SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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INDEX NO. 154947/2023

EMERALD PATRICE,

Plaintiff,

MOTION DATE 09/30/2025, N/A

- v -

MOTION SEQ. NO. 001 002

NEW YORK CITY DEPARTMENT OF TRANSPORTATION, CITY OF NEW YORK, OUR RENTAL PUMPS LLC,

DECISION + ORDER ON MOTION

Defendant.

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OUR RENTAL PUMPS LLC

Third-Party
Index No. 595937/2023

Plaintiff,

-against-

JUDLAU CONTRACTING INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 110

were read on this motion for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109

were read on this motion to STRIKE PLEADINGS.

Plaintiff Emerald Patrice ("Plaintiff:") moves principally for discovery relief and for sanctions under CPLR § 3124 and § 3126: (a) to compel Defendants New York City Department of Transportation and City of New York (collectively, "the City") to serve verified answers and produce documents responsive to Plaintiff's Verified Bill of Particulars (Jan. 6, 2025), Notice of Discovery and Inspection (Jan. 6, 2025), Combined Discovery Demands (Jan. 6, 2025 / re-served Feb. 3, 2025), insurance demands (Jan. 6, 2025 and supplemental May 7, 2025), and related discovery; (b) to compel the City to proceed with depositions directed at defendants and their witnesses and to comply with prior court orders; and (c) for sanctions, up to striking or preclusion, should the City continue to refuse to comply.

Third-party defendant Judlau Contracting Inc. ("Judlau") moves (a) to compel Plaintiff to appear for the continued deposition and to permit that continuation to be video-recorded; (b) to

compel Plaintiff to answer certain questions that were objected to at the first day of his deposition; and (c) to compel Plaintiff to execute medical/social security/union authorizations and to respond to outstanding discovery directed to plaintiff. Plaintiff opposes Judlau's application and also presses its own discovery/sanction motion against the City.

For the reasons set forth below, and after careful consideration of the papers and the authorities cited therein, the court (1) denies the requested striking of the City's pleadings at this time but but Plaintiff's CPLR § 3124 motion to compel production and to proceed with depositions, with the schedule and conditions set forth below; (2) denies Judlau's application to video-record only the second day of Plaintiff's deposition (for the reasons stated below), but grants in part Judlau's request to compel limited, non-privileged answers and to obtain targeted authorizations and document production; and (3) schedules a compliance conference to monitor implementation and to consider further sanctions if warranted.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff commenced this personal-injury action on June 2, 2023. Plaintiff served a Verified Bill of Particulars on September 21, 2023 and a Supplemental Verified Bill of Particulars on January 6, 2025. On January 6, 2025 (and re-served on February 3, 2025) Plaintiff served discovery demands on the City, and served additional discovery (including insurance demands and a Notice to Produce) on May 7, 2025. The court conducted a compliance conference on June 24, 2025 with a number of directives (including dates for continuing Plaintiff's deposition and for defendants' depositions, and deadlines for the City to respond to certain discovery). Plaintiff made repeated good-faith efforts to obtain discovery (letters of April 29, 2025 and May 7, 2025; follow-up email June 12, 2025; attempt to meet and confer Aug. 19, 2025). The City's paper responses and the depositions identified in the court's schedule remain outstanding in material respects as of the filings now before the court.

Separately, Plaintiff's deposition began on June 16, 2025 and continued by agreement to June 25, 2025. On June 25 counsel for Judlau (and/or other defendants) informed the parties and the deponent that they intended to videotape the continuation. Plaintiff objects and contends no proper notice of videotape deposition was ever served prior to the first day of testimony; Plaintiff therefore contends any attempt to video only the second day is untimely, procedurally defective and prejudicial. Judlau contends later-served notices (including a July 17, 2025 notice) are sufficient and that changed circumstances (counsel's obstructive conduct; plaintiff's inconsistent testimony; the nature of claimed injuries) justify videotaping.

ARGUMENTS

Plaintiff asserts that the City has repeatedly failed to comply with discovery demands and the court's June 24, 2025 directives (and related deadlines). Plaintiff seeks an order compelling the City to produce the outstanding materials and to proceed with depositions; Plaintiff also seeks sanctions under CPLR § 3126 (including, in the moving papers, striking or preclusion) should the City continue to ignore orders. The moving papers document the service dates, the good-faith letters and the court's orders; Plaintiff argues that the City's failures are willful or, at minimum, negligent and prejudicial.

Judlau argues (1) that videotaping is warranted because the first day of testimony revealed credibility issues and counsel's conduct that may make a video record appropriate; (2) that certain foundational / impeaching or authentication questions (including whether plaintiff's earlier 50-h testimony was accurately read) are appropriate and should be answered; and (3) that narrow authorizations (SSA, treating providers, union records and Brookdale records) are necessary given the issues raised in the Bill of Particulars and observed inconsistencies. Judlau relies on authority permitting a court, in its discretion, to order videotaping or permit continued videotaping where circumstances warrant (citing Aloise v. Saulo and other cases), and argues Plaintiff's procedural objections to the notice are meritless or curable.

