

**All in 1 SPOT with Theratalk, SLP, PT, OT,
Psychology, PLLC v Noor Staffing Group, LLC**

2022 NY Slip Op 33862(U)

November 15, 2022

Supreme Court, New York County

Docket Number: Index No. 652227/2019

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ALL IN 1 SPOT WITH THERATALK, SLP, PT, OT,
PSYCHOLOGY, PLLC, IRENE CHRISTOFOROU-
GIOULES, MARIA PANAYIOTOU-MAMOUNAS

Plaintiffs,

- v -

NOOR STAFFING GROUP, LLC, HABIB NOOR, JACOB
ELETTO,

Defendants.

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INDEX NO. 652227/2019

MOTION DATE 08/29/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105 were read on this motion for DISCOVERY.

Plaintiffs All in 1 SPOT, PLLC, Irene Christoforou-Gioules, and Maria Panayiotou-Mamounas (collectively, “Plaintiffs”) move for an order compelling Defendants Noor Staffing Group, LLC (“NSG”), Habib Noor, and Jacob Eletto (collectively, “Defendants”), (1) to produce documents pursuant to certain outstanding notices for discovery, or, in the alternative, precluding the use as evidence at trial of any document not produced pursuant to said notices, and (2) to respond in writing to certain outstanding interrogatories; and (3) directing the further deposition upon oral or written examination of non-party John Scully.

Plaintiffs’ memorandum of law in support of their motion is 67 pages long, which far exceeds the maximum length set forth in 22 NYCRR § 202.70.17 (“briefs or memoranda of law shall be limited to 7,000 words each”). Plaintiffs concede that “counsel to the All in 1 parties did not include in the motion papers the word-count certification mandated by Commercial Division Rule 17, precisely because counsel could not certify that the document complied with the word

count limit” (NYSCEF 105 at 2 n 1 [Pl. br. in reply]). Plaintiffs did not make a request to extend the word count. Further, Plaintiffs did not submit a Rule 14 letter as required by this Court’s rules, and Defendants submit that Plaintiffs did not seek to meet and confer on all disputed issues prior to filing their motion.

Under these circumstances, failure to follow the Commercial Division Rules warrants denial of the motion without prejudice (*Latin Markets Brazil, LLC v McArdle*, 76 Misc 3d 1208(A) [Sup Ct, NY County 2022]; *see also Grisi v Shainswit*, 119 AD2d 418, 421 [1st Dept 1986] [“[C]ourts have the inherent power, and indeed responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the courts of litigation before them”]; *Maple Drake Austell Owner, LLC v D.F. Pray, Inc.*, 75 Misc 3d 1203(A) [Sup Ct, NY County 2022] [discovery motions should be denied if a party fails to adhere to the court rules]; *Agora Gourmet Foods Inc. v Edge*, 2021 NY Slip Op 32036[U], 8 [Sup Ct, Westchester County 2021] [“It is axiomatic that a fundamental job of the Court is active case management, including reducing undue burden on the Court, litigants, and clients, as well as ensuring that litigants and their counsel comply with Court rules (including this Court's Part Rules and the Commercial Division Rules)”]).

However, in the interest of efficiency, and with the hope and expectation of avoiding a follow-on motion, the Court reviewed the papers and believes the following items points by Plaintiffs likely would be granted in response to a properly filed motion, while the remainder would be denied.

First, because Scully conceded that he did not render legal advice to NSG prior to October 2017 (*see* NYSCEF 88 at 50:7-10), Defendant should produce all communications predating October 2017 that were withheld by the NSG parties based on Scully’s participation.

Second, NSG should provide a more detailed privilege log for communications after October 2017 that were withheld based on Scully's presence, including dates, senders and recipients, subject lines, and a short description of the document. NSG should also produce any communications that can be appropriately redacted to remove privileged communications. Once NSG has produced a more detailed privilege log, and produced redacted documents (if any), the parties should meet and confer in good faith. If disputes still remain, Plaintiffs may move to compel and Defendants should provide the disputed documents to the Court for *in-camera* review.¹ Whether or not Scully will need to be re-deposed will be resolved pending the potential *in camera* review.

Third, Defendants should produce documents responsive to Requests 12 and 13 contained in exhibit 10 to the DeLince affirmation (NYSCEF 92 [Feb. 4, 2022 NSG parties' response to All in 1 parties' supp doc request]) (*see e.g. Mananghaya v Bronx-Lebanon Hosp. Ctr.*, 147 AD3d 487, 488-89 [1st Dept 2017] [employer ordered to produce documents expressly referenced in deposition testimony of an employee]; *Telford v City of New York*, 2012 NY Slip Op 31661[U], *3-4 [Sup Ct, NY County 2012] [ordering production of all records referred to in deposition testimony of City employee]).

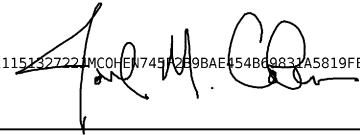
Accordingly, it is

ORDERED that Plaintiffs' motion to compel is **denied without prejudice**, subject to the guidance provided herein.

¹ Defendant should send hard copies of the disputed documents to the Court via mail or by messenger directed to the Part 3 Clerk.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

11/15/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: