SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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SADEAQUA SCOTT,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY,

Defendant.

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INDEX NO. 100660/2023

MOTION DATE 08/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 18-27
were read on this motion for DISCOVERY
and cross-motion for PROTECTIVE ORDER.

In this action, plaintiff alleges that she sustained injuries on May 11, 2022, at approximately 4:38 p.m., on the 14th Street/Union Square L train subway platform, when, as she was entering car 8369 on the L train heading towards 8th Avenue, the car door abruptly closed on her foot, causing her to fall “sharply backwards onto the platform, directly onto my lower spine/buttocks area” (exhibit H of exhibits A-I in support of motion [NYSCEF Doc. No. 19], notice of claim, at pdf pages 15-16). Plaintiff further alleges that her injury was exacerbated by having to wait roughly an hour for a non-operational elevator to be put back in service so that she could reach EMS, as she was unable to walk up the stairs due to her injuries.

On this motion, plaintiff seeks to compel defendant:

1) "to provide full and complete responses to Plaintiff's discovery demands dated October 25, 2024;"
2) to produce "documents identified in Plaintiff's good-faith letter dated April 5, 2025”;
3) to provide a “supplemental response explaining the NYCTA’s surveillance video preservation policy and actions taken regarding the incident on May 11, 2022” (notice of motion [NYSCEF Doc. No. 18] at 3).

Plaintiff also seeks discovery sanctions of preclusion and costs and fees (*id*.). Defendant opposes the motion and cross-moves for a protective order and requests that costs and sanctions be imposed on plaintiff, pursuant to 22 NYCRR 130-1.1. Plaintiff opposes the cross-motion.

DISCUSSION

I. Plaintiff's Motion

A. Good Faith Efforts

Preliminarily, the court must address defendant's argument that plaintiff's motion should be denied outright on the grounds that plaintiff did not comply with 22 NYCRR 202.7 (a)'s requirement to provide "an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion."

Although plaintiff has not attached a document entitled "Affirmation of Good Faith"—as is the practice of most attorneys in this jurisdiction—a party is permitted to detail her good faith efforts to resolve the discovery dispute in their "primary affirmation submitted in support of the motion" as opposed to "a separate affirmation that serves specifically to discuss such efforts, although the latter is the better practice" (*Anuchina v Mar. Transp. Logistics, Inc*., 216 AD3d 1126, 1128 [2d Dept 2023] [internal quotation marks and citations omitted]).

In her affirmation in support of this motion, plaintiff specifically detailed her efforts to resolve the issues addressed in this motion, including attempts to resolve the issues during a compliance conference with the court and her sending defendant a letter outlining the alleged "deficiencies" in defendant's production (affirmation in support of motion [NYSCEF Doc. No. 18] at 4-5 of 8). Thus, plaintiff's "affirmation complied with the requirements of 22 NYCRR 202.7(a)(2) and (c)" (*Hinduja Glob. Sols., Inc. v HBI Group, Inc.*, 214 AD3d 471, 471 [1st Dept 2023]).

B. To Compel Discovery, Pursuant to CPLR 3214

CPLR 3101 states that there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." "[M]aterial 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" (*Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). "[T]he acid test for disclosure of information is not whether the party can make out a prima facie case without the evidence, but whether he or she can make out a more persuasive case with it" (6 Weinstein-Korn-Miller, NY Civ Prac CPLR ¶ 3101.08 [2024]).

> "While the 'material and necessary' standard set forth in CPLR 3101 (a) is to be liberally construed, this does not mean that litigants have carte blanche to demand production of whatever documents they speculate might contain something helpful. It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to

> the discovery of information bearing on the claims" (*Vyas v Campbell*, 4 AD3d 417, 418 [2d Dept 2004] [internal citation omitted]; *see also Twenty Four Hour Fuel Oil Corp. v Hunter Ambulance*, 226 AD2d 175-176 [1st Dept 1996]).

The party seeking discovery must "establish the factual predicate regarding relevancy" (*Crazytown Furniture, Inc. v Brooklyn Union Gas Co*., 150 AD2d 420, 420 [2d Dept 1989]).

Even assuming, for the sake of argument, that the discovery sought is "material and necessary," "[u]nder our discovery statutes and case law, competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party" (*Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954 [1998] [quotation marks and citation omitted]).

Preliminarily, the court notes that because defendant failed to respond to plaintiff's demand of October 25, 2024 within twenty days, pursuant to CPLR 3122 (a) (1), defendant "waived objection based on any ground other than palpable impropriety or privilege" (*DiMaggio v Port Auth. of New York and New Jersey*, 228 AD3d 426, 427 [1st Dept 2024]).

The court will discuss each of plaintiff's demands, from plaintiff's Discovery Demands of October 25, 2024 (exhibit A in support of motion [NYSCEF Doc. No. 19] at pdf pages[1] 1-2), the respective responses and objections in defendant's January 7, 2025 Response to Notice for Discovery and Inspection (exhibit 2 in opposition to motion and in support of cross-motion [NYSCEF Doc. 23]), and plaintiff's respective follow-ups to those responses and objections in her Good Faith Discovery Letter of April 5, 2025 (exhibit C of exhibits A-I in support of motion [NYSCEF Doc. No. 19] at pdf pages 7-8 of 19).

Demand No. 1

Demand: "All records and documentation related to the employee/conductor involved in the incident that caused the Plaintiff's fall and injuries, including but not limited to employment records, training certifications related to passenger safety, property maintenance, passenger injury protocol, and any disciplinary record."[2]

[1] Plaintiff's exhibits A through I, which span 19 page in total, were uploaded as single NYSCEF document, instead of being uploaded as separate individual documents (*see* https://iappscontent.courts.state.ny.us/NYSCEF/live/training/userManual.pdf ["Multiple documents must be submitted separately"]). Only some of the exhibits are paginated. For ease of reference, "pdf page" refers to the page number of NYSCEF Document 19 that would appear in a .pdf viewer.

[2] All quoted language following "**Demand**" is from Plaintiff's Initial Discovery Demand of October 25, 2024 (exhibit A of exhibits A-I in support of motion [NYSCEF Doc. No. 19] at pdf pages 1-2).

> **"Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. At the appropriate time, NYCTA will produce a witness with knowledge for a deposition."[3]

Plaintiff's first demand here is palpably improper. A party is only entitled to such personnel records if they have asserted a cause of action for negligent hiring (*Parkinson v FedEx Corp.*, 184 AD3d 433, 434 [1st Dept 2020]). Here, plaintiff has not attached a copy of her complaint as an exhibit to this motion, and a copy of the complaint was not e-filed in this case, so the court does not know if plaintiff asserted a cause of action for negligent hiring.

But, in any event, "where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention" (*Karoon v New York City Tr. Auth.*, 241 AD2d 323, 324 [1st Dept 1997]). Here, based on the notice of claim, the allegations are that the employee/conductor was acting within the scope of his employment—albeit negligently—when he closed the door on plaintiff. Thus, there can be no viable claim for negligent hiring here, and plaintiff is not entitled to discovery of such personnel records.

Demand No. 2

> **Demand**: "Incident reports or internal communications regarding the role of all employees, including the conductor's responsibilities for operating and maintaining the L train subway cars #8369 in which the door closed on the plaintiff's foot, and #8315 which contained the conductor's booth"
>
> "**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive."

This demand is denied as palpably improper because on its face, the demand is vague. On the one hand perhaps plaintiff is seeking any "incident reports" or "internal communications" that were created in response to her incident; but, on the other hand, plaintiff apparently seeks information about the "conductor's responsibilities for operating and maintaining the L train subway cars #8369 in which the door closed on the plaintiff's foot, and #8315 which contained the conductor's booth" that perhaps extends beyond the incident. Given the circumstances, "the appropriate remedy is to vacate the entire demand rather than to prune it" (*U.S. Bank Tr., N.A. v Carter*, 204 AD3d 727, 729 [2d Dept 2022]).

[3] All quoted language following each "**Objection**" is from Defendant's January 7, 2025 Response to Plaintiff's October 25, 2024 Demand (defendant's exhibit 2 in opposition to motion [NYSCEF Doc. 23]).

Demand No. 3

Demand: "All records concerning the non-functional elevator (henceforth referring to the elevator at the NYCTA/MTA 14th Street/8th Avenue subway station platform for the L train) and employee(s), including Kenson Thomas and his supervisors, who were negligent (according to TV station PIX11 News) regarding the non-functional elevator, which delayed the Plaintiff in accessing paramedics. This includes employment records, training certifications related to job safety and property maintenance, and any disciplinary records related to their performance."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving the objection, attached hereto as Exhibit "1" is NYCTA's incident report."

As mentioned in regards to Demand No. 1, plaintiff is not entitled to employee personnel records here because there is no viable claim for negligent hiring in this action.

Furthermore, in this demand, plaintiff seems to be seeking these records based on her theory that the "non-functional elevator . . . delayed the Plaintiff in accessing paramedics" (Plaintiff's October 25, 2024 Demand).

Discovery as to whether the elevator was negligently maintained is not warranted. Preliminarily, it seems unlikely that the elevator being out-of-service at the time of plaintiff's injury would give rise to a separate cause of action (*see Public Admr. of County of N.Y. v Fifth Ave. Dev. Corp.*, 180 AD2d 473, 473 [1st Dept 1992] [holding that the defendant elevator maintenance company was not liable as a matter of law where plaintiff's decedent died of a heart attack after "Emergency Medical Service personnel were delayed by the lack of an operable elevator and required to negotiate six flights of stairs to remove decedent from the building"]).

In any event, assuming that plaintiff were to establish that the door negligently closed on her foot, the NYCTA would be liable for any foreseeable consequence of that initial negligence—regardless of whether or not the elevator was properly maintained (*see Nelson v 1683 Unico, Inc.*, 246 AD2d 447, 448 [1st Dept 1998] [affirming that "[t]he for past and future pain and suffering were properly upheld, as subsequent medical malpractice was a foreseeable consequence of defendant's negligence in not clearing debris off the stairwell on which plaintiff fell"]; *Greenspan v Stand-Up MRI of Manhattan, P.C.*, 206 AD3d 588, 590 [1st Dept 2022] ["malpractice resulting in aggravation of an injury is a foreseeable consequence of the acts of an initial tortfeasor"]). Put differently, any additional pain and suffering and/or exacerbation of an injury occasioned by a delay in treatment would arguably be a foreseeable consequence for which defendant could be liable—just as further injury brought about by medical malpractice treating the injury would arguably be a foreseeable consequence. Thus, discovery on the maintenance and repair of the elevator here is not relevant to the claims and defenses in this action.

Therefore, this demand is denied as palpably improper.

Demand No. 4:

Demand: "All incident reports or internal communications regarding the employee(s)' role in maintaining the nonfunctional elevator at the 14th Street/8th Avenue subway station for the L train."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit '1' is NYCTA's incident report."

Demand No. 4 is denied, as palpably improper, for the same reasons as Demand No. 3.

Demand No. 5:

Demand: "Maintenance and inspection logs for L train subway cars (hereto forth referencing cars #8316 and #8369)."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit "2" is NYCTA's maintenance and inspection logs for L train subway car #8369 and Exhibit "3" is NYCTA's maintenance and inspection logs for L train subway car #8313."

Deficiency Letter Follow-Up: "Your response and Exhibit 3 produced logs for car #8313, but my discovery demand clearly requested records for car #8316. Car #8316 was part of the train consist identified in the NYCTA's own Incident Report (Exhibit 1). Please provide the full, particularly those covering the days and weeks surrounding the incident.

Thank you for providing these logs. However, given that your own Incident Report identifies car #8369 as the vehicle where my foot became caught, I am requesting additional documentation on:
- Any door-related issues for car #8369 in the month leading up to the incident;
- Any actions taken following the 'CUSTOMER INJURY' entry dated 5/11/2022;
- Whether the incident was logged in the vehicle's diagnostic system or door sensor logs."[4]

[4] All quoted language following "**Deficiency Letter Follow-Up**" is from Good Faith Discovery Letter of April 5, 2025 (exhibit C of exhibits A-I in support of motion [NYSCEF Doc. No. 19] at pdf pages 7-8 of 19).

Based on plaintiff's Deficiency Letter of April 5, 2025, it appears that plaintiff is mainly looking to obtain the full maintenance and inspection logs for Car Nos. 8316. In her affirmation in support of this motion, plaintiff further explains why she believes that the maintenance and inspection logs for car #8316 are relevant:

> "Car #8316, where the conductor was stationed, contained the control panel for door operation. Any electrical or relay issues in that car may have contributed to the malfunction that led to my injury. NYCTA has failed to produce diagnostic or maintenance logs for car #8316. Further, logs were provided for car #8313 (Exhibit F), which was not involved in the incident" (affirmation in support of motion at 5 of 8).