Plaintiff maintains that no proper notice of videotape deposition was ever served prior to the commencement of depositions (and no notice was provided before the first day); that CPLR § 3113(b) requires continuous taking when videotaping is used and the parties cannot "turn the camera on" mid-deposition; and that the court may issue a protective order where videotaping would be partial and unnecessary. Plaintiff also argues many of the questions sought by Judlau are not material and necessary and that certain authorizations (e.g., PCP records from Dr. Rao) are not discoverable without a showing of relevance.

DISCUSSION

Discovery in New York is broad; CPLR § 3101(a) requires disclosure of "matter material and necessary" to prosecution or defense, a test of "usefulness and reason" not indispensability. *Forman v. Henkin*, 30 NY3d 656 (2018), reiterates that threshold. Parties seeking discovery must establish a factual predicate showing relevancy. CPLR § 3103 authorizes protective orders where disclosure would cause undue prejudice. CPLR § 3113 governs the taking of depositions; subsection (b) requires depositions to be taken "continuously" and references rules adopted by the Appellate Division (22 NYCRR § 202.15) governing audiovisual recording. CPLR § 3124 authorizes motions to compel discovery; CPLR § 3126 provides for sanctions — including preclusion or striking pleadings — when a party "refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed." The Court of Appeals and Appellate Divisions have stressed both the breadth of discovery and the trial court's broad discretion to fashion sanctions tailored to the circumstances (*see, e.g., Zletz v. Wetanson*, 67 NY2d 711 [1986]; *Kihl v. Pfeffer*, 94 NY2d 118 [1999]; *Sepulveda v. 1010 Woodruff Ave. Owner, LLC*, 166 AD3d 835 [2d Dept 2018]; *Arpino v. F.J.F. & Sons Elec. Co*., 102 AD3d 201 [2d Dept 2012]; *Silberstein v. Maimonides Med. Ctr*., 109 AD3d 812 [2d Dept 2013]).

I. The City's Discovery Obligations

Here, the court finds that Plaintiff has established (by the documentary record and the June 24, 2025 conference order) a clear showing that the City has not produced certain promised responses and has not completed depositions called for on the schedule. The record of repeated requests, good-faith letters (Apr. 29 and May 7, 2025), follow-ups and the court's own prior directives furnishes the factual predicate for compelling production under CPLR § 3124.

Although Plaintiff seeks the draconian sanction of striking the City's pleadings, the court will not strike the City's pleadings at this time. Striking pleadings is an extreme remedy, reserved

for egregious, willful, contumacious and unremedied conduct (*Zletz*, *Kihl*, *Sepulveda*), and where lesser measures have been attempted or are plainly inadequate. The court recognizes Plaintiff's prejudice and the record of delay, and therefore will enter a mandatory, court-ordered compliance plan that (a) compels production, (b) compels depositions to proceed within a reasonable fixed period, and (c) preserves the option of harsher sanctions should the City fail to comply by the deadlines set below. This approach is consistent with authority approving conditional orders and giving parties a final opportunity to comply before the severe sanction of striking pleadings is imposed (*see Arpino*, 102 AD3d 201; *Silberstein*, 109 AD3d 812).

II. Judlau's Videotape Request

The record shows no notice of videotape deposition was served prior to the start of the first day of Plaintiff's deposition. Plaintiff's position that a mid-deposition "turn the camera on" approach is inconsistent with CPLR § 3113(b) and the Appellate Division's rules governing audiovisual recording (22 NYCRR § 202.15) is well taken. The rule implementing audiovisual recording requires that the notice state that the deposition is to be recorded by audiovisual means and identify the operator; CPLR § 3113(b) contemplates continuous examination when used. Courts have in comparable circumstances exercised discretion to issue protective orders where videotaping would be partial and unnecessary while in other instances — where obstruction, credibility concerns and counsel misconduct occurred — courts have allowed videotaping.

Upon review of CPLR § 3113(b), and the implementing rule of 22 NYCRR § 202.15, the court concludes that Judlau's request must be denied. No notice of audiovisual recording was served prior to the commencement of the first day of Plaintiff's deposition, and the court is persuaded that piecemeal videotaping — turning on the camera after the deposition has already begun — is inconsistent with the "continuous" deposition requirement of CPLR § 3113(b) and with the procedural safeguards of 22 NYCRR § 202.15. While videotaping may be appropriate under different circumstances — for example, where counsel's obstructive behavior or credibility concerns justify it— the record here does not warrant such relief at this time.

