

Konstantynovska v Caring Professionals, Inc.
2026 NY Slip Op 30246(U)
January 21, 2026
Supreme Court, New York County
Docket Number: Index No. 159883/2016
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 65M

Justice

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LYUDMYLA KONSTANTYNOVSKA, NATASHA SEVERIN,
GULCHEKHRA LUTFIEVA, ALL OTHER PERSONS
SIMILARLY SITUATED WHO WERE EMPLOYED BY
CARING PROFESSIONALS, INC.

INDEX NO. 159883/2016

MOTION DATE N/A

MOTION SEQ. NO. 005

Plaintiffs,

- v -

CARING PROFESSIONALS, INC.,

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185

were read on this motion for DISCOVERY.

Plaintiffs Natasha Severin ("Severin") and Gulchekhra Lutfieva ("Lutfieva") (collectively "plaintiffs") move pursuant to CPLR § 3103(a) for a protective order barring defendant Caring Professionals, Inc. ("defendant") from conducting any additional depositions of the named plaintiffs, Severin and Lutfieva. Plaintiffs contend that defendant has already exhausted its right to depose these witnesses during full-day depositions conducted in February 2020 and that any further examination would be unreasonably cumulative, duplicative, and prejudicial. Defendant opposes the motion, arguing that the prior depositions were expressly limited to class certification issues, that merits-based testimony was affirmatively restricted by plaintiffs' counsel, and that good cause exists to permit narrowly tailored follow-up depositions on issues central to liability.

BACKGROUND AND PROCEDURAL HISTORY

This certified class action arises from allegations that defendant failed to compensate home health aides for all hours worked during 24-hour live-in shifts, in violation of the New York Labor Law and related regulations. Plaintiffs allege that they did not receive the uninterrupted sleep and meal breaks required by law and were therefore entitled to compensation for all 24 hours worked, rather than the flat 13 hours paid by defendant.

The legal framework governing these claims is well established. In Andryeyeva v New York Health Care, Inc., the Court of Appeals upheld the New York State Department of Labor's interpretation of the Minimum Wage Order, holding that an employer may compensate a home health aide for only 13 hours of a 24-hour shift only if the aide actually receives three hours of meal breaks and eight hours of sleep time, five of which must be uninterrupted (33 NY3d 152,

165–166 [2019]). Where those conditions are not met, the aide must be paid for the entire 24-hour shift (*id.* at 182).

Defendant deposed plaintiffs Severin and Lutfieva on February 11 and 12, 2020. Each deposition lasted approximately seven hours of on-the-record testimony and was conducted through an interpreter. At the time, discovery was bifurcated, and the depositions were noticed as part of pre-class certification discovery. The transcripts reflect that while defendant explored certain topics touching on plaintiffs’ work duties and recordkeeping practices, plaintiffs’ counsel objected to and limited questioning concerning plaintiffs’ actual sleep and meal breaks, daily activities during live-in shifts, and communications with coordinators regarding interruptions—on the stated ground that such inquiries “went to the merits.”

Following class certification, merits discovery proceeded. In 2025, defendant sought to conduct limited follow-up depositions of the named plaintiffs to address merits topics that were not explored in 2020. Plaintiffs objected and moved for a protective order, giving rise to the instant motion.

ARGUMENTS

Plaintiffs argue that CPLR § 3103(a) authorizes the court to prevent defendant from engaging in duplicative discovery that would cause unreasonable annoyance and prejudice. They contend that defendant already had a full and fair opportunity to depose the named plaintiffs and that any gaps in the record are the result of defendant’s own litigation choices. Plaintiffs further assert that the passage of time since the original depositions creates a substantial risk of unfair impeachment due to faded memory, and that defendant’s request amounts to an impermissible fishing expedition.

Defendant counters that plaintiffs’ position is contradicted by the deposition transcripts themselves, which demonstrate that core merits issues, particularly the actual sleep and meal breaks plaintiffs received during 24-hour shifts, were never explored because of counsel’s objections. Defendant maintains that these facts go to the heart of liability under *Andryeyeva* and that no alternative witnesses can provide this testimony. Defendant further emphasizes that it has proposed reasonable limits on the scope and duration of any continued depositions and that plaintiffs have failed to demonstrate the type of prejudice required to justify a protective order barring discovery altogether.

