

Eisenberg v Amazon Logistics. Inc

2024 NY Slip Op 34622(U)

January 30, 2024

Supreme Court, New York County

Docket Number: Index No. 150852/2022

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LISA S. HEADLEY PART **28M**

Justice

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ERIC EISENBERG,

Plaintiff,

- v -

AMAZON LOGISTICS, INC. ALPHA CARTING COMPANY,
BETA CARTING COMPANY, BERNARD WILSON,
ANTONIO DOE, KURT ROE

Defendant.

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INDEX NO. 150852/2022
MOTION DATE 10/08/2024
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 237 were read on this motion to/for DISCOVERY.

Background

Plaintiff, Eric Eisenberg (“Plaintiff”), commenced this action, which stems from an alleged assault that occurred on March 21, 2021, involving defendants Bernard Wilson, Antonio “Doc” and Kurt “Roe”, who were employed by Amazon Logistics, Alpha Carting Company and/or Beta Carting Company. During the alleged assault, the plaintiff, who was participating in the NYC Citizens Air Complaint Program, was tracking idling vehicles. Plaintiff alleges that while he was documenting the defendants’ idling vehicle, he was assaulted by the individual defendants and sustained severe permanent personal injuries, including anxiety, depression, knee pain, back pain, bruising and lacerations on various parts of Plaintiff’s body, and is now seeking compensatory and punitive damages.

On March 24, 2024, this Court issued a Preliminary Conference Order, which directed the defendants to respond to the Plaintiff’s Notice for Discovery and Inspection by April 3, 2023, and all disclosure should have been completed by November 24, 2023. (*See, NYSCEF Doc. No. 46*). Plaintiff filed this motion for an Order, pursuant to *CPLR §3124*, compelling Defendants Amazon Logistics, Inc. (“Amazon”) to produce all responsive documents since Amazon has waived any objections to the Plaintiff’s Notice for Discovery and Inspection. (*NYSCEF Doc No. 40*).

Defendant Amazon filed opposition to the motion, and a cross-motion for a protective order pursuant to *CPLR §3103(a)*, and to strike certain demands. This Court received a letter dated November 8, 2024, from Plaintiff consenting to the defendant’s cross-motion for a protective order governing the disclosure of confidential discovery material. Thus, plaintiff withdraws opposition

to the portion of the cross-motion seeking a protective order. (*See, NYSCEF Doc. No. 237*). Therefore, the portion of the defendant's cross-motion as to the protective order is granted on consent, and this Court shall issue the proposed Protective Order filed with the Court in conjunction with this Decision and Order. (*See, NYSCEF Doc. No. 74*). This Court will determine the remaining relief sought in plaintiff's motion to compel and defendant's cross-motion as it pertains to striking certain demands as stated herein.

CPLR §3123 states in pertinent part that: "[a] party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry." *See, CPLR §3123*.

CPLR §3124 governs when a party fails to disclose discovery. The provision states in part, "[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order ... the party seeking disclosure may move to compel compliance or a response." *See, CPLR §3124*.

Plaintiff's Motion to Compel Discovery

In the motion, Plaintiff seeks to compel Amazon to respond to the discovery requests made in the Plaintiff's Notice for Discovery and Inspection dated June 7, 2022. Plaintiff argues that Defendant Amazon waived any objection to Plaintiff's Notice for Discovery and Inspection because Amazon failed to respond. (*See, NYSCEF Doc. No. 41*).

To the contrary, Amazon asserts that they demonstrated good faith efforts to comply with discovery, and on February 21, 2024, Amazon served responses to Plaintiff's discovery demands. (*See, NYSCEF Doc. No. 60*). Amazon submits that they raised objections because of the confidential nature of the discovery demands, and requested Plaintiff enter into a confidentiality agreement. Amazon argues the Plaintiff's motion to compel should be denied because plaintiff seeks to compel disclosure of Amazon's trade secrets and confidential data without any confidentiality protections.

Amazon's Cross-Motion for a Protective Order and to Strike Certain Demands

In addition, Amazon filed a cross-motion for an Order, pursuant to *CPLR §3103*, (1) for a Protective Order as to the plaintiff's discovery demands, to the extent of requiring all parties in this litigation to keep certain documents and data provided to them confidential, in order to facilitate discovery and allow Amazon to produce documents and data responsive to plaintiff's discovery demands while ensuring such documents and data will be protected; (2) to strike certain documents demands as outside the scope of discovery and not reasonably calculated to lead to discoverable evidence; and (3) to grant such other relief the Courts deems just and proper. (*See, NYSCEF Doc. No. 64 -77*).

Defendant Amazon submits that the Plaintiff seeks a myriad of documents concerning idling violations that are publicly available documents, as well as vague requests for idling and

missions data. Amazon asserts that Plaintiff's fishing expeditions demands should be stricken and/or limited in scope because Amazon has addressed them its good faith letter. See, NYSCEF Doc. No. 73).

In opposition to the cross-motion, and as it pertains to striking certain document demands as outside the scope of discovery, Plaintiff argues Amazon offered a boiler plate objection to almost every demand, and Amazon seeks an issuance of a protective order against Plaintiff's discovery demands to the extent of requiring all parties to this litigation to keep certain documents and data provided to them by Amazon confidential.

Here, this Court finds that the Plaintiff's motion to compel and defendant's cross-motion are resolved as follows: Amazon maintains that they have produced all responsive, non-privileged documents, and maintain that they will produce additional confidential documents once Plaintiff agrees to a two-tiered confidentiality agreement. Here, the parties have consented to the Protective Order. This Court also finds Amazon's request for a two-tiered confidentiality agreement to be proper and reasonable given the request to produce Amazon's trade secrets. See, BEC Capital, LLC v. Bistrovic, 112 N.Y.S. 3d 127,128 (1st Dep't 2019). Moreover, upon further discovery after the issuance of the protective order, the demands plaintiff seeks to compel, and the provisions defendant deem to strike are deemed resolved.

Accordingly, it is hereby

ORDERED that Plaintiff Eric Eisenberg's motion for an Order, pursuant to CPLR §3124, compelling Defendant Amazon Logistics, Inc. to produce all responsive documents is resolved; and it is further

ORDERED that Defendant Amazon Logistics, Inc.'s cross-motion for a Protective Order, pursuant to CPLR§3103(a), is granted on consent, and such Protective Order is annexed hereto; and it is further

ORDERED that Defendant Amazon Logistics, Inc.'s cross-motion to strike is resolved; and it is further


ORDERED that the parties are directed to proceed with discovery in a good faith and expeditious manner; and it is further

ORDERED that the parties shall appear for a compliance conference before the Court on April 24, 2025, at 10:30 a.m. in Part 28; and it is further

ORDERED that any requested relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision and Order of the Court.

1/30/2025
DATE


LISA S. HEADLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
ERIC EISENBERG,

Plaintiff,

Index No. 150852/2022

-against-

PROTECTIVE ORDER

AMAZON LOGISTICS, INC., "ALPHA CARTING COMPANY" (name being fictitious as the true identity is currently unknown) and "BETA CARTING COMPANY" (name being fictitious as the true identity is currently unknown), BERNARD WILSON, ANTONIO "DOE" (name being fictitious as the true identify is currently unknown), KURT "ROE" (name being fictitious as the true identity is currently unknown),

Defendants.
----- X

The Court enters the following Protective Order governing the disclosure of confidential Discovery Material by a Producing Party to a Receiving Party in this Action.

1. Definitions. As used in this Order:

- a. "Action" refers to the above-captioned litigation.
- b. "Discovery Material" includes all information exchanged between the parties, whether gathered through informal requests or communications between the parties or their counsel or gathered through formal discovery conducted pursuant to the New York Civil Practice Law and Rules ("CPLR") article 31 or article 23. Discovery Material includes information within documents, depositions, deposition exhibits, and other written, recorded, computerized, electronic or graphic matter, copies, and excerpts or summaries of documents disclosed as required under CPLR article 31 or article 23.
- c. A "Producing Party" is a party to this litigation, or a nonparty either acting on a party's behalf or responding to discovery pursuant to a CPLR article 23 subpoena, that produces Discovery Material in this Action.
- d. A "Receiving Party" is a party to this litigation that receives Discovery Material from a Producing Party in this Action.
- e. "Confidential Information" shall mean all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business

information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party or, as appropriate, nonparty designating the material as confidential, be detrimental to the conduct of that Party's or nonparty's business or the business of any of that Party's or nonparty's customers or clients.