Accordingly, Judlau's motion to videotape only the second day of Plaintiff's deposition is denied. Any future videotaping of depositions may occur only (a) upon written agreement of the parties with proper notice identifying the audiovisual operator, or (b) upon further application supported by a showing of changed circumstances and full compliance with 22 NYCRR § 202.15 and CPLR § 3107.

III. Compelled Answers to Limited Deposition Questions and Scope of Questioning

Plaintiff shall answer reasonable, narrowly framed questions that authenticate or clarify his prior testimony (e.g., whether he recalls giving the testimony reflected in a quoted portion, whether he stands by a prior answer). Asking a witness whether he recalls a prior question and answer, or whether a passage correctly reflects his prior statement, is a legitimate foundation for impeachment and is not *per se* objectionable. The court will therefore compel Plaintiff to answer foundation questions limited to authentication or recollection of prior testimony, provided the questions do not require narration or privileged content. Counsel may, as always, preserve objections on the record (*see Hoopes v. Carota*, 74 NY2d 716 [1989]).

Timing of retention is not privileged per se; the substance of communications is privileged but the date a client first retained counsel is not. The court therefore compels Plaintiff to answer limited questions about when he retained counsel, subject to protective limitations if counsel proffers a specific objection grounded in law (*see Hoopes*, 74 NY2d 716).

Questions that seek purely collateral or irrelevant matters, or that invade privileged spaces, remain protected. If defenses wish to pursue further lines, they must show a factual predicate demonstrating materiality before the court will compel otherwise intrusive questioning (*see Patterson v. Turner Constr. Co.*, 88 AD3d 617 [1st Dept 2011]; *Tapp v. New York State Urban Dev. Corp.*, 102 AD3d 620 [1st Dept 2013]; *Forman v. Henkin*, 30 NY3d 656 [2018]).

Accordingly, having reviewed the specific deposition disputes raised by Judlau concerning Plaintiff's testimony, the court rules as follows:

1. **Authentication of Prior Testimony.** Plaintiff is directed to answer reasonable, narrowly framed questions that authenticate or clarify his prior testimony, including his 50-h examination. Such questions — for example, whether he recalls giving certain prior answers and whether the transcript accurately reflects his testimony — are legitimate foundations for impeachment and not objectionable.

2. **Timing of Retention of Counsel.** Plaintiff is directed to answer **l**imited questions as to the date on which he retained counsel. The court emphasizes that while the fact of retention is not privileged, the content of communications with counsel remains fully protected (*see Hoopes v. Carota*, 74 NY2d 716 [1989]).

3. **Irrelevant or Unduly Intrusive Questions.** Any questions that are collateral, irrelevant, or that seek to invade the attorney-client privilege remain protected, and Plaintiff need not answer them. If Defendants seek further exploration into areas that may initially appear collateral, they must establish a factual predicate demonstrating materiality and necessity (*see Patterson v. Turner Constr. Co.*, 88 AD3d 617 [1st Dept 2011]; *Tapp v. N.Y. State Urban Dev. Corp.*, 102 A.D.3d 620 [1st Dept 2013]; *Forman v. Henkin*, 30 NY3d 656 [2018]).

Thus, Plaintiff is compelled to answer only narrowly tailored authentication and timing questions, and Defendants are precluded from pursuing broader or improper inquiries absent further leave of court.

IV. Authorizations

Plaintiff objects to broad PCP records demands. Appellate Division, First Department, authority limits unfettered access to such files (*Jerez v. Tishman Constr. Corp. of N.Y.*, 118 AD3d 617 [1st Dept 2014]; *Brito v. Gomez*, 168 AD3d 1 [1st Dept 2018]). Nonetheless, where a plaintiff's testimony raises inconsistencies or where future lost earnings and medical conditions are affirmatively placed in issue, targeted records are discoverable.

It is undisputed that Plaintiff has already provided many authorizations through prior counsel. The remaining requests are resolved as follows:

1. **Social Security Administration (SSA).** Plaintiff is directed to execute a properly completed SSA authorization within fourteen (14) days of this decision and order. If Plaintiff disputes the form of the authorization, he must execute the court's standard SSA form or submit an affidavit setting forth his objection.

2. **Brookdale Medical Center.** Plaintiff is directed to provide an authorization limited to records from Brookdale Medical Center covering the period of two (2) years prior to the accident through the present. This limitation balances Defendants' entitlement to relevant medical history with Plaintiff's legitimate privacy concerns.

3. **Treating Providers.** Plaintiff is directed to execute authorizations for records from Dr. Olatokunbo Osewa-Lucas and any other treating surgeons identified in his Bill of Particulars and supplemental submissions. These records are material and necessary to the claims and defenses.