DISCUSSION

CPLR § 3101(a) mandates “full disclosure of all matter material and necessary in the prosecution or defense of an action.” That standard is liberally construed in favor of disclosure and requires only that the information sought be reasonably calculated to lead to the discovery of relevant evidence (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). At the same time, CPLR § 3103(a) empowers the court to issue protective orders to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice.”

Trial courts possess broad discretion in supervising discovery and balancing these competing interests (*Mavrikis v Brooklyn Union Gas Co.*, 196 AD2d 689, 690 [1st Dept 1993]). However, a protective order that wholly precludes otherwise relevant discovery is considered a “drastic remedy” and should be granted only upon a clear showing of undue prejudice or abuse (*Koump v Smith*, 25 NY2d 287, 294 [1969]).

Where a party seeks to preclude a continued or additional deposition, the inquiry is twofold: whether the prior deposition was sufficient, and whether the proposed additional examination is reasonably likely to yield material and necessary information (*Nunez v Chase Manhattan Bank*, 71 AD3d 967, 968 [2d Dept 2010]). Conversely, a party seeking a protective order bears the burden of demonstrating that the discovery sought is unreasonably cumulative or unduly prejudicial (*Espinoza v Tejada*, 228 AD3d 623, 624–625 [2d Dept 2024]).

Applying these principles, the court finds that plaintiffs have not met their burden. The record demonstrates that the February 2020 depositions did not fully explore merits issues central to liability—most notably, whether plaintiffs in fact received uninterrupted sleep and meal breaks during their 24-hour shifts. The deposition transcripts reflect that defense counsel was curtailed from pursuing these topics based on objections that the questions “went to the merits.” Those objections may have been understandable at the class certification stage, but they do not render the omitted testimony forever undiscoverable.

Critically, plaintiffs’ actual sleep and meal experiences are not collateral matters; they are dispositive under *Andryeyeva*, which conditions the legality of the 13-hour rule on the reality of the breaks provided (33 NY3d at 165–166). No amount of documentary discovery or testimony from third parties can substitute for plaintiffs’ own testimony on these issues.

Nor does the mere fact that the original depositions approached the seven-hour presumptive limit under 22 NYCRR § 202.20-b(a)(2) compel a different result. Courts routinely permit additional deposition time upon a showing of good cause, particularly where significant subject matter was not addressed (*see Wanliss v Retina Assoc. of N.Y., P.C.*, 230 AD3d 1270, 1271 [2d Dept 2024] [affirming denial of continued deposition where movant failed to show that seven hours was insufficient or that additional questioning was necessary]). Here, unlike in *Wanliss*, defendant has identified concrete, unaddressed topics that go to the core of the claims and defenses.

Plaintiffs’ argument concerning faded memory and potential impeachment is likewise unavailing. While the court is mindful of the passage of time, that consideration alone does not outweigh defendant’s right to obtain relevant discovery. As courts have observed, speculative prejudice is insufficient to justify foreclosing discovery (*see e.g. Willis v Cassia*, 255 AD2d 800, 801 [2d Dept 1998]). Any concerns regarding fairness can be mitigated through reasonable limitations on scope and duration, rather than an outright bar.

Accordingly, the court declines to issue a protective order precluding further depositions. Defendant shall be permitted to conduct limited follow-up depositions of the named plaintiffs, confined strictly to merits issues that were not previously explored, including but not limited to plaintiffs’ sleep and meal breaks during 24-hour shifts and related interruptions. The parties are

directed to cooperate in good faith to schedule such depositions, which shall be completed within a reasonable time and consistent with the proportionality principles underlying CPLR article 31.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for a protective order pursuant to CPLR § 3103(a) is denied; and it is further

ORDERED that defendant may conduct limited follow-up depositions of the named plaintiffs, narrowly tailored to previously unexamined merits issues; and it is further

ORDERED that a compliance conference shall be held in Part 65, Supreme Court, New York County, 80 Centre Street, Room 308, New York, NY 10013, on Tuesday, March 10, 2026, at 2:15 PM.

This constitutes the decision and order of the court.

1/21/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE