

CAPTION

NOTICE OF MOTION TO COMPEL & FOR SANCTIONS

PLEASE TAKE NOTICE, that upon the annexed affidavit of _____, duly sworn to the ____ day of _____, 20____, upon the annexed affidavit of _____, duly sworn to the ____ day of _____, 20____, upon the annexed copy of Defendant's First Set of Interrogatories & Request for Production of Documents, and upon all the pleadings and proceedings had herein, the undersigned will move this Court at a _____ Term, Part _____ thereof, to be held in and for the County of _____, at

_____, State of New York, on the _____ day of _____, 2013, at _____ a.m./p.m. of that day or as soon thereafter as counsel and parties can be heard, for an order pursuant to CPLR 3126, dismissing the action against Defendant _____, or alternatively for an order pursuant to CPLR 3124, directing the Plaintiff to answer all Interrogatories, and to produce and permit the Defendant to inspect, copy, or photograph all documents requested, and granting costs.

The above-entitled action is for personal injury.

An affirmation that a good faith effort has been made to resolve the issues raised in this motion is annexed hereto.

Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least two days before the return date of this motion.

Dated:

Name, Address, Phone Number

To: Name and address of each
party or his/her attorney
to be served with a copy

CAPTION

AFFIDAVIT

State of New York)
) ss.:
County of _____)

_____, being duly sworn, deposes and says:

1. I am the Defendant in this action, and represent myself.
2. This is a motion for an order pursuant to CPLR 3126, deeming the issues resolved in favor of Defendant, prohibiting the Plaintiff from supporting the claims against Defendant, and dismissing the actions against him/her. Alternatively, if the court does not order the above, this is a request for an order pursuant to CPLR 3124, compelling the Plaintiff to answer interrogatories, and to produce and permit the Defendant to inspect, copy, or photograph all documents requested in Defendant's First Set of Interrogatories & Request for Production.
3. This is an action to recover damages for personal injuries sustained
4. The parties are under a strict Scheduling Order, a copy of which is attached and incorporated herein. (Exhibit A).
5. On _____, a cover letter and two copies of the Defendant's First Set of Interrogatories & Request for Production was served upon the Plaintiff's attorney's office, copies of which are attached and incorporated herein. (Exhibit B).
6. The Plaintiff did not make any objection to the Interrogatories and Request pursuant to CPLR 3112, and no protective order has been applied for or issued.
7. As no answers or documents were received, the undersigned faxed the Plaintiff's attorney on _____, requesting notice of the status. (Exhibit C).
8. As there was no reply to the fax, the undersigned called the Plaintiff's attorney's office on _____, and requested the status from the Plaintiff's attorney. Attorney _____ had no answers or documents for the undersigned, and stated ...
9. As of this date, the undersigned has not received any response to his/her discovery requests.
10. The undersigned cannot properly proceed to trial without the answers and documents sought. The undersigned has no idea of what other discovery from other parties and non-parties is needed until those answers and documents are provided.

11. The answers and documents produced, whenever received, will undoubtedly require follow-up.. Had the answers and documents been provided by the due dates, the undersigned would have had enough time for follow-up before the Court's deadlines for completion of written discovery by _____ and depositions by _____.

12. The undersigned submits that the Plaintiff is purposefully being dilatory. The Plaintiff had an opportunity to object to the Court's Scheduling Order, but did not do so. Instead, the Plaintiff is attempting to circumvent the Court's Scheduling Order and frustrate the Defendant's defenses by not timely producing answers and documents.

13. The undersigned respectfully requests that pursuant to CPLR 3126, this Court issue an Order deeming the issues resolved in favor of Defendant, prohibiting the Plaintiff from supporting the claims against Defendant, and dismissing the action against him/her.

14. Alternatively, if the court does not order the above, the undersigned respectfully requests pursuant to CPLR 3124 that this Court order the Plaintiff to produce the answers and documents, and that the Defendant be granted an extension of time for written discovery and depositions by the amount of time the Plaintiff has delayed in answering the subject discovery. The Plaintiff has not undertaken any discovery, and should not be rewarded with any extension due to his failure to respond timely to the Defendant's discovery requests.

15. No previous application for the relief herein prayed for has been made.

WHEREFORE, your deponent respectfully requests that the instant motion be granted, (1) that an Order issue deeming the issues resolved in favor of the Defendant, prohibiting the Plaintiff from supporting the claims against Defendant, and dismissing the action against Defendant, or (2) that the Plaintiff be ordered to produce; and for such other and further relief as to this Court may seem just and proper.

Dated:

Name

Sworn to before me this ____ of _____, 20__

Notary Public: State of New York

