

Pena v Bogopa Serv. Corp.

2025 NY Slip Op 33873(U)

October 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 517014/2021

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 9th day of October, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
MIGNOLIA PENA,

Plaintiff(s)

Index No: 517014/2021
Motion Seq. 3-6

-against-

BOGOPA SERVICE CORP.,

Defendant(s)

ORDER

-----X

The following e-filed papers read herein:

	<u>NYSCEF Nos.:</u>
Notice of Motion/Affidavits Annexed	
Exhibits Annexed/Reply.....	52-80; 129-132
Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....	121-125
Notice of Motion/Affidavits Annexed	
Exhibits Annexed/Reply.....	44-51; 118-119
Notice of Motion/Affidavits Annexed	
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In this matter, Bogopa Service Corp. (“Defendant”) moves (Motion Seq. 3) for an order dismissing Mignolia Pena’s (“Plaintiff”) complaint for perpetuating fraud on the court and to impose sanctions upon Plaintiff and/or counsel for frivolous conduct pursuant to 22 NYCRR 130.1.1; or in the alternative striking Plaintiff’s complaint based upon her knowing, intentional, and repeated failures to truthfully respond to Defendant’s discovery demands and for perjury offered at her EBT, or precluding Plaintiff from offering any evidence at the time of trial, with sanctions imposed pursuant to CPLR 3126. Defendant also moves alternatively for leave to serve an Amended Answer pursuant to CPLR 3025(b), to assert an affirmative defense and a counter claim for fraud against Plaintiff. Defendant also seeks to vacate the Note of Issue, compel Plaintiff to respond to Defendant’s outstanding discovery demands, appear for further deposition, and produce requested and additional post-note of issue discovery pursuant to CPLR 3124. Plaintiff has opposed the motion. Additionally, Plaintiff moves (Motion Seq. 4) for summary judgment on the issue of liability pursuant to CPLR 3212. Defendant has opposed the motion. Plaintiff also moves (Motion Seq. 5) for an order of preference based on Plaintiff’s age. Defendant has opposed the motion. Lastly, Defendant moves (Motion Seq. 6) for summary judgment dismissing Plaintiff’s complaint pursuant to CPLR 3212. Plaintiff has opposed the motion.

This action arises from an alleged trip-and-fall incident that occurred on February 9, 2020. Plaintiff claims that while she was shopping at the Defendant's supermarket known as the Food Bazaar Supermarket, she tripped and fell over a metal platform that was in place in front of the fish aisle of the market. As a result of the incident, Plaintiff states that she has sustained injuries to her lumbar spine, cervical spine, right shoulder, left shoulder, and left knee, as well as post-traumatic headaches, dizziness, difficulty sleeping, and blurry vision in her left eye.

In support of its motion, Defendant argues that over the course of 15 years, Plaintiff has "intentionally organized a pervasive scheme designed to fabricate a medical narrative through selective omission and false statements to her medical providers, in an attempt to manufacture a record falsely supporting causation." Defendant states that as part of her scheme, that Plaintiff knowingly and repeatedly denied the existence of prior accidents, injuries, and treatment through discovery and repeatedly perjured herself throughout her deposition testimony. Specifically, Defendant alleges that Plaintiff has provided false and/or omitted material information to each, and every medical provider seen in relation to her lawsuits, including this one, that Plaintiff has failed to disclose prior treatment, injuries, and accidents as required by multiple court orders, and in response to repeated demands for the information, and that Plaintiff filed a materially false Note of Issue herein. Defendant also alleges that some of the providers associated with Plaintiff's prior claims may have participated in this scheme and have been convicted of fraud in receiving kickbacks and providing unnecessary treatment in related cases. In support of its motion, Defendant submits, inter alia, a Preliminary Conference ("PC") Order dated April 29, 2022,¹ a Discovery Demand dated July 8, 2022, Plaintiff's responses to demands dated July 21, 2022,² a Compliance Conference ("CC") Order dated November 1, 2022,³ a follow up Discovery Demand for all prior related injury and treatment authorizations dated October 31, 2023, a Final-Conference Pre-Note ("FC") Order dated December 18, 2023,⁴ Plaintiff's authorizations for some outstanding Discovery Demands dated January 12, 2024,⁵ Plaintiff's EBT testimony dated May 20, 2024, an affidavit and transcript from a prior lawsuit wherein Plaintiff was alleged to have assisted a law firm in wrongfully "purchasing Plaintiffs away from another law firm," Plaintiff's EBT testimony from the 2015 car accident dated January 5, 2017, Plaintiff's Bill of

¹ Pursuant to the PC Order, "if exacerbation of a prior injury is alleged, properly executed OCA Form 960 – HIPAA compliant authorizations shall be furnished for all medical records from all providers who treated the prior injury that is alleged to have been exacerbated as a result of this accident."

² In response to Defendant's various demands for prior injuries, treatments, and accidents, Plaintiff responded "not applicable."

³ Pursuant to the CC Order, "to the extent not completed, Plaintiff shall provide all outstanding authorizations within 20 days of this Order."

⁴ The FC Order directed Plaintiff to provide responses to Defendant's demands no later than January 15, 2024.

⁵ Plaintiff's disclosure was limited to providers in relation to a March 1, 2015, car accident, despite the demand being for all prior related injuries, treatments, and accidents.

Particulars from the 2015 car accident, a Nassau court decision,⁶ Defendant's Post EBT Demands, Plaintiff's response dated June 7, 2024,⁷ Defendant's notice of deficiency dated June 12, 2024, Plaintiff's "ISO" Claims Inquiry search results listing accidents in 2003, 2009, 2015, 2017, and 2018, and various medical records of Plaintiff.

In opposition, Plaintiff argues that Defendant has failed to establish that she organized a pervasive scheme designed to undermine the judicial process and/or fabricated any evidence. Plaintiff's counsel asserts, that Plaintiff is 74 years old, from the Dominican Republic, and that she was only educated up to the 8th grade. As a result, Plaintiff's counsel contends that her understanding of medical terminology is limited and that her memory has faded over the years, but that Plaintiff corrects herself when necessary. With respect to the discovery releases, Plaintiff's counsel states that when they were served initial discovery responses that they were not aware of any pre-existing injuries that affected the same body parts that are alleged as a result of the subject accident, but that as information was provided that they served additional and corrected responses along with any authorizations they were able to obtain. Plaintiff also argues that the ISO Claims Search result form submitted by Defendant should be disregarded as inadmissible hearsay because it is not certified or sworn to. With respect to the Nassau court decision, Plaintiff contends that the decision is a default motion that was not decided on the merits and Plaintiff denies that she did anything intentionally wrong. Moreover, Plaintiff asserts that her complaint should not be stricken pursuant to CPLR 3216 because Defendant has not established any willful conduct by the Plaintiff, and Defendant's request to amend its Answer should be denied since it was filed so late after Plaintiff's deposition, which was held over two years ago.

First the court will address Defendant's request to dismiss Plaintiff's Complaint for committing alleged fraud on the court as well as Defendant's request to impose sanctions upon Plaintiff and/or her counsel for frivolous conduct. Generally, a court has the power to strike pleadings upon a finding by "clear and convincing evidence" of fraud on the court wherein the record supports the existence of such evidence (see *CDR Creances S.A.S. v Cohen*, 23 NY3d 307 [2014]). Fraud on the court involves willful conduct that is deceitful and obstructionistic, which injects misrepresentations and false information into the judicial process "so serious that it undermines ... the integrity of the proceeding" (*Id.* at 318; citing *Baba-Ali v State of New York*, 19 NY3d 627 [2012]). In order to demonstrate fraud on the court, the nonoffending party must establish by clear and convincing evidence that the offending "party has acted knowingly in an attempt to

⁶ Pursuant to the court decision the insurance company related to the March 1, 2015, car accident was relieved from any obligation to pay benefits and held that Plaintiff herein "made intentional material misrepresentations, in the claim and failed to cooperate in the investigation."

⁷ Plaintiff's response provided no authorizations and claimed a complete lapse of memory as to any providers or information.

hinder the fact finder's fair adjudication of the case and his adversary's defense of the action" (*Id.* at 320; citing *McMunn v Memorial Sloan-Kettering Cancer Center*, 191 F.Supp.2d 440 [SDNY March 27, 2002]).

Additionally, Pursuant to 22 NYCRR 130-1.1, a court, in its discretion, may impose sanctions against a party for frivolous conduct (*Finley v Finley*, 233 AD3d 654 [2d Dept. 2024]; *Weissman v Weissman*, 116 AD3d 848 [2d Dept. 2014]). Conduct is frivolous if "(1) it is completely without merit in law or fact and cannot be supported by a reasonable argument for the extension, modification, or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (*Finley* at 655; *Matter of Congregation Ahavas Moische, Inc. v Katzoff*, 134 AD3d 934 [2d Dept. 2015]; see 22 NYCRR 130-1.1[c]). In determining whether the conduct undertaken was frivolous, a court shall consider "the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel" (*Finley* at 655; 22 NYCRR 130-1.1[c]).

Here, the court finds that Defendant has not established its burden of demonstrating fraud on the court by clear and convincing evidence. Considering the evidence submitted, the Defendant has not demonstrated that the Plaintiff's deposition testimony or previous litigation history was knowingly designed to hinder the factfinder's fair adjudication of the case and the Defendants' defense of this action. The court also finds that Defendant has failed to establish that the Plaintiff's conduct herein was frivolous within the meaning of 22 NYCRR 130-1.1.

Next, the court will address Defendant's request to strike Plaintiff's complaint based upon her alleged knowing, intentional, and repeated failures to truthfully respond to Defendant's discovery demands and for perjury offered at her EBT, or precluding Plaintiff from offering any evidence at the time of trial, with sanctions imposed pursuant to CPLR 3126. CPLR 3126 states in part that, "if any party ... refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them" (*CDR Creances S.A.S.* at 317). Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR 3126 are matters within the sound discretion of the motion court (*Winters v City of NY*, 234 AD3d 805 [2d Dept 2025], citing *Morales v Zherka*, 140 AD3d 836, 836-837 [2d Dept 2016]). It is well settled, that "the willful and contumacious character of the plaintiff's conduct can be inferred from his [or her] repeated failure to respond to the defendants' demands for discovery of records, his [or her] failure to meaningfully and timely comply with the Supreme Court's order directing such disclosure, and his [or her] failure to provide any reasonable excuse for these failures"

(*Halyard v Magellan Aerospace NY, Inc.*, 221 AD3d 592, 594 [2d Dept 2023], citing *Ewa v City of NY*, 186 AD3d 1195, 1196 [2d Dept 2020]; *Vays v Luntz*, 179 AD3d 744, 747 [2d Dept 2020]).

Here the court finds, that though Plaintiff failed to provide initial responses to Defendant's discovery demands, Plaintiff's counsel has demonstrated a reasonable excuse for her failure to timely comply and sent updated releases as they received updated and corrected information. Defendant has not established knowing, intentional, and repeated failures to truthfully respond to its discovery demands or for perjury offered at EBT, wherein Plaintiff acknowledged what she could recall and correct herself when needed. Furthermore, the issue of Plaintiff's credibility should be determined by a jury. Accordingly, that branch of Defendant's motion to strike Plaintiff's complaint is denied.

With respect to Defendant's request for leave to serve an Amended Answer to assert an affirmative defense and a counterclaim for fraud against the Plaintiff, under CPLR 3025 (b), a defendant may amend his answer by leave of court and such leave "shall be freely given" unless the party opposing the motion establishes that the proposed amendment is palpably insufficient or patently devoid of merit, or that the delay in seeking the amendment would cause prejudice or surprise to the other parties (CPLR 3025 [b]; *Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]; *Wells Fargo Bank, N.A. v Spatafore*, 183 AD3d 853, 853 [2d Dept 2020]). It is not for this Court to determine on a motion to amend an answer the "legal sufficiency or merits" of the proposed amendment (*Sample v Levada*, 8 AD3d 465, 467-468 [2d Dept 2004]). However, "[w]here the lack of merit of a proposed defense is clear and free from doubt, a motion for leave to amend an answer to raise that defense should be denied" (*Lucido*, 49 AD3d at 226 [2d Dept 2008]). Lateness in seeking an amendment or a party's failure to offer an excuse for the delay will not bar the amendment absent prejudice (*Quiros v Polow*, 135 AD2d 697, 699 [2d Dept 1987]; *Smith v D.L. Peterson Trust*, 254 AD2d 479, 480 [2d Dept 1998]). Ultimately, "the determination to permit or deny amendment is committed to the sound discretion of the trial court" (*US Bank N.A. v Murillo*, 171 AD3d 984, 986 [2d Dept 2019]).

