

**Acosta v City of New York**

2025 NY Slip Op 34841(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 157225/2022

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

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JOHN X ACOSTA,

Plaintiff,

- v -

THE CITY OF NEW YORK, NYPD SERGEANT SEAN AMAN, WILLIAM PERRITT, COREY BEHAN, BRIAN BRANDEFINE, STEPHEN MALVAGNA, DOMINICK COGLIANO, THERESA FLETCHER, DAN FITZPATRICK

Defendant.

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INDEX NO. 157225/2022

MOTION DATE 10/31/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 131, 132, 133, 134

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT .

Upon the foregoing documents, the City moves pursuant to CPLR § 2221 (a) for an order vacating or modifying a prior order of this court dated September 30, 2025, pursuant to CPLR § 3103 (a) for a protective order, to extent the City’s time to comply with the September 30, 2025 order, and to stay enforcement of the order pending resolution of this motion. Plaintiff opposes the motion and cross-moves for an award of sanctions. For the reasons set forth herein, the motion is denied except to the limited extent set forth herein, and the cross-motion is denied.

**BACKGROUND**

In this civil rights action, Plaintiff seeks damages in connection with his arrest by members of the New York City Police Department (“NYPD”), while Plaintiff was allegedly participating in a lawful protest on May 25, 2021 (NYSCEF Doc No. 2, complaint ¶ 14). On August 23, 2022, Plaintiff commenced this action by filing a summons and complaint, which interposes causes of action against defendants the City of New York (“City”) and NYPD Sergeant Sean Aman (Shield #3440), and against NYPD members designated as Does #1-7 (NYSCEF Doc Nos. 1-2). The City appeared by filing an answer only on behalf of itself on July 25, 2023 (NYSCEF Doc No. 5). The complaint was later amended, substituting police officers identified in discovery for the Doe defendants named in the first complaint (NYSCEF Doc No. 43). The City later filed several amended complaints, indicating representation of the individual defendants (NYSCEF Doc Nos. 15, 50, 51, 52, 53, 64).

On August 14, 2025, Plaintiff moved pursuant to CPLR § 3126 for an order compelling Defendants to respond to certain outstanding discovery requests and for an award of sanctions

(Motion Seq. 003) (NYSCEF Doc No. 55, notice of motion). Specifically, Plaintiff objected to the City's failure to produce any documents in discovery and refusal to provide the names of other individuals arrested at the same protest as Plaintiff, among others. The City opposed the motion, arguing, *inter alia*, that it had complied with its discovery obligations by producing responsive documents. By an order and decision dated September 30, 2025, this court granted the motion to the extent that Defendants shall serve supplemental responses and produce responsive documents consistent with the rulings above within sixty (60) days of entry of the court's order (NYSCEF Doc No. 86, decision and order).

The City now moves pursuant to CPLR § 2221 (a) for an order "partially vacating and/or modifying" the September 30, 2025 order; pursuant to CPLR 3103(a) for a protective order limiting the production of disciplinary records to a period of no more than ten (10) years prior to the date of incident, specifically limited to allegations of force and veracity claims of fraud/perjury, preventing and or limiting disclosure of confidential, privileged and/or palpably irrelevant portions of officer disciplinary records and personal identifying information to prevent unreasonable embarrassment and prejudice; pursuant to CPLR § 2004 extending the City's time to comply with the September 30, 2025 order by 120 days from the resolution of the instant motion; and pursuant to CPLR § 3103 and CPLR § 2201, staying the enforcement of the order pending the resolution of the instant motion.

Plaintiff opposes and cross-moves for an award of sanctions pursuant to 22 NYCRR § 202.20-f (b) and 22 NYCRR § 130-1.1-a f for failure to meet and confer with Plaintiff regarding the dispute prior to filing the motion, for the "frivolous assertion Plaintiff failed to confer," and for filing a motion to reconsider which Plaintiff asserts solely advances new arguments (NYSCEF Doc No. 131, notice of cross-motion). Plaintiff also seeks an award of sanctions pursuant to CPLR § 3126 for failure to comply with the September 30, 2025 order (*id.*).

## DISCUSSION

Section 2221 (a) of the CPLR provides that "[a] motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it." Here, the City has designated its motion as one to "partially vacat[e] and/or modify[]" the September 30, 2025 order, but the motion consists entirely of additional or reiterated arguments regarding the discovery disputes that were resolved by the September 30, 2025 order. While it is well established that a court has, in its sound discretion, the inherent power to vacate or modify a prior order in the interest of justice, the City failed to make any showing why the relief it seeks would benefit the interest of justice (*see Alvarez v Fiat Realty Corp.*, 157 AD2d 456, 456 [1st Dept 1990]). Nor are any of the grounds for statutory vacatur of a prior order provided for by CPLR § 5015 applicable here.