- f. "Confidential Attorneys' Eyes Only Information" designation shall mean that the document is comprised of Confidential Information that the producing party deems especially sensitive, which may include, but is not limited to, data, computer code and associated comments and revision histories, formulas, engineering specifications, or other information that may define or otherwise describe in detail the algorithms or structure of software, mobile applications, or hardware designs, disclosure of which to another Party or Nonparty would create a substantial risk of serious harm that could not be avoided by less restrictive means, confidential research and development, financial, technical, marketing, any other sensitive trade secret information, or information capable of being utilized for the preparation or prosecution of a patent application dealing with such subject matter.
2. **Confidential Discovery Material.** This Protective Order applies to all confidential Discovery Material, Confidential Information and Confidential Attorneys' Eyes Only Information produced or obtained in this case. For the purposes of this Protective Order, confidential Discovery Material shall include:
- a. Commercial information relating to any party's business including, but not limited to, tax data, financial information, financial or business plans or projections, proposed strategic transactions or other business combinations, internal audit practices, procedures, and outcomes, trade secrets or other commercially sensitive business or technical information, proprietary business and marketing plans and strategies, studies or analyses by internal or outside experts, competitive analyses, customer or prospective customer lists and information, profit/loss information, product or service pricing or billing agreements or guidelines, and/or confidential project-related information;
 - b. Personnel data of the parties or their employees, including but not limited to, information regarding employment applications; employment references; wages and income; benefits; employee evaluations; medical evaluation and treatment and related records; counseling or mental health records; educational records; and employment counseling, discipline, or performance improvement documentation;
 - c. Information concerning settlement discussions and mediation, including demands or offers, arising from a dispute between a party and a non-party;
 - d. Medical or mental health information;
 - e. Records restricted or prohibited from disclosure by statute; and
 - f. Any information copied or extracted from the previously described materials, including all excerpts, summaries, or compilations of this information or testimony,

and documentation of questioning, statements, conversations, or presentations that might reveal the information contained within the underlying confidential Discovery Material.

3. **Confidential Attorneys' Eyes Only Information.** Material produced and marked as Confidential Attorneys' Eyes Only Information may be disclosed only to the Receiving Party and to such other persons as counsel for the Producing Party agrees in advance or as Ordered by the Court. The Receiving Party may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Attorneys' Eyes Only Information. If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials. If no such motion is filed, such documents or materials shall continue to be treated as Confidential Attorneys' Eyes Only Information. If such motion is filed, the documents or other materials shall be deemed Confidential Attorneys' Eyes Only Information unless and until the Court rules otherwise. Notwithstanding anything to the contrary in this stipulation, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information or Confidential Attorneys' Eyes Only Information.
4. **Manner of Confidential Designation.** A Producing Party shall affix a "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" designation to any confidential Discovery Material produced in this Action.
 - a. For documentary information (defined to include paper or electronic documents, but not transcripts of depositions or other pretrial or trial proceedings), the Producing Party must affix the legend "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" to each page that contains protected material.
 - b. If only a portion or portions of the information on a document page qualifies for protection, the Producing Party must clearly identify the protected portion(s) (e.g., by using highlighting, underlining, or appropriate markings in the margins).
 - c. If it is not feasible to label confidential Discovery Material as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" the Producing Party shall indicate via cover letter or otherwise at the time of production that the material being produced is confidential.
 - d. At the time of a deposition or within 10 days after receipt of the deposition transcript, a party may designate as confidential specific portions of the transcript which contain confidential matters under the standards set forth in Section 2 above. This designation shall be in writing and served upon all counsel. No objection shall be interposed at deposition that an answer would elicit confidential information. Transcripts will be treated as confidential for this 10-day period. Any portions of a transcript designated confidential shall thereafter be treated as confidential in accordance with this Order. The confidential portion of the transcript and any

exhibits referenced solely therein shall be bound in a separate volume and marked "CONFIDENTIAL" by the reporter.

5. Timing of Confidential Designation.

- a. Except as otherwise stipulated or ordered, or where discovery is made available for inspection before it is formally disclosed, Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.
- b. If the Producing Party responds to discovery by making Discovery Material available for inspection, the Producing Party need not affix confidential designations until after the Receiving Party has selected the material it wants to receive. During the inspection and before the designation, all material made available for inspection is deemed confidential. After the Receiving Party has identified the Discovery Material it wants produced, the Producing Party must determine which materials, or portions thereof, qualify for protection under this Order, and designate the materials as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" as required under this order.