The elements of a cause of action for fraud require: (1) a material misrepresentation of a fact, (2) knowledge of its falsity, (3) an intent to induce reliance, (4) justifiable reliance, and (5) damages" (*Da Silva v Champ Constr. Corp.*, 186 AD3d 452, 454 [2d Dept 2020]). Where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail pursuant to CPLR 3016(b).

Here, the court does not find that Defendant has demonstrated sufficient need to amend its Answer. Defendant's answer was filed in October of 2021. While Defendant does not specify exactly when it discovered facts to support their allegations to assert their fraud claim, upon review of Defendant's moving papers, and Plaintiff's EBT which was taken in May of 2024, Defendant appears to have had sufficient enough facts that were known or should have been known to seek amendment of its Answer prior to this

instant motion. Additionally, the court finds that the Defendant's proposed amendments fail to allege any specific facts that Plaintiff knowingly made material misrepresentations so as to support a fraud claim and rather conclusory allege that Plaintiff engaged in a pervasive scheme of fraud. Furthermore, the unproven allegations of fraud against Plaintiff's attorney and/or medical providers, do not, without more, warrant a claim for fraud against Plaintiff herself. Any discrepancies in the Plaintiff's deposition testimony should be weighed by the trier of fact and determined at trial.

The court will next address Defendant's request to vacate the note of issue, compel Plaintiff to respond to Defendant's outstanding discovery demands, appear for further deposition, and produce requested and additional post-note issue discovery. A note of issue should be vacated where "it is based upon a certificate of readiness that incorrectly states that all discovery has been completed" (*Matos v City of New York*, 154 AD3d 532 [1st Dept. 2017]). Pursuant to 22 NYCRR 202.21(e), any party to an action may, within 20 days of service of the note of issue and certificate of readiness, move to vacate the note of issue upon an affidavit demonstrating that the case is not ready for trial (*Bundhoo v Wendy's*, 152 AD3d 734 [2d Dept. 2017]; see 22 NYCRR 202.21[e]). However, after the 20-day period has expired, no such motion shall be allowed except for good cause shown (*Id.* at 737). Additionally, CPLR 3124 allows a court to compel disclosure "if a person fails to respond to or comply with any request, notice, interrogatory, demand, question, or order."

Plaintiff's Note of Issue was filed on July 12, 2024, and Defendant's motion was filed July 24, 2024. The branch of the motion seeking to vacate the Note of Issue is granted. The branch of the motion seeking to compel Plaintiff to appear for a further deposition and produce requested and additional post-note discovery is also granted. Plaintiff is directed to respond to all outstanding discovery demands. All responses shall be provided to Defendant within 45 days of the date that Defendant serves a copy of this order, with notice of entry, upon all parties to this action. Additional EBTS of other parties, if necessary, shall be scheduled by the Discovery Part Judge.

Parties shall also schedule additional EBTS of parties, if necessary and the

In support of her motion for a trial preference (Motion Seq. 5), Plaintiff states that this matter should be set down for an early date, on the ground that the plaintiff is 73 years old. In opposition, Defendant argues that Plaintiff's request for trial preference based off her age is moot because it was untimely and made more than 10 days after the filing of the Note of Issue and that Plaintiff has not requested an extension or proffered any good cause for the delay.

Pursuant to CPLR 3404(b), "unless the court otherwise orders, notice of a motion for preference shall be served with the note of issue by the party serving the note of issue, or ten days after such service by any other party; or thereafter during the pendency of the action upon the application of a party who reaches the age of seventy years, or who is terminally ill."

Here, the court finds that in view of the undisputed evidence that the Plaintiff has reached the age of 73, and that the mandatory language” of CPLR 3403(a)(4) provides that a trial preference shall be granted in any action upon the application of a party who has reached age 70, that Plaintiff’s motion for a trial preference based on age is granted. Plaintiff has proffered a reasonable excuse for her delay and in opposition Defendant has failed to show any prejudice by Plaintiff’s delay or in granting the motion.

In support of her motion for summary judgment (Motion Seq. 4), Plaintiff argues that the dangerous condition that caused Plaintiff to fall was caused and created by the employee who left the platform in that position. Plaintiff also argues that the employee who left the platform there was aware that it was on the floor, extending beyond the adjacent food section where Plaintiff was standing. Plaintiff contends that the placement of the platform was created by the Defendant and that it was foreseeable that customers walking in the aisle would be injured. In support of her motion, Plaintiff submits a video of the incident, Plaintiff’s EBT, Defendant’s EBT, and the incident report.

In opposition to Plaintiff’s motion and in support of its cross-motion (Motion Seq. 6), Defendant argues that Plaintiff has failed to allege any injury proximately caused by the subject incident, and further, that “Plaintiff cannot parse out any particularized injury attributable to subject incident as opposed to her numerous prior claims of injury to same body parts without resorting to impermissible speculation.” Defendant contends that each and every one of Plaintiff’s claimed injuries herein has already been claimed in prior actions. Furthermore, Defendant states that none of the providers that has seen or treated Plaintiff “has rendered a reliable opinion, or any opinion at all, as to why her repackaged injuries are somehow new or different than her pre-existing injuries and conditions, nor has any rendered any opinions that her injuries or conditions have been aggravated/exacerbated.” In contrast, Defendant asserts that its IME provider found no objective evidence of any injury related to this incident. Thus, Defendant contends that Plaintiff’s assertions are founded on mere speculation as to proximate cause and she is unable to withstand summary judgment or raise a triable issue of fact in opposition.

It is well established that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Ayotte v. Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212, [2d Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, [2d Dept. 1984]; *Galeta v. New York News, Inc.*, 95

AD2d 325, [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept. 1990]; *Rebecchi v. Whitemore*, 172 AD2d 600 [2d Dept. 1991]).

The elements of a cause of action alleging common-law negligence are a duty owed by the defendant to the plaintiff, a breach of that duty, and a showing that the breach of that duty constituted a proximate cause of the injury (*Porcasi v Oji*, 220 AD3d 899 [2d Dept. 2023]; *Pasquaretto v Long Island University*, 150 AD3d 1129 [2d Dept. 2017]; *Roberson v Wycoff Heights Medical Center*, 123 AD3d 791 [2d Dept. 2014]).

“In order for a plaintiff in a slip and fall case to establish a prima facie case of negligence, the plaintiff must demonstrate that the defendant created the condition which caused the accident, or that the defendant had actual or constructive notice of the condition and that the defective condition was a proximate cause of his or her injuries” (see *Hernandez v Conway Stores, Inc.*, 143 AD3d 943, 944 [2d Dept 2016]; see also *Pecocra v Fitness International, LLC*, 212 AD3D 644 [2d Dept. 2023; *Garcia v Emerick Gross Real Estate, L.P.*, 196 ad3D 676 [2d Dept. 2021]; *Nunez v Chase Manhattan Bank*, 155 AD3d 641 [2d Dept. 2017]). When the defendant is moving for summary judgment, it must establish that it “maintained the subject property in a reasonably safe condition and that it neither created the alleged dangerous condition nor had actual or constructive notice thereof” (*McGee v New York City Hous. Auth.*, 122 AD3d 695, 696 [2d Dept 2014] [internal citation omitted]). Constructive notice is established if the defect is visible and apparent and existed for a sufficient length of time before the accident to allow the defendant to discover and remedy it (*Gordon v Am. Museum of Nat. Hist.*, 67 NY2d 836, 837 [1986]). A defendant who has actual knowledge of a particular ongoing and recurring hazardous condition may be charged with constructive notice of each specific reoccurrence of that condition” (*Willis v Galileo Cortlandt, LLC*, 106 AD3d 730, 731 [2d Dept 2013]). In determining proximate cause, it is held that “an accident can have more than one proximate cause, and although it is generally for the trier of fact to determine the issue of proximate cause, it may be decided as a matter of law where only one conclusion may be drawn from the established facts” (*Kirby v Lett*, 208 AD3d 1174, 1175 [2d Dept 2022]; *Elusma v. Jackson*, 186 AD3d 1326 [2d Dept. 2020]). The concept of proximate cause “stems from policy considerations that serve to place manageable limits upon the liability that flows from negligent conduct (see *Burlington Ins. Co. v NYC Transit Authority*, 29 NY3d 313 [2017]; *Hain v Jamison*, 28 NY3d [2018]; *Derdiarian v Felix Contr.*, 51 NY2d 308 [1980]). Even when negligence and injury are both properly found, the negligent party may be held liable only where the alleged negligence is found to be a proximate cause of the injury (*Roberson* at 792; *Pasquaretto* at 1130).