In actuality, the City seeks to reargue the court's order, but has not met the requisite burden for relief under CPLR § 2221 (d) because it has not identified any matters of fact or law allegedly

overlooked or misapprehended by the court in determining the prior motion (CPLR § 2221 [d]). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*William P. Pahl Equip. Corp. v Kassiss*, 182 AD2d 22, 27 [1st Dept 1992] [internal citations omitted]).

The City was afforded ample opportunity to argue its position regarding the issues raised in the prior motion, both in its written submissions and at oral argument on September 30, 2025. The court carefully considered these arguments and issued an order that balances mandates of CPLR § 3101 (a) with the need to protect the privacy, safety, and privilege of parties and members of the public. The issues raised by the City in its motion were discussed, at length, at oral argument and are addressed by the court’s order, which accounts for relevant statutory limitations to certain disclosure and the privacy concerns raised by the City.

Nevertheless, the City’s motion has brought to the court’s attention that five of the items referenced in the court’s order inadvertently reference the incorrect demand from Plaintiff’s Notice for Discovery and Inspection and Combined Demands. Therefore, the September 30, 2025 order shall be revised and amended as follows, for the purpose of clarification:

**Request No. 3** (Civilian witnesses). *Granted in part.* To the extent Defendants are aware of civilian witnesses whom they intend to rely on at trial, those names shall be produced. If no such civilian witnesses are known, Defendants must expressly state.

**Request No. 4** (names/identities of certain NYPD members). *Granted in part.* Defendants’ prior response referring generally to the CSO and body-worn camera videos is insufficient. Defendants must provide a supplemental response expressly identifying any individuals known to have or reasonably believed to have witnessed Plaintiff engaging in alleged criminal conduct, as provided for in response to Request No. 6, below.

**Request No. 5** (names of NYPD members who took Plaintiff into custody). *Granted.* Defendants shall provide a supplemental response identifying the names of any such NYPD members.

**Request No. 6** (NYPD members who witnessed alleged criminal conduct). Defendants shall provide a supplemental response identifying the names of any such NYPD members. If none are known, Defendants must so state unequivocally.

**Request No. 7** (Personnel files). *Granted.* Defendants must supplement their response by producing personnel files of the officers identified in Demand No. 5 who took Plaintiff into custody, subject to lawful redactions of non-relevant personal data. If any other portion is withheld, Defendants must provide a compelling justification supported by statutory authority, with a privilege or redaction log.

With respect to the cross-motion, the court declines to award sanctions in connection with this motion. This should not be taken to imply that the court has overlooked or willfully ignored the procedural errors that have overshadowed the City’s defense of this action. The court is cognizant of Plaintiff’s concerns, but the need for the clarifications provided above contradict a finding that the City’s motion is frivolous. However, the Plaintiff is granted leave to renew the cross-motion for sanctions in the event of a failure to comply with the directives set forth in the September 30, 2025 order and the directives herein.

Accordingly, it is

ORDERED that the motion is denied, except that the September 30, 2025 order (NYSCEF Doc No. 86) is clarified and amended as set forth herein; and it is further

ORDERED that Defendants shall serve supplemental responses and produce responsive documents consistent with the rulings in the September 30, 2025 order, amended herein, within sixty (30) days of entry of this decision and order; and it is further

ORDERED that any withheld or redacted documents must be logged with specificity. Boilerplate objections are unacceptable; and it is further

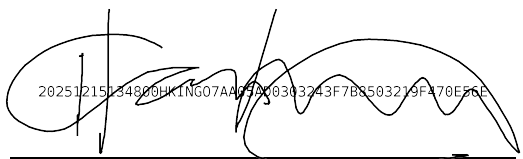
ORDERED that, if necessary, the parties shall forward their competing proposed protective orders covering personnel, medical, and disciplinary files to the court’s attention within 10 days of entry of this order; and it is further

ORDERED that the parties shall appear in the DCM Part (Room 103, 80 Centre Street, New York, NY) on February 3, 2025 at 2:00 PM for a compliance/status conference; and it is further

ORDERED that the cross-motion for sanctions is denied.

This constitutes the order and decision of the court.

12/15/2025  
DATE

  
HASA A. KINGO, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE