

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
EXHIBITION FILED
FILED: 12/22/09

ALAN NEWTON,

Plaintiff,

- against -

ORDER

07 Civ. 6211 (SAS)

THE CITY OF NEW YORK; DISTRICT ATTORNEYS MARIO MEROLA AND ROBERT T. JOHNSON, INDIVIDUALLY, AND IN THEIR OFFICIAL CAPACITY; ANDREA FREUND AND VARIOUS JOHN/JANE DOES, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES AS EMPLOYEES OF THE CITY OF NEW YORK WHO ARE/WERE ASSISTANT DISTRICT ATTORNEYS WITHIN THE OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF BRONX; DETECTIVE JOANNE NEWBERT, DETECTIVE PHILLIP GALLIGAN, DETECTIVE [JOHN DOE] HARTFIELD, DETECTIVE [JOHN DOE] RYAN, DETECTIVE [JOHN DOE] HARRIS, POLICE OFFICER DOUGLAS LEHO, POLICE OFFICER WILLIAM SEAN O'TOOLE, LIEUTENANT MICHAEL SHEEHAN, SERGEANT PATRICK J. McGUIRE, POLICE OFFICER [JOHN DOE] HASKINS, POLICE OFFICER [JANE DOE] KIELY, INSPECTOR JACK J. TRABITZ AND VARIOUS JOHN/JANE DOES, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES AS EMPLOYEES OF THE CITY OF NEW YORK WHO ARE/WERE MEMBERS OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Defendants.

SHIRA A. SCHEINDLIN, U.S.D.J.:

Newton v. The City of New York et al

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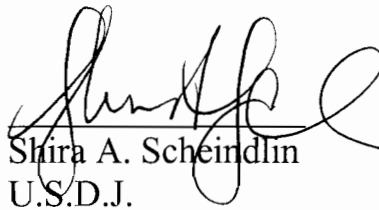
By letter dated December 18, 2009, plaintiff requested an order compelling defendants to produce for deposition the following former employees within the next fourteen days: Colleen Dundas, Patricia Brandow, John P. Higgins, Bruce J. Major, Donald Hackson, and Gerard Nathason. By letter dated December 21, 2009, defendants contend that they offered to produce Major on a prior occasion, but plaintiff's counsel was unavailable and the parties have been unable to agree on a new date. Defendants also reiterate that, as far as they can determine, Higgins, Hackson, and Nathason are neither current nor former New York City employees. Finally, defendants state that they have contacted Dundas and Brandow, both former employees, at their last known addresses and are awaiting response. Defendants request until January 20, 2010 to produce Major, Dundas, and Brandow. Plaintiff again wrote the Court in response to defendants' letter reemphasizing his request that defendants be ordered to produce the six individuals within fourteen days.

Although defendants are not presumed to exercise control over former City of New York employees, they must make all efforts to produce them where possible. IT IS HEREBY ORDERED that defendants are to produce former employees Major, Dundas, and Brandow by January 20, 2010. No further extensions will be granted. Defendants are directed to provide plaintiff with sufficient notice prior to producing these witnesses and plaintiff is directed to make himself available to take their deposition.

Defendants cannot be ordered to produce Higgins, Hackson, or Nathason because defendants cannot produce individuals whom they cannot identify. Plaintiff has been asked repeatedly to produce additional identifying information regarding these individuals. Either plaintiff refuses to do so or none exists. If plaintiff can supply additional identifying information, defendants are directed to produce these individuals as well to the extent such information leads to their identification.

That this action has required an inordinate amount of the Court's time to resolve discovery issues demonstrates that the parties are not cooperating as contemplated by the discovery rules.¹ This Court will no longer tolerate letters from either side squabbling over discovery issues. Counsel are directed to undertake all reasonable efforts to resolve future discovery disputes in good faith *prior* to seeking relief from this Court. Any evidence to the contrary will result in sanctions against the culpable party.

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
December 21, 2009

¹ A good example is counsels' joint failure to agree on a mutually convenient date for the Major deposition.

-Appearances -

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