Although defendant's counsel refers to the discovery sought in relation to Car Nos. 8316 as a "fishing expedition" (affirmation in opposition to motion and in support of cross-motion [NYSCEF Doc. No. 22] ¶ 25), plaintiff has established why maintenance and inspection logs for Car Nos. 8316 are relevant. Furthermore, such demand is not unduly burdensome.

It would appear that plaintiff is also seeking additional information as to Car No. 8369 that was not part of her initial demand. Here, the court finds that documents that any such "additional documentation" which reports "[a]ny door-related issues for car #8369 in the month leading up to the incident" would appear to be relevant on its face and should be turned over. However, the other two additional demands are palpably improper in that they appear to seek information regarding post-remedial measures and are vague (*Mesoraca v Parking Services Plus, Inc.*, 231 AD3d 1145, 1146 [2d Dept 2024] [holding that evidence of post-remedial measures is not discoverable in a negligence case]; *Star Auto Sales of Queens, LLC v Filardo*, 216 AD3d 839, 840 [2d Dept 2023] [holding that "the plaintiff's discovery demands were palpably improper in that they were overbroad and burdensome, sought irrelevant or confidential information, or failed to specify with reasonable particularity what was demanded"]).

Therefore, the court directs defendant to provide maintenance and inspection logs for Car Nos. 8316 for year before the underlying incident of May 11, 2022, and to provide any documents concerning "[a]ny door-related issues for car #8369 in the month leading up to the incident" within sixty (60) days.

Demand No. 6

Demand: "Any communications regarding previous incidents or hazards related to L train subway cars involved in the incident."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, NYCTA is unaware of any other incidents involving the L train subway cars."

This demand is denied as palpably improper. On its face, the demand is vague and overly broad. It is unclear which types of documents plaintiff is seeking here, and plaintiff has not specified a date range. As plaintiff is asking defendants to search a potentially limitless universe for vague "communications", the court finds that this demand is palpably improper (*Kiernan v Booth Mem. Med. Ctr.*, 175 AD3d 1396, 1397-98 [2d Dept 2019] ["disclosure demands may be palpably improper where they seek irrelevant information, are overbroad and burdensome, or fail to specify with reasonable particularity many of the documents demanded"]).

Demand No. 7

Demand: "Work orders or repair logs for the non-functional elevator at the 14th Street/8th Avenue NYCTA subway station prior to and following the incidents on May 11, 2022."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit '4' is NYCTA's work orders and repair records regarding the subject elevator at the 14th Street/8th Avenue NYCTA subway station."

This demand is denied as palpably improper. On its face, the demand is overly broad. Moreover, as explained in the analysis of Demand No. 3, the functioning of the subway station's elevators is not relevant to the material issues in this action.

Demand No. 8

Demand: "Safety reports or complaints regarding hazardous conditions on the property, particularly in the area where the fall occurred."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive."

This demand is denied as palpably improper for the same reasons as Demand No. 6.

Demand No. 9:

Demand: "All incident reports created by the Defendant or its employees and police concerning the Plaintiff's injury incident reported to the NYCTA"

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit '1' is NYCTA's incident report."

Defendant's objections are overruled. This demand appears on its face to be reasonably calculated to obtain relevant information in that it "[a]ll incident reports"

created in response to plaintiff's alleged injury. Here, as noted above, defendant provided an incident report as responsive to this demand. It is unclear to the court what other documents would be responsive to this demand. However, the court notes that defendants' response did not provide an "affidavit" pursuant to 22 NYCRR 202.20-c (c). This subsection states that for each document request, the responding party shall provide a response containing:

> "at the conclusion of thereof, the affidavit of the responding party stating: (i) whether the production of documents in its possession, custody or control and that are responsive to the individual requests is complete; or (ii) that there are no documents in its possession, custody or control that are responsive to any individual requests."

Thus, the court directs defendant to provide an affidavit pursuant to 22 NYCRR 202.20-c (c) in response to this demand within sixty (60) days.

Demand No. 10

Demand: "All video footage from security cameras in the area of the fall (14th Street Union Square, L train subway platform, near the conductor's booth, around 4:38 PM on May 11, 2022)."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, NYCTA has not located any video and reserves the right to supplement this response"

Deficiency Letter Follow-Up: "Your response states that "NYCTA has not located any video," with no additional details. Given the seriousness of the incident (documented in Exhibit 1 – Incident Report) and that I reported the fall at the time it occurred (May 11, 2022 at 16:46), I request the following clarification:
- Were security cameras operational at 14th Street/Union Square L platform on May 11, 2022?
- Was any footage ever recorded, reviewed, preserved, or logged?
- If it existed, when and why was it deleted or deemed unavailable?
- What is NYCTA's official video retention policy for this location?
- Who is the custodian responsible for retrieving such footage?
- Are any other recordings (e.g., of the surrounding platform, other cars, adjacent times) available?"

Defendant's objections are overruled. Although defendant's counsel has stated that it has not located any video—but "reserves the right to supplement this response"—the court believes that a thorough affidavit of search, by a person with knowledge, should be provided in response to this demand.

Thus, the court directs that, within sixty (60) days, defendant provide an affidavit by an appropriate individual with knowledge as to the maintenance and storage of video for the subject platform, stating, at the very least, "where the subject records were likely to be kept, what efforts, if any, were made to preserve them, whether such records were routinely destroyed, [and] whether a search had been conducted in every location where the records were likely to be found" (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]).

Demand No. 11

Demand No. 11: "Internal communications (emails, texts, memos) regarding the Plaintiff's fall, including reports on the operational status of the audio, lights, and doors of subway cars #8316 and #8369 before and after the incident."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit "1" is NYCTA's incident report."

This demand is denied as palpably improper. While the first clause of this sentence appears to seek documents that would be relevant, the second clause is palpably improper on its face. Among other things, the demand requests documents that might include evidence of subsequent repairs and remedial measures, which "is not discoverable or admissible in a negligence case" (*C. B. v New York City Tr. Auth.*, 219 AD3d 1397, 1399 [2d Dept 2023]).

Thus, the court finds that appropriate remedy here is to deny "the entire demand rather than to prune it" (*Ferrara v Longwood Cent. School Dist.*, 225 AD3d 671, 673 [2d Dept 2024]).

Demand No. 12

Demand: "Internal communications regarding the non-functional elevator at the 14th Street/8th Avenue subway station platform."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit '4' is NYCTA's work orders and repair records regarding the elevator at the 14th Street/8th Avenue NYCTA subway station."

This demand is denied as palpably improper. On its face, the demand is overly broad. Moreover, as explained in the analysis of Demand No. 3, the functioning of the subway station's elevators is not relevant to the material issues in this action.

Demand No. 13

Demand: "Any reports or communications detailing reasons for the elevator being out of service."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit '4' is NYCTA's work orders and repair records regarding the elevator at the 14th Street/8th Avenue NYCTA subway station."

This demand is denied as palpably improper. On its face, the demand is overly broad. Moreover, as explained in the analysis of Demand No. 3, the functioning of the subway station's elevators is not relevant to the material issues in this action.

Demand No. 14

Demand: "Documentation of prior accidents or injuries occurring at the 14th Street Union Square L train subway platform under similar circumstances."

"**Objection**. This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, NYCTA is unaware of any other accidents under similar circumstance."

This demand is denied as palpably improper. While the court might allow a demand for "incident reports for two years before subject incident, where passenger was injured after getting stuck in the L train door at 14th Street station", the present wording of the demand is too vague and requires defendant to be the judge of what amounts to "similar circumstances." In any event, the nature of the records sought will be better understood once there is a clearer understanding as to what was the cause of the accident: i.e. whether an employee closed the door on plaintiff or whether the was some mechanical malfunction that caused the door to close on plaintiff.

Given the circumstances of the case, the court will deny this demand without prejudice to plaintiff an appropriately tailored demand after the deposition of defendant's witness, wherein the question of how the accident occurred can be more thoroughly explored (*see Fusco v Mace Ave. Med.*, P.C., 209 AD3d 561, 562 [1st Dept 2022] [holding that the plaintiff's demand was "'palpably improper' as overbroad and burdensome, particularly where no depositions had been held"]).