4. **Primary Care Physician (Dr. Rao).** Plaintiff is not directed at this time to provide a blanket authorization for records from Dr. Rao. Unless Defendants can establish a factual predicate showing that Dr. Rao treated or was consulted for the injuries at issue, those records remain outside the scope of permissible disclosure. Should Defendants later come forward with such evidence, they may renew their application.

5. **Union Records.** Plaintiff is directed to execute an authorization limited to employment and earnings records from his union, restricted to the periods relevant to evaluating lost earnings, employment history, and work capacity. Defendants shall tailor their request accordingly.

6. **Other PCP or unrelated authorizations.** Any other demands not specifically addressed above are denied without prejudice unless and until Defendants make a specific showing of relevance consistent with the materiality standard under CPLR § 3101(a).

A compliance conference is scheduled for December 2, 2025 at 2:00 p.m. in Room 103 at 80 Centre Street, New York, NY (Differentiated Case Management Part). Counsel shall attend in person. The City's counsel shall file an affirmation of compliance seven (7) days before that conference. If the City has complied, the compliance conference will be used to address any remaining disputes and to set further dates; if the City has not complied, Plaintiff may seek immediate CPLR § 3126 relief and the court will consider preclusion or striking, consistent with governing authority.

Accordingly, it is hereby

ORDERED, that Plaintiff's request to strike the City's answer is denied, without prejudice; and the court declines to impose that severe sanction at this time but expressly reserves the right

to impose dispositive sanctions, including striking the answer, if the City fails to comply with the clear deadlines and directives set forth below; and it is further

ORDERED, that, pursuant to CPLR § 3124, Defendants New York City Department of Transportation and the City of New York shall serve verified written responses and produce documents responsive to Plaintiff's Verified Bill of Particulars dated January 6, 2025, Notice of Discovery and Inspection dated January 6, 2025, Combined Discovery Demands dated January 6, 2025 and re-served February 3, 2025, Insurance Demands dated January 6, 2025 and May 7, 2025, and Notice to Produce dated May 7, 2025, within sixty (60) days of the date of this decision and order; and it is further

ORDERED, that any partial production shall be accompanied by a privilege log identifying each withheld document with specific grounds for withholding; and it is further

ORDERED, that Defendants shall proceed with and make available witnesses for deposition, including those identified at the June 24, 2025 conference, and that all such depositions shall be completed within sixty (60) days of this decision and order; counsel shall meet and confer within fourteen (14) days to set deposition dates and shall cooperate in good faith; and it is further

ORDERED, that Judlau's application to videotape only the continuation of Plaintiff's deposition is denied; and that any future videotaping of depositions shall proceed only by written agreement of the parties with compliant notice or by further application demonstrating changed circumstances and full compliance with 22 NYCRR § 202.15 and CPLR §3107; and it is further

ORDERED, that Plaintiff shall answer, at a resumed deposition, reasonable and narrowly tailored questions authenticating or clarifying prior testimony and answer non-privileged foundational questions, including the date of retention of counsel; questions that seek privileged communications or are not reasonably calculated to lead to admissible evidence shall remain protected; counsel shall meet and confer within seven (7) days to identify and narrow contested questions, and any persistent disputes shall be submitted to the court for resolution; and it is further

ORDERED, that Plaintiff shall, within fourteen (14) days of this decision and order, execute a Social Security Administration authorization, as well as targeted authorizations for Brookdale Medical Center records and union employment records, and for records from Dr. Olatokunbo Osewa-Lucas and any treating surgeons identified in the Bill of Particulars; and it is further

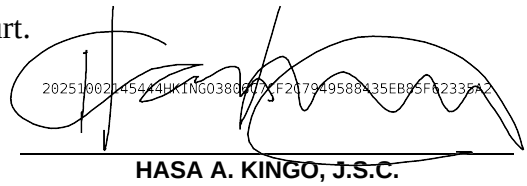
ORDERED, that any demand for authorizations not specifically directed above, including records from Dr. Rao as primary care physician, is denied without prejudice absent a proper factual showing of relevance; and it is further

ORDERED, that lead counsel for the City shall file and serve an affirmation seven (7) days before the compliance conference attesting to compliance with this decision and order, identifying withheld categories, and specifying deposition dates scheduled and completed; and it is further

ORDERED, that if the City or any defendant fails to comply with this decision and order within the time periods set forth, the court will consider sanctions pursuant to CPLR § 3126, including preclusion of evidence, limitation of defenses, striking of pleadings, or default judgment; and it is further

ORDERED, that counsel shall appear in person for a compliance conference on December 2, 2025, at 2:00 P.M., in Room 103 at 80 Centre Street, New York, New York (Differentiated Case Management Part); and failure to appear may result in sanctions.

This constitutes the decision and order of the court.



10/2/2025
DATE

HASA A. KINGO, J.S.C.

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