [1st Dept 2007]; *Moran v Hurst*, 32 AD3d 909 [2d Dept 2006]; *Castellano v Norwegian Christian Home & Health Ctr., Inc.*, 24 AD3d 490 [2d Dept 2005]). A review of defendants' responses to demands concerning the affirmative defenses of culpable conduct and failure to mitigate damages shows those responses to be sufficiently particularized.

Insofar as defendants have the burden of proof of establishing a set-off of any damages awarded to plaintiff in this action (*Damiano v Exide Corp.*, 970 F Supp 222, 229 [SDNY 1997]; *see Scalone v. Phelps Mem. Hosp. Ctr.*, 184 A.D.2d 65 [2d Dept 1992]), defendants are required to respond to plaintiff's demand for particularization of the collateral source affirmative defense. At this stage of the action, defendants should be able to provide such particularization. Notably, plaintiff's deposition has occurred and defendants sought particularization of plaintiff's collateral source payments in defendants' demand for a verified bill of particulars dated June 28, 2019 (NYSCEF Doc. 3). Defendants also bear the burden of proving the affirmative defense asserted pursuant to Public Health Law 2805-d[4] (*see Forney v Huntington Hops.*, 134, AD2d 405, 406 [2d Dept 1987]).

Home addresses

Whether a party is entitled to informally interview an employee of the adverse party was answered by the Court of Appeals in *Niesig v. Team I*, 76 N.Y.2d 363 [1990]. The *Niesig* Court held "that ex parte communications with nonmanagerial employees are permitted, but adversary counsel are prohibited from directly communicating with employees who have the power to bind the corporation in litigation, are charged with carrying out the advice of the corporation's attorney, or are considered organizational members possessing a stake in the representation. By so holding, we struck a balance between protecting represented parties from making imprudent disclosures, and allowing opposing counsel the opportunity to unearth relevant facts through informal discovery devices, like ex parte interviews, that have the potential to streamline discovery and foster the prompt resolution of claims" (*Muriel Siebert & Co., Inc. v Intuit Inc.*, 8 NY3d 506, 511 [2007] [internal citations omitted]). Or in other words, could these employees' acts/ omissions bind the employer or affect defendants' liability to plaintiff? (*see Schmidt v State*, 181 Misc2d 499 [Court of Claims of New York, 1999]. Insofar as DeLuca is a dental assistant and defendants have alleged that Santasiero witnessed plaintiff's signature on the consent form, they are employees whose acts have the power to bind HVOS. Accordingly, plaintiff is not entitled to informally interview them outside of the presence of counsel.

Literature and Other Materials Requested in Plaintiff's Notices for Discovery and Inspection

At the outset, it appears that the majority of plaintiff's demands at issue are in reality interrogatories, which are improperly asserted when a bill of particulars has already been used unless leave of Court has been sought. (*CPLR 3130*). Even if the demands are not deemed interrogatories, they would nonetheless be improper. With respect to plaintiff's demands for identification of literature, readings, courses, general information, and textbooks, a review of the deposition transcript reveals numerous examples of Wiston testifying that his opinions were based on, inter alia, reading journals and articles. However, Wiston was unable to identify or recall any specific articles which formed the basis of his opinion. Accordingly, it cannot be said that defendants are improperly withholding that information. Additionally, it is noted that Wiston has been a practicing oral surgeon for more than 20 years and during the course of that time has likely read countless professional articles and journals. His inability to recall specific ones is not willful and contumacious. A demand for him to identify same is overbroad and burdensome. Moreover, although plaintiff was entitled to question Wiston regarding his expert opinion (*see McDermott v. Manhattan Eye, Ear & Throat Hosp.*, 15 N.Y.2d 20 [1964]), Wiston was not appearing as the defendants' expert (*see Sagiv v Gamache*, 26 AD3d 368, 369 [2d Dept 2006]). With respect to the demand seeking identification of the witness to plaintiff's signature of the consent form, Wiston was thoroughly questioned about the procedure for presenting the form to a patient and for

obtaining the patient's signature, during which time he testified that he and a member of his staff would witness the signature (Exhibit F, pages 189-196). Notably, at no point was Wiston questioned as to the identity of the witness.

Deposition Questions

Part 221.2 of the Uniform Rules for the Conduct at Depositions requires deponents to "answer all questions at a deposition, except: (i) to preserve a privilege or right of confidentiality; (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person."

Whether Wiston knew from his counsel that plaintiff had testified or that she had undergone microsurgery constitute facts that are not privileged communications (*see*, CLPR 4503; *Niesig v. Team I*, 76 N.Y.2d 363 [1990]). This is distinguishable from questions concerning substantive discussions between counsel and Wiston, such as the nature of the discussion concerning Dr. Proothi's operative report which is privileged. The Court recognizes two exceptions to the rule that a witness being asked to opine on a matter must have personal knowledge of the facts: an expert may rely on out-of-court material if "it is of a kind accepted in the profession as reliable in forming a professional opinion" or if it "comes from a witness subject to full cross-examination on the trial (*Hamsch v New York City Tr. Auth.*, 63 NY2d 723, 726 [1984][internal citations omitted]). Here, Wiston was being asked to comment concerning facts which were allegedly presented in Dr. Proothi's operative report, which does not appear to have been provided to defendants, that after the removal of the tooth in question, plaintiff was experiencing numbness and an inability to taste over the right side of her tongue. Although Wiston may not have had first-hand knowledge of Dr. Proothi's report, this seems to fall into one of the exceptions to the rule that it comes from a witness subject to full cross-examination at trial. Accordingly, Wiston should have been allowed to answer this question. Lastly, the Court finds that defense counsel properly limited Wiston's response concerning Lashkin's reputation in the oral surgery community to Wiston's opinion.

All other arguments raised, and evidence submitted by the parties have been considered by this Court notwithstanding the specific absence of reference thereto.

Accordingly, it is

ORDERED that the motions are determined as followed:

1. Concerning the branch of plaintiff's motion seeking to compel further particularization of certain affirmative defenses, defendants shall, on or before December 24, 2020, provide further particularization of the affirmative defenses of collateral source and Public Health Law 2805-d(4);
2. The branch of plaintiff's motion seeking disclosure of Dorine DeLuca and Victoria Santasiero's home addresses is denied, and the branch of defendants' motion seeking a protective order regarding same is granted;
3. The branch of plaintiff's motion seeking to compel responses to plaintiff's notices for discovery and inspection dated May 27, 2020 and July 2, 2020 is denied and the branch of defendants' motion for a protective order regarding same is granted; and
4. The branch of plaintiff's motion seeking an additional deposition of Dr. Wiston is granted to the limited extent that he shall appear remotely for an additional deposition

on or before January 15, 2021 limited to the questions which he was improperly instructed not to answer as set forth herein; and it is further

ORDERED that all other relief requested is herewith denied; and it is further

ORDERED that the parties are directed to appear for a virtual conference with Chief Court Attorney Diane Clerkin by Microsoft Teams, or as the Court shall otherwise direct, in accordance with the Virtual Courtroom Protocol implemented in the Ninth Judicial District, on January 19, 2021, at 9:30 a.m. and it is further

ORDERED that plaintiff shall serve a copy of this Order with notice of entry upon defendants within three (3) days of entry with proof of service, or as the Court shall further direct due to the COVID-19 health emergency.

The foregoing constitutes the Decision and Order of this Court.

DATED: White Plains, New York
December 1, 2020


HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

Service upon all counsel via NYSCEF

CC: Compliance Part Clerk