Demand No. 15

Demand: "Any complaints or reports regarding the elevator's functionality or other safety concerns raised by employees or passengers."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit "4"

is NYCTA's work orders and repair records regarding the elevator at the 14th Street/8th Avenue NYCTA subway station."

This demand is denied as palpably improper. On its face, the demand is overly broad. Moreover, as explained in the analysis of Demand No. 3, the functioning of the subway station's elevators is not relevant to the material issues in this action.

Demand No. 16

Demand: "Copies of the Defendant's insurance policies covering incidents such as the Plaintiff's fall."

Response: "NYCTA is self-insured."

Defendant has responded to the demand and not objected. It is unclear from plaintiff's papers whether she is seeking to compel a further response to this demand. There is no mention of insurance in her affirmation in support of this motion (NYSCEF Doc. No. 18) or in her affirmation opposing defendant's cross-motion and in further support of her motion (NYSCEF Doc. No. 26).

Therefore, the court will deny compelling defendant to provide any further discovery as to this demand.

Demand No. 17

Demand No. 17: "Records of any claims made against the property or its employees related to premises liability or safety issues, specifically regarding the elevator and subway cars involved in the incident."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive."

On its face, the demand is overly broad. Further, there is no time frame specified, and, as mentioned regarding Demand No. 3, the elevator is not relevant to the material issues in this action. Therefore, the demand is denied as palpably improper.

Further, as discussed regarding to Demand No. 14, the nature of the discovery sought may hopefully be narrowed after a deposition of defendant's witness wherein the parties can explore the circumstances that may have brought about the subject incident. Therefore, plaintiff should be able to draft an appropriately tailored demand after the deposition of defendant's witness.

Demand No. 18

Demand: "Documentation of any code violations or citations received by the property related to safety, premises condition, and elevator functionality."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive."

This demand is denied as palpably improper, as it seeks an overly broad category of documents for an overly broad location and for issues not material to the case.

Demand No. 19

Demand: "Records concerning the property's procedures for responding to medical emergencies, particularly involving nonfunctional elevators and inaccessible areas."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive."

This demand is denied as palpably improper. The demand is overly broad, and, as explained in the analysis of Demand No. 3, the functioning of the subway station's elevators and the EMS response to plaintiff's alleged injury is not a material issue in this case.

Demand No. 20

Demand: "Communications or records regarding delays in emergency services accessing the Plaintiff and/or subway via the elevators on the day of the Plaintiff's fall."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive. Without waiving such objection, attached hereto as Exhibit "1" is NYCTA incident report."

This demand is denied as palpably improper, as explained above for Demand No. 19.

Demand No. 21

Demand: "If applicable, the credentials and reports of any expert witnesses the defense intends to use against the Plaintiff."

"**Objection.** NYCTA has not yet retained the services of an expert. Upon retention of same, notification will occur pursuant to CPLR § 3101(d)."

This demand is denied as palpably improper because it is premature. To the extent that plaintiff is seeking to compel a response to this demand, there is nothing to compel as defendant has responded stating that they have not retained any expert witness.

Demand No. 22

Demand: "Copies of any independent medical examinations (IMEs) the Defendant has conducted or plans to conduct regarding the Plaintiff's injuries."

"**Objection.** Plaintiff has not yet appeared for an IME."

This demand is premature. When this motion was conferenced on August 5, 2025, the parties stated that plaintiff's IME had not yet occurred. Once the IME does occur, defendant will have forty-five (45) days to exchange the IME report pursuant to the so-ordered compliance conference stipulation of February 6, 2025 (NYSCEF Doc. No. 17).

Demand No. 23

Demand: "If the non-functional elevator or subway cars involved in the incident are not owned by the Defendant, please provide the names of the respective owners."

"**Objection.** This demand is vague, unduly burdensome, overbroad, and oppressive."

This demand is denied as palpably improper. The demand is overly broad; and, as explained before regarding Demand No. 3, the elevators are not material to this action.

C. For Discovery Sanctions

On this motion, plaintiff seeks "sanctions, including but not limited to costs, litigation-related fees, and/or a spoliation inference pursuant to CPLR 3126 for the failure to preserve surveillance video footage" (plaintiff's notice of motion [NYSCEF Doc. No. 18] ¶ 5). Plaintiff does not expressly seek "the drastic remedy of striking a party's pleading pursuant to CPLR 3126" which is only appropriate where "the moving party conclusively demonstrates that the non-disclosure was willful, contumacious or due to bad faith" (*Henderson-Jones v City of New York*, 87 AD3d 498, 504 [1st Dept 2011]).

1. Preclusion

Although preclusion is a less drastic sanction than striking a pleading—and thus not subject to the same rigorous showing—the movant seeking this sanction must show still show that the responding party engaged in discovery conduct that "deprived" them of their "ability to prove [their] case" and that the sanction is "proportionate" to the misconduct" (*Dedushaj v 3175-77 Villa Ave. Hous. Dev. Fund Corp.*, 135 AD3d 421 [1st Dept 2016]).

Here, plaintiff has not shown that defendant engaged in any sort of discovery misconduct, and certainly not misconduct that would justify preclusion. Therefore, this branch of plaintiff's motion is denied.

2. Costs and Fees

"A monetary sanction, including costs and counsel fees, may be imposed under the statutory language in CPLR 3126, which permits the court to make such orders with regard to a failure or refusal to disclose information which the court finds ought to have been disclosed as are just" (*Maxim, Inc. v Feifer*, 161 AD3d 551, 554 [1st Dept 2018] [internal quotation marks and emendation omitted]).

"It is unnecessary to demonstrate willful and contumacious behavior in order to impose a sanction like a monetary sanction . . . as opposed to a more drastic sanction such as the striking of a pleading" (*Guenzburger v Fernandez*, 219 AD3d 1221, 1221 [1st Dept 2023] [internal quotation marks and emendation omitted]). Awarding costs and fees may be an appropriate way, in the court's exercise of discretion, to compensate the moving party for having to engage in unnecessary motion practice to obtain discovery that should have been turned over in the first instance, especially where other sanctions are "not proportionate" to the subject misconduct (*Dedushaj*, 135 AD3d at 421; *see also D2D Holdings LLC v Bridgemarket Assoc., L.P.*, 222 AD3d 430, 430 [1st Dept 2023] [imposing monetary sanctions on the plaintiffs for not turning over discovery that was "manifestly relevant to plaintiffs' alleged damages"]; *Vizcaino v W. Beef, Inc.*, 161 AD3d 632, 633 [1st Dept 2018] ["An award of the costs of this motion and appeal is appropriate to compensate plaintiff for the extraordinary time and effort necessitated by defendants' lack of diligence"]).

However, the mere fact that a movant prevails on a motion to compel, pursuant to CPLR 3124, does not entitle the movant to recover cost and fees, pursuant to CPLR 3126, as there can, of course, be good faith disputes between parties as to whether the subject information is discoverable. It is only where the responding party engaged in misconduct by not turning over the sought-after discovery that a monetary sanction is appropriate (*see e.g. D2D Holdings LLC*, 222 AD3d at 430 [where sought-after discovery was "manifestly relevant"]; *Vizcaino v W. Beef, Inc.*, 161 AD3d 632, 633 [1st Dept 2018] [where plaintiff's motion practice was "necessitated by defendants' lack of diligence"]).

Here, the court finds that defendant did not engage in discovery misconduct, and thus plaintiff is not entitled to any award of monetary sanction. Notably, of the 23 demands that plaintiff seeks to compel further responses to in this motion, the court is only compelling defendant to provide further responses to three of those demands, and only after significantly limiting the scope of each demand.

Thus, this branch of the motion seeking monetary sanctions is denied.

3. Sanctions for Alleged Spoliation of Video Evidence

"Spoliation refers to evidence which is destroyed or substantially altered" (*Gilliam v Uni Holdings*, 201 AD3d 83, 86 [1st Dept 2021]). "To obtain sanctions for spoliation, a party must establish that the non-moving party had an obligation to preserve the item in question, that the item was destroyed with a 'culpable state of mind,' and that the destroyed item was relevant to the party's claim or defense" (*Rossi v Doka USA, Ltd.*, 181 AD3d 523, 525 [1st Dept 2020] [internal citation and quotation marks omitted]).