6. Qualified Recipients. For the purposes of this Protective Order, the persons authorized to receive confidential Discovery Material (hereinafter "Qualified Recipient") are:

- a. The Parties, including any members, council members, officers, board members, directors, employees, or other legal representatives of the parties;
- b. Legal counsel representing the parties, and members of the paralegal, secretarial, or clerical staff who are employed by, retained by, or assisting such counsel; including vendors who are retained to copy documents or electronic files, provide technical, litigation support, or mock trial services, or provide messenger or other administrative support services;
- c. Any non-expert witness during any deposition or other proceeding in this Action, and counsel for that witness;
- d. Potential witnesses and their counsel, but only to the extent reasonably related to the anticipated subject matter of the potential witness's deposition, trial, or hearing testimony for this Action;
- e. Consulting or testifying expert witnesses who will be providing professional opinions or assistance for this Action based upon a review of the confidential information, and the staff and assistants employed by the consulting or testifying experts;
- f. Any mediator or arbitrator retained by the parties to assist with resolving and/or settling the claims of this Action and members of the arbitrator's or mediator's staff and assistants;

- g. The parties' insurers for this Action, and their staff and assistants, members, officers, board members, directors or other legal representatives;
 - h. Court reporters for depositions taken in this Action, including persons operating video recording equipment and persons preparing transcripts of testimony;
 - i. The Court and its staff, any court reporter or typist recording or transcribing hearings and testimony, and jurors; and
 - j. Any auditor or regulator of a party entitled to review the confidential Discovery Material due to contractual rights or obligations, or federal or state laws, or court orders, but solely for such contractual or legal purposes.
- 7. Dissemination by the Receiving Party.**
- a. Before receiving confidential Discovery Material or Confidential Attorneys' Eyes Only Information, each Qualified Recipient who is not included in Sections 5(a) and (b) above, shall: (i) review and agree to the terms of this Protective Order and (ii) execute a copy of the Agreement attached hereto as Appendix A.
 - b. The prohibition on disclosing information designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" exists and is enforceable by the Court even if the person receiving the information fails or refuses to sign the Appendix A Agreement.
- 8. Limitations on Use.** Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" shall be held in confidence by each Qualified Recipient to whom it is disclosed, shall be used only for purposes of this action, and shall not be disclosed to any person who is not a Qualified Recipient. Nothing herein prevents disclosure beyond the terms of this Protective Order if the party claiming confidentiality consents in writing to such disclosure.
- 9. Docket Filings.** A party seeking to file documents containing confidential Discovery Material under seal must comply with the Court's rules and electronic docketing procedures for filing motions for leave to file under seal.
- 10. Challenges to Confidentiality Designations.** A Receiving Party that questions the Producing Party's confidentiality designation will, as an initial step, contact the Producing Party and confer in good faith to resolve the dispute. If the parties are unable to resolve the dispute without court intervention, they shall apply to the Court for a determination as to whether the designation is appropriate. The party that designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" bears the burden of proving it was properly designated. The party challenging a "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" designation must obtain a court order before disseminating the information to anyone other than Qualified Recipients.
- 11. Use at Court Hearings and Trial.** Subject to the Federal Rules of Evidence, Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES

ONLY" may be offered and received into evidence at trial or at any hearing or oral argument. A party agreeing to the entry of this order does not thereby waive the right to object to the admissibility of the material in any proceeding, including trial. Any party may move the Court for an order that Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" be reviewed *in camera* or under other conditions to prevent unnecessary disclosure.

12. **Return or Destruction of Documents.** Upon final termination of this Action, including all appeals, each party shall make reasonable efforts to destroy all Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY". The destroying party shall notify the producing party when destruction under this provision is complete. If a party is unable to destroy all Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY", that material shall be returned to the Producing Party or the Producing Party's counsel. This Protective Order shall survive the final termination of this action, and it shall be binding on the parties and their legal counsel in the future.
13. **Modification.** This Protective Order is entered without prejudice to the right of any party to ask the Court to order additional protective provisions, or to modify, relax or rescind any restrictions imposed by this Protective Order. Disclosure other than as provided for herein shall require the prior written consent of the Producing Party, or a supplemental Protective Order of the Court.
14. **Additional Parties to Litigation.** In the event additional parties are joined in this action, they shall not have access to Discovery Material as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" until the newly joined party, by its counsel, has executed and, at the request of any party, filed with the Court, its agreement to be fully bound by this Protective Order.
15. **Inadvertent Disclosure of Protected Discovery Material.** The inadvertent, unintentional, or *in camera* disclosure of a confidential document and information shall not generally be deemed a waiver, in whole or in part, of any party's claims of confidentiality. If at any time prior to trial, a producing party realizes that some portion(s) of the discovery material that the party produced should be designated as confidential, the party may so designate by apprising all parties in writing, and providing that the material has not already been published or otherwise disclosed, such portion(s) shall thereafter be treated as confidential under this Order.
16. **Jurisdiction.** This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder.

Protective Order

Dated: New York, NY
Jan 30, 2024

SO ORDERED:



J.S.C.

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