

Amerasinghe v Lederman
2026 NY Slip Op 31961(U)
May 5, 2026
Supreme Court, New York County
Docket Number: Index No. 805482/2023
Judge: Kathy J. King
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

-----X

PREMALAL AMERASINGHE,

Plaintiff,

- v -

GILBERT LEDERMAN, GILBERT LEDERMAN, M.D., P.C.,
and RADIOSURGERY NEW YORK LLC

Defendants.

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INDEX NO. 805482/2023

MOTION DATE 01/30/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for EXTEND - TIME

Upon the foregoing documents, and oral arguments having been heard, Plaintiff moves for an Order: extending the time to file the Note of Issue, and, pursuant to CPLR 3126, striking Defendants' Answer for failure to produce Court Ordered discovery, or, in the alternative, pursuant CPLR 3101 and 3124 (a) compelling defendants to produce information demanded in Plaintiff's Notice for Post-EBT Discovery and Inspection dated November 25, 2025 and the September 15, 2025 Court Order.

Defendant opposes the motion to the extent that Plaintiff seeks to strike the Answer and compel discovery.

BACKGROUND

This action arises out of claims sounding in medical malpractice, commenced on December 5, 2023, and issue was joined on February 15, 2024.

A Preliminary Conference Order was entered on February 6, 2025, followed by a Compliance Conference Order dated May 30, 2025.

Plaintiff's deposition was conducted on August 10, 2025. Thereafter, a Stipulation and Order dated September 11, 2025, directed Defendants to produce metadata and audit trail information relating to Plaintiff's medical records.

On November 21, 2025, the deposition of Defendant physician was conducted. Following that deposition, Plaintiff served a Notice for Post-EBT Discovery and Inspection dated November 25, 2025, seeking, inter alia, the identity of the transcription service utilized by Defendants and the names of staff employed at Defendants' practice during the relevant time period.

Defendants served responses on January 23, 2026, asserting objections, including that the demands were vague, overbroad, and not reasonably calculated to lead to discoverable information. Defendants further contend that certain metadata and audit trail materials were previously addressed in their prior discovery responses and that no additional responsive material is in their possession.

Plaintiff now moves for relief pursuant to CPLR 3126 and 3124 and seeks an extension of time to file the Note of Issue.

DISCUSSION

It is well settled that striking a pleading pursuant to CPLR 3126 is a drastic remedy that is appropriate only upon a clear showing that the failure to comply with discovery obligations was willful, contumacious, or in bad faith (*see Kihl v Pfeffer*, 94 NY2d 118 [1999]). Such conduct may be inferred from a pattern of noncompliance, repeated disregard of court orders, or a refusal to engage in discovery (*Id.*).

Here, although Plaintiff contends that Defendants have not fully complied with the September 11, 2025, Order and have failed to provide certain post-EBT discovery, the record does

not establish the level of willful and contumacious conduct necessary to warrant striking Defendants' Answer.

The record reflects that Defendants have asserted objections to Plaintiff's demands, including objections based on relevance, overbreadth, and possession, and have further represented that responsive metadata and audit trail information was previously produced in response to prior demands. While Plaintiff disputes the sufficiency of those responses, a dispute regarding the scope or adequacy of discovery responses does not, alone, warrant the drastic remedy of striking a pleading.

However, CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action, which is to be liberally construed (*see Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371 [1991]). Post-EBT discovery seeking the identity of transcription services and personnel involved in Plaintiff's care, to the extent such information is within Defendants' possession or control, is material and necessary insofar as it may bear on the creation, maintenance, and accuracy of the medical records at issue.

Accordingly, while the branch of Plaintiff's motion seeking to strike Defendants' Answer is denied, the branch seeking to compel discovery is granted to the extent set forth below.

Plaintiff also seeks an extension of time to file the Note of Issue based upon outstanding discovery, and Defendants do not oppose this branch of the motion.

In light of the continuing discovery obligations, including court-ordered production and post-EBT demands, the Court finds good cause exists to extend Plaintiff's time to file the Note of Issue to ensure that disclosure is complete and the matter is properly certified for trial.

Accordingly, it is hereby

ORDERED that the branch of Plaintiff's motion seeking to strike Defendants' Answer pursuant to CPLR 3126 is denied; and it is further


ORDERED that the branch of Plaintiff's motion pursuant to CPLR 3101 and 3124 is granted to the extent that Defendants shall, within sixty (60) days of the date of this Order with notice of entry, produce:

- (1) any outstanding metadata and audit trail information responsive to the September 11, 2025, Order to the extent not previously produced; and
- (2) produce the information demanded in Plaintiff's Notice for Post-EBT Discovery and Inspection dated November 25, 2025, including the identity of any transcription service utilized and the names of staff employed during the relevant time period;

and it is further

ORDERED that the branch of Plaintiff's motion seeking an extension of time to file the Note of Issue is granted, and Plaintiff shall file the Note of Issue on or before August 31, 2026.

This constitutes the Decision and Order of the Court.

<u>5/5/2026</u> DATE					 KATHY KING, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE
					<input type="checkbox"/>	