SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **18**

Justice

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T. B.,

Plaintiff,

- v -

BIG BROTHERS BIG SISTERS OF NEW YORK CITY, DOES 1-10

Defendant.

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INDEX NO. 452864/2021

MOTION DATE 05/16/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for DISCOVERY.

In this motion, defendant Big Brothers Big Sisters of New York City (BBBS) moves to compel plaintiff to admit to defendant's request for admission number 1 and produce documents responsive to defendant's request for production number 1, pursuant to CPLR 3214. Plaintiff T.B. cross-moves for a protective order to limit the requests to admit and requests the Court strike defendant's answer, order defendant to compel defendant to produce documents, and provide another witness for deposition. Plaintiff also seeks costs associated with responding to the motion.

This is a case brought pursuant to the Child Victims Act. Plaintiff claims to have been abused between 1976 and 1981 by a man named Earl Eaton, a volunteer mentor assigned to plaintiff's brother. Defendant states that plaintiff testified at his deposition he did not recall through which mentoring program Eaton was assigned to plaintiff's brother. Defendant contends it has no records of Eaton, or of plaintiff's brother, participating in any of defendant's programs.

According to the defendant, at the deposition of defendant's representative, Michael Coughlin, plaintiff introduced an excerpt of a chat with artificial intelligence ChatGPT, in which ChatGPT purported to summarize a New York Times article identifying Earl Eaton as BBBS's Executive Director and reporting Eaton had been arrested for sexually abusing a 15-year-old boy. Defendant believes this article to have been "hallucinated" by ChatGPT.

BBBS served a discovery request to admit, asking plaintiff to admit the article referenced in the exchange by ChatGPT does not exist, and a request to produce the entire exchange with ChatGPT which resulted in the reference to the apparently nonexistent article. Plaintiff has declined to admit the article does not exist, but has admitted plaintiff has been unable to locate the article by;

> "using further prompts to question the artificial intelligence program about the veracity of the information it provided; accessing the link provided as a citation to the response from the artificial intelligence program; searching the New York Times website; accessing the New York Times, Times Machine and manually scrolling through the 692 pages that were published on October 10, 19821; emailing the New York Times archives; emailing the New York Times help address; searching Newspapers.com; searching Archives.org; searching digitized library archive records; and searching WestLaw"

(Plaintiff's Response to Defendant's Request for Admission, attached as exhibit E to Aff. of Tara Norris, [NYCSEF Doc No. 76, p. 38]). CPLR § 3123 provides "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 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 . . . can be ascertained by [the party] upon reasonable inquiry." While the plaintiff may not have personal knowledge of the status of the article or how the summary was generated, it is within plaintiff's ability to obtain that information. While plaintiff has declined to admit the article's nonexistence, plaintiff has admitted the reference provided by ChatGPT is incorrect and

the article could not be found through extensive searching. The answer to the request to admit is sufficient.

As far as defendant's motion seeks to compel the production of the full text of the chat session which led to the artificial intelligence providing the summary of the phantom article, plaintiff asserts that document is protected work product. Defendant argues plaintiff has waived any attorney work product protection for the artificial intelligence transcript by producing part of that document. "'At issue' waiver of privilege occurs where a party affirmatively places the subject matter of its own privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of a claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information" (*Deutsche Bank Tr. Co. of Americas v Tri-Links Inv. Tr.*, 43 AD3d 56, 63 [1st Dept 2007] [internal citations omitted]). Further, partial disclosure of privileged material may waive the privilege (*Deutsche Bank Tr. Co. of Americas v Tri-Links Inv. Tr.*, 43 AD3d 56, 64 [1st Dept 2007]; *Orco Bank, N.V. v Proteinas Del Pacifico, S.A.*, 179 AD2d 390, 390 [1st Dept 1992] [plaintiff waived attorney-client privilege by placing the counsel's advice in issue and making selective disclosure]). Here, plaintiff's counsel has disclosed a portion of the transcript with ChatGPT, placing the purported article summary at issue and waiving attorney work product protection. The purported article summary included statements about the defendant and the alleged abuser which would go to their relationship and notice. As plaintiff takes the position the article summarized may exist in another publication or on another date, the prompts which led ChatGPT to provide the purported summary have been placed at issue, as they may help the defendant search for the summarized article and other relevant evidence.

Plaintiff cross-moves for a protective order to limit defendant's requests to admit; for sanctions in the amount of plaintiff's costs in responding to defendant's motion to compel and discovery demands; to strike BBBS's answer; to compel defendant to produce all documents used by the BBBS's entity witness to prepare for his deposition; to continue the deposition of the BBBS's witness; and for another corporate witness to be deposed.

As far as plaintiff moves to limit defendants' requests to admit, CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." "The words, 'material and necessary', are . . . 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. CPLR 3101 (subd. [a]) should be construed . . . to permit discovery of testimony which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406-07 [1968] [internal quotations omitted]). This provision has been accorded a liberal interpretation in favor of disclosure (*see Nitz v Prudential – Bache Secs.*, 102 AD2d 914, 915 [1st Dept 1984]). As discussed above, the exchange that led to the purported article summary is relevant and may lead to admissible evidence, so is proper for discovery.

As the discovery demands are permissible and the motion to compel was not frivolous, as far as plaintiff seeks sanctions pursuant to 22 NYCRR 130-1.1 or CPLR § 3126 related to those demands, that portion of plaintiff's cross-motion is denied.

Plaintiff also seeks sanctions against the defendant pursuant to CPLR § 3126 for failing to disclose what documents were reviewed by defendant's entity witness in preparation for the deposition, as well as the production of those documents. Plaintiff is entitled to inquire as to

what documents were reviewed by the witness prior to the deposition (*Freidman v Fayenson*, 41 Misc 3d 1236(A) [NY Sup 2013], *affd sub nom. Freidman v Yakov*, 138 AD3d 554 [1st Dept 2016]). As far as plaintiff seeks the production of those documents, defendant contends plaintiff is not entitled to all documents, only to those used to refresh the witness's recollection. As the witness at issue is a corporate or entity witness, plaintiff is entitled to documents used to refresh the witness's recollection or to educate the witness, especially as the witness may not have personal knowledge of the events or information which are the subject of their testimony. The witness may be testifying solely from information learned from the documents (*see E. R. Carpenter Co. v ABC Carpet Co., Inc.*, 98 Misc 2d 1091, 1094 [Civ Ct 1979]). Once the documents have been produced, if any, the witness shall appear to continue the deposition, including answering questions regarding how the witness was educated to testify on behalf of the entity and how the witness's recollection was refreshed. Privileged documents viewed for reasons unrelated to the deposition need not be provided. As far as plaintiff requests another corporate representative be provided as a witness, that request is denied as plaintiff has failed to show the witness provided was insufficient.

Accordingly, for the reasons discussed above, it is hereby

ORDERED that defendant's motion to compel is GRANTED IN PART to the extent that plaintiff shall produce the full transcript of the communication with ChatGPT which led to ChatGPT providing the purported summarized article within ten (10) days of the date this Decision and Order is filed. The motion to compel is otherwise denied; and it is further

ORDERED that the cross-motion is GRANTED IN PART to the extent that within ten (10) days of the date this Decision and Order is filed, defendant shall produce documents used to educate the entity witness or refresh the witness's recollection in preparation for the deposition

and that within thirty (30) days of the date of filing of this decision and order, the witness shall appear for a continuation of the deposition at which time the witness shall answer questions about the process of preparing for the deposition, and the motion is otherwise denied.

This constitutes the Decision and Order of the Court.

8/21/2025
DATE

ALEXANDER M. TISCH, 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