While plaintiff seeks sanctions on this motion for defendant's alleged "failure to preserve and produce the requested video" (affirmation in support of motion [NYSCEF Doc. No. 18] ¶ 11), it has not yet been established that video of the incident ever existed, and, much less that defendant was on notice of its obligation to preserve the video or that the video was destroyed with a culpable state of mind. The *Jackson* affidavit that defendant will now provide, per the court's order here, will hopefully shed some more light on these questions.

Therefore, this branch of the motion seeking sanctions for spoliation regarding potential video of the incident is denied.

II. Defendant's Cross-Motion

A. For a Protective Order

Pursuant to CPLR 3103 (a), a court may "make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts" (*id*.).

"The failure of a party to challenge the propriety of a notice for discovery and inspection pursuant to CPLR 3120 within the time prescribed by CPLR 3122 forecloses inquiry into the propriety of the information sought except with regard to material that is privileged pursuant to CPLR 3101, or requests that are palpably improper" (*Garcia v Jomber Realty, Inc.*, 264 AD2d 809, 810 [2d Dept 1999]).

As mentioned, defendant did not timely object to plaintiff's discovery demands, and defendant has not asserted that any of demands sought privileged information, so

the court's inquiry on defendant's cross-motion would be limited to the issue of whether plaintiff's demands were palpably improper.

As discussed above, this court has already determined that all but three of plaintiff's 23 demands—Demand Nos. 5, 9 and 10—were palpably improper. Thus, this court will issue a protective order vacating all of plaintiff's subject demands except 5, 9 and 10.

B. For Sanctions Pursuant to 22 NYCRR 130–1.1 (a)

Although defendant did not expressly request sanctions in the notice of cross-motion, defendant's counsel writes:

> "The Appellate Division, First Department has held that 22 NYCRR 130–1.1 allows a Court to exercise its discretion to impose costs and sanctions on an errant party under circumstances particularly applicable here. The relief may include, inter alia, sanctions against the offending party or its attorney in an amount to be determined by the Court, which would be made payable to the Client Security Fund" (affirmation in opposition to motion and in support of cross-motion ¶ 28).

To the extent that defendant is requesting that this court impose costs and sanctions on plaintiff, this branch of the motion is denied, as the court does not find that plaintiff engaged in frivolous conduct (*see Yenom Corp. v 155 Wooster St., Inc.*, 33 AD3d 67, 70 [1st Dept 2006] ["this Court must be careful to avoid the imposition of sanctions in cases where the appellant asserts colorable, albeit unpersuasive, arguments in good faith and without an intent to harass or injure"]).

CONCLUSION

Accordingly, it is hereby **ORDERED** that plaintiff's discovery motion is **GRANTED TO THE EXTENT THAT** within sixty (60) days of service of a copy this decision and order with notice of entry, defendant New York City Transit Authority shall provide the following in response to plaintiff Sadeaqua Scott's discovery demands dated October 25, 2024 and documents identified in Plaintiff's good-faith letter dated April 5, 2025:

1) Regarding plaintiff's Demand No. 5 in her October 25, 2024 Discovery Demands: maintenance and inspection logs for Car No. 8316 for one year before the underlying incident of May 11, 2022 and any documents concerning any door-related issues for Car No. 8369 occurring thirty (30) days before the incident;

2) Regarding plaintiff's Demand No. 9 in her October 25, 2024 Discovery Demands: an affidavit pursuant to 22 NYCRR 202.20-c (c) in response to this demand; and

3) Regarding plaintiff's Demand No. 10 in her October 25, 2024 Discovery Demands: an affidavit by an appropriate individual with knowledge as to the

> maintenance and storage of video for the subject platform stating, at the very least, "where the subject records were likely to be kept, what efforts, if any, were made to preserve them, whether such records were routinely destroyed, [and] whether a search had been conducted in every location where the records were likely to be found" (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]);

and the motion is otherwise denied; and it is further

ORDERED that the cross-motion for a protective order by defendant is **GRANTED TO THE EXTENT** that Demand Nos. 1-4, 6-8, and 11-23 in the October 25, 2024 Discovery Demands are **VACATED**, and the cross-motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear for a virtual status conference on **February 24, 2026** at **10:30 AM** using this MS Teams Link.

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12/2/2025
DATE

RICHARD TSAI, J.S.C.

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