

**Daniel Szalkiewicz & Assoc., P.C. v Liu**

2025 NY Slip Op 34678(U)

December 5, 2025

Supreme Court, New York County

Docket Number: Index No. 150713/2024

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. PAUL A. GOETZ PART 47**

*Justice*

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**INDEX NO. 150713/2024**

DANIEL SZALKIEWICZ & ASSOCIATES, P.C., DANIEL  
SZALKIEWICZ

**MOTION DATE 09/15/2025**

Plaintiffs,

**MOTION SEQ. NO. 009**

- v -

VIVIAN LIU,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318

were read on this motion to/for STRIKE PLEADINGS.

Plaintiffs move pursuant to CPLR §§ 3124 and 3126 to strike defendant’s answer and counterclaims; or in the alternative, to compel discovery and preclude defendant from offering evidence at trial if she fails to comply; and for attorneys’ fees and costs incurred in filing the instant motion (NYSCEF Doc No 288). Defendant opposes and purports to cross-move for an order directing all ESI discovery to proceed under defendant’s proposed Google Takeout protocol; to compel plaintiffs to produce their own ESI in native, metadata-preserving form; to compel plaintiffs to produce all communications and materials relating to their alleged law enforcement reports; to preclude plaintiffs from relying on any unverified allegations of criminal conduct or investigation unless and until they provide documentation of same; and awarding defendant reasonable attorneys’ fees and costs incurred in investigating plaintiffs’ representations (NYSCEF Doc No 299, pp. 14-15).

At the outset, as plaintiffs note, defendant failed to file a notice of cross-motion as required by CPLR § 2215. While “courts retain discretion to entertain requests for affirmative relief that do not meet the requirements of CPLR 2215” (*Fried v Jacob Holding, Inc.*, 110 AD3d 56, 65 [2<sup>nd</sup> Dept 2013]), such discretion will not be exercised here, as this court’s part rules state that “[i]f there is a discrepancy between the relief sought in your notice of motion and the relief sought in your supporting papers, the notice of motion is controlling” (Part 47 Rules, Section II.C; *Varlaro v Varlaro*, 107 AD3d 1596, 1596 [4<sup>th</sup> Dept 2013] [“the court properly refused to consider the relief requested by plaintiff inasmuch as he did not file or serve a notice of cross motion”]). As defendant failed to file a notice of cross-motion setting forth the relief sought, the issues raised in the cross-motion are not properly before the court.<sup>1</sup>

#### Medical Records and Authorizations

Plaintiffs served demands for defendant’s medical records and authorizations on January 17, 2025 (NYSCEF Doc No 247). On the same day, the matter was stayed pending an order on defendant’s prior counsel’s motion to withdraw (NYSCEF Doc No 177). The stay was lifted on April 7, 2025. At the preliminary conference on April 10, 2025, the “medical reports and authorizations” section was left blank, however, defendant still had not provided authorizations (NYSCEF Doc No 185). At the next conference on June 26, 2025, defendant was ordered “to provide medical records within 7 days” (NYSCEF Doc No 215), but did not do so.

On July 25, 2025, defendant provided “an authorization for a summary letter from [her] therapist” (NYSCEF Doc No 279). Plaintiffs responded by noting the following deficiencies:

“The notice specifically indicated Plaintiffs were seeking authorizations releasing ‘the entire hospital record or records, including medical health records’ including ‘each and every

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<sup>1</sup> Defendant asserts that plaintiffs are using their allegations of defendant’s criminal activity “to justify invasive discovery demands” (NYSCEF Doc No 299, p. 12), however, these allegations are not referenced in plaintiffs’ moving papers (NYSCEF Doc No 243).

physician who treated the defendant for injuries alleged in her Affidavits’ and those who consulted with or saw her ‘for any related prior condition, infirmity, or condition.’ More so, the notice stated the authorizations needed to allow the providers to discuss the medical records with Plaintiffs . . . [To date,] we received a single authorization – for ‘Brenda Ramirez’ with no address, no date range, and no authorization allowing the provider to discuss the health information with our office. The HIPAA authorization indicated that Brenda Ramirez would only be providing a ‘Summary Letter’ and no other details about Ms. Liu.”

(NYSCEF Doc No 282).

Plaintiffs argue that defendant waived any objections to plaintiffs’ demands for medical records and authorizations by failing to respond or object to same (NYSCEF Doc No 243, pp. 5-6). In opposition, defendant asserts that “[s]he has produced redacted treatment records from her licensed counselor, executed a HIPAA authorization permitting Plaintiffs to communicate directly with that provider” (NYSCEF Doc No 299, p. 1). However, defendant did not submit any evidence of such production, and plaintiffs assert that “no such [medical] records were ever produced by Liu” (NYSCEF Doc No 300, p. 3).