Here, the court finds that Plaintiff has established entitlement to summary judgment on the issue of liability as a matter of law. Plaintiff’s evidence herein including EBT testimony of the parties and a video

of the accident establishes that Defendant created the dangerous condition, and that Defendant had actual and/or constructive notice of the dangerous condition. In opposition, Defendant does not address or rebut Plaintiff's claims regarding creation of the dangerous condition or notice. Rather, Defendant, in response re-iterates its argument that Plaintiff committed fraud and contends that was not the proximate cause of Plaintiff's allegations under a general theory of negligence on the grounds that "because Plaintiff has concealed her prior injuries, pre-existing conditions, and prior treatment from all of her medical providers in this case, that none of Plaintiff's providers sufficiently opine as to how or why this instant accident is a proximate cause of her injuries, as opposed to the multiple prior claims, providers, and treatment she has made in the past, or that any such conditions were aggravated or exacerbated." With respect to the contested issue of injuries and causation, the court finds that issues of fact exist as to what extent, if any, Plaintiff's complained-of injuries were proximately caused and/or exacerbated by the accident. Under the circumstances of this case, Defendant's argument is insufficient to establish prima facie that Plaintiff did not sustain an aggravation and/or exacerbation of prior injuries as a result of the subject accident. In response to Defendant's demand dated July 8, 2022, as well as Plaintiff's Verified Bill of Particulars, Plaintiff states that she "will claim aggravation, exacerbation, or precipitation or any applicable pre-existing injury or condition." Additionally, Plaintiff herein submits a doctor's report from AnJani Sinha, M.D., M.S. ("Sinha") and reviewed by Alexandra Carrer, M.D. ("Carrer"), dated August 26, 2024, wherein Plaintiff's doctor performed range of motion tests on Plaintiff and an MRI. In their report, Carrer opines that current injuries Plaintiff is asserting to her left knee and shoulder were causally related to the subject accident. Defendant, in opposition also submits an IME Report by Jeffrey Passick, M.D. ("Passick"), dated July 30, 2024. Passick also examined Plaintiff regarding her 2015 accident. In his report, Passick opines that he found no objective evidence of any injury related to the subject accident.

Accordingly, it is hereby,

ORDERED, that Defendant's motion (Motion Seq. 3) is granted to the extent that the branch of Defendant's motion seeking to seeking to strike from the trial calendar, compel Plaintiff to appear for a further deposition and produce requested and additional post-note discovery is granted. Plaintiff is directed to respond to all outstanding discovery demands. All responses shall be provided to Defendant within 45 days of the date that Defendant serves a copy of this order, with notice of entry, served upon all parties to this action within 10 days of entry. Additional EBTS of other parties, if necessary, shall be scheduled by the Discovery Part Judge. Defendant may move for an order to preclude upon a showing of Plaintiff's failure to comply with this order.

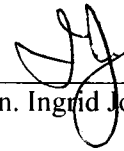
ORDERED, that Plaintiff's motion (Motion Seq. 4) for summary judgment on the issue of liability is granted. The issue of whether Plaintiff's complained-of injuries were proximately caused and/or exacerbated by the accident shall be determined at trial, and it is further,

ORDERED, that Plaintiff's motion (Motion Seq. 5) for a trial preference on the basis of Plaintiff's age is granted, and it is further,

ORDERED, that Defendant's motion (Motion Seq. 6) for summary judgment dismissing Plaintiff's complaint is denied. The issue of whether Plaintiff's complained-of injuries were proximately caused and/or exacerbated by the accident shall be determined at trial.

Matters not addressed herein are either without merit or moot.

This constitutes the decision and order of the court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**