Defendant has not indicated that she previously objected to the demands for medical records and authorizations, but she now argues that “[n]othing in the CPLR compels disclosure of the entirety of a party’s mental-health history when only a specific injury or condition has been placed in issue,” and therefore “Plaintiffs’ request for nondurational HIPAA authorizations and wholesale mental-health files is therefore entirely improper” (NYSCEF Doc No 299). However, defendant’s sixth counterclaim alleges that she “has suffered severe emotional distress, including anxiety, [and] fear” due to plaintiffs’ conduct (NYSCEF Doc No 246 ¶ 53). “[B]y seeking to recover damages for emotional distress,” defendant thus “put [her] mental condition in issue” (*Rosen v MHM Realty LLC*, 166 AD3d 428, 428 [1<sup>st</sup> Dept 2018]). Therefore, plaintiffs are

entitled to discovery regarding her alleged emotional damages, beyond an authorization for a summary letter from defendant's therapist.

Accordingly, defendant will be ordered to produce records and authorizations responsive to plaintiff's January 17, 2025 demands (NYSCEF Doc No 247) and July 29, 2025 deficiency letter (NYSCEF Doc No 282).

#### Employment Authorizations

Plaintiffs also served demands for defendant's employment authorizations on January 17, 2025 (NYSCEF Doc No 247). At the status conference on June 26, 2025, defendant consented to withdraw any request for damages relating to her current employment to obviate the need for full production of employment records and authorizations (NYSCEF Doc Nos 215; 246 ¶ 53 [defendant alleges she "suffered . . . reputational damage[] and economic harm" as a result of plaintiffs' conduct]). At the status conference on November 6, 2025 (NYSCEF Doc No 324), defendant consented to provide plaintiffs with basic information regarding defendant's employment history from 2021 through the present (including the names of employers, dates of employment, salaries, and titles). Accordingly, defendant will be ordered to produce such information as agreed.

#### Interrogatories

Plaintiffs served their interrogatories on May 21, 2025 (NYSCEF Doc No 251). Defendant generally objected on the grounds that they seek: (i) "invasive . . . information protected by the mental health privilege"; (ii) "unrelated personal history" in a manner that is "harassing[] and burdensome"; and (iii) identification of electronic devices and VPNs, which information is "overbroad and irrelevant" (NYSCEF Doc No 264).

For the reasons stated *supra*, defendant will be ordered to respond to the Interrogatory Nos 4, 6, and 10 regarding defendant's mental health.

Plaintiffs ask defendant to “[i]dentify all individuals . . . who you have accused [] of harming or mistreating you”; “[d]escribe in detail all instances in which you have published negative reviews about businesses or individuals, including the platforms used and the nature of the criticisms”; “[i]dentify all past or pending legal actions, complaints, or ethical grievances you have initiated against any individual or business from 2019 to the present”; and “[i]dentify the efforts you have taken to optimize DanielSzalkiewicz.com” (NYSCEF Doc No 251). Plaintiffs have explained the relevance of each of these interrogatories (NYSCEF Doc No 243), and defendant did not address these arguments in her opposition (NYSCEF Doc No 299). Accordingly, defendant will be ordered to respond to Interrogatory Nos 3, 5, 8, and 13.

Regarding defendant's electronic devices and VPNs used, plaintiffs note that they are seeking only “a basic inventory of devices that can be subject to targeted forensic examination” (NYSCEF Doc No 243). Defendant argues against plaintiffs being given *access* to defendant's devices but does not present any argument as to why an inventory cannot be provided or address plaintiffs' argument as to the relevancy of defendant's VPN information. (NYSCEF Doc No 299). Accordingly, defendant will be ordered to respond to Interrogatory Nos 11 and 12 seeking identification of defendant's electronic devices and VPNs.

#### ESI Discovery Protocol

Plaintiffs assert that in response to their demands for defendant's electronic files, “Defendant offered non-native files that were highly edited and cropped to omit useful information” (NYSCEF Doc No 243, p. 16). Plaintiffs argue that “a third-party vendor is needed to search [defendant's] devices” because “[t]his entire case was borne from electronic devices,”

and defendant “has made multiple misstatements of facts in her affirmations, and as a computer expert, will likely make ESI discovery complex” (*id.*, p. 17). In opposition, defendant asserts that she “proposed a practical and proportional electronic discovery protocol using Google’s native Takeout export,” but that “Plaintiffs summarily rejected the proposal” without providing a “technical or legal reason” (NYSCEF Doc No 299, pp. 3-4). Defendant argues that “forensic imaging and unrestricted device access are extraordinary remedies” which are not warranted here, as “[t]here is no evidence that Defendant destroyed or concealed data, violated a court order, or refused to cooperate” (*id.*, p. 8).

Defendant’s full document production to date consists of approximately 37 pages of documents (*compare* NYSCEF Doc No 300, p.14 [plaintiffs assert they have produced 1,798 pages of documents]) in non-native, non-searchable format, including screenshots (NYSCEF Doc No 265). This production is plainly insufficient (*Rd. v Lande*, 2024 NY Misc LEXIS 61775 \*4 [SC NY Co 2024] [“Screenshots are not native ESI nor are they complete records”]) and does not even meet the standard defendant seeks to “reciprocally” apply to plaintiffs.

Neither party’s first requests for the production of documents demanded that the documents be produced in native format with metadata (NYSCEF Doc Nos 209, 250; *150 Nassau Assoc. LLC v RC Dolner LLC*, 96 AD3d 676, 677 [1<sup>st</sup> Dept 2012] [“it cannot be said that it was an abuse of the court’s discretion to deny reproduction of the documents in their native format” where the party seeking production “did not request the documents in the ‘native’ file format . . . until [] its own motion to compel”]; see also, *Hoffman v Wyckoff Hgts. Med. Ctr.*, 2015 NY Slip Op 32580[U], \*9-11 [SC NY Co 2015] [collecting cases where metadata was ordered to be produced because a party “specifically requested production” in that format]).

Nevertheless, “[w]here the court deems appropriate, it may establish the method and scope of any electronic discovery” (Uniform Court Rule 202.12[e][3]).

Here, considering the nature of plaintiffs’ claims and defendant’s counterclaims (which involve allegations of online misrepresentations and misconduct, and communications from anonymous sources), metadata from the documents to be produced will likely be relevant and material to the parties’ claims and defenses (*Hinshaw & Culbertson, LLP v e-Smart Tech., Inc.*, 2012 NY Slip Op 30751[U], \*5 [SC NY Co 2012] [“Disclosure of meta-data is required if it has ‘bearing on the controversy and will assist preparation for trial . . . The test is one of usefulness and reason’”], quoting *Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Hoffman*, 2015 NY Slip Op 32580[U] at 11 [determining that “a native file production . . . may lead to relevant evidence” because “there is an issue in this action as to the circumstances under which [a document] was prepared and executed”]). Accordingly, both parties will be ordered to produce their documents in native format with accompanying metadata.

Plaintiffs have demonstrated why defendant’s proposed Google Takeout protocol is inadequate to meet the discovery needs of this action. Specifically, plaintiffs assert that this “method [] is limited to only information contained [] Google account[s]” and therefore would not capture “electronically stored information contained on a party’s computer, cell phone, and non-Google related applications” (NYSCEF Doc No 300, pp. 2, 6 [providing examples of discoverable material that would be found on defendant’s devices and not through her Google account]). Defendant failed to rebut this argument that a production using Google Takeout would be incomplete. Accordingly, the parties will not be directed to use the Google Takeout protocol for ESI discovery; rather, they will be ordered to engage a third-party vendor for the production of documents.

### Content of Plaintiffs' Document Demands

Plaintiffs also assert that “defendant has either objected to or provided minimal response to . . . [t]he remainder of Plaintiffs’ document demands,” which “are all relevant to the instant litigation” (NYSCEF Doc No 243, pp. 17-18 [listing specific outstanding demands]). Defendant does not address plaintiffs’ assertion that these demands are relevant and discoverable in her opposition (NYSCEF Doc No 299) and therefore has waived any objections she may have to same (*People v Nat’l Rifle Ass’n of Am., Inc.*, 223 AD3d 84, 92 [1<sup>st</sup> Dept 2023] [defendant “waived its [] objections to production of [demanded documents] by failing to raise them in opposition to [the opposing party’s] motion to compel”). Accordingly, defendant will be ordered to produce documents responsive to the outstanding requests set forth in plaintiffs’ papers (NYSCEF Doc No 243, pp. 17-18).

### Sanctions

While plaintiffs have shown that defendant failed to comply with discovery deadlines, they have not “demonstrate[d] that [defendant] engaged in a willful or contumacious pattern of noncompliance with discovery requests or court-ordered disclosure so as to warrant such sanctions” at this juncture (*Singer v Riskin*, 137 AD3d 999, 1000 [2<sup>nd</sup> Dept 2016]).

Based on the foregoing, it is

ORDERED that plaintiffs’ motion is granted to the extent that defendant is ordered to produce the following items within 30 days, and if defendant fails to produce these items, she will be precluded from offering evidence of same at trial:

- (i) Medical records and authorizations responsive to plaintiff’s January 17, 2025 demands (NYSCEF Doc No 247) and July 29, 2025 deficiency letter (NYSCEF Doc No 282);
- (ii) Basic information regarding defendant’s employment history from 2021 through the present (including the names of employers, dates of employment, salaries, and titles);

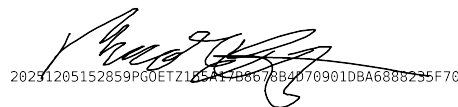
- (iii) Responses to Interrogatory Nos 3-6, 8, 10-13;
- (iv) Documents responsive to the outstanding requests as set forth in plaintiffs' papers (NYSCEF Doc No 243, pp. 17-18);

And it is further

ORDERED that the parties shall engage a third-party vendor in the production of documents; and it is further

ORDERED that the parties shall conduct plaintiffs' depositions on or before January 30, 2026, and defendant's deposition on or before February 20, 2026; and it is further

ORDERED that the parties are directed to appear for a status conference on February 26, 2026.



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<b>12/5/2025</b>		<b>PAUL A. GOETZ, J.S.C.</b>
<b>DATE</b>		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE