Hoffman v Wyckoff Hgts. Med. Ctr.
2015 NY Slip Op 32580(U)
July 25, 2015
Supreme Court, New York County
Docket Number: 653685/2012
Judge: Marcy Friedman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 60

PRESENT: Hon. Marcy Friedman, J.S.C.

DAVID N. HOFFMAN,

Plaintiff,

– against –

WYCKOFF HEIGHTS MEDICAL CENTER,

Defendant.

Index No.: 653685/2012

DECISION/ORDER

This action is brought by plaintiff David N. Hoffman, former general counsel of defendant Wyckoff Heights Medical Center (Wyckoff), for breach of an employment agreement. The complaint pleads that Hoffman was terminated without cause from his employment at Wyckoff, and is therefore entitled to severance payments under the contract. (Compl. ¶¶ 8-14.) Wyckoff contends that the termination was for cause. The answer pleads, among other things, that Hoffman was a target of an investigation into Wyckoff by the Kings County District Attorney's Office (KCDA) at the time of his termination, and that Hoffman failed to accurately and timely disclose to the Wyckoff Board of Trustees the existence of a subpoena from the KCDA. (Answer ¶¶ 56, 59-60.) Wyckoff asserts counterclaims based on these allegations, including claims for breach of contract and breach of fiduciary duty. (See id. ¶¶ 84-89; 98-101.)

This court has coordinated disclosure in this action and a related defamation action brought by Hoffman against two defendants: Gary Goffner, the Chairman of the Wyckoff Board of Trustees, and Ramon Rodriguez, the President and Chief Executive Officer of Wyckoff (the defamation defendants). (See Compl., Hoffman v Rodriguez, Index No. 159167/2012.) The defamation claim is based in substantial part on statements allegedly made by the defamation

defendants concerning Hoffman's involvement in the KCDA investigation. (Id. ¶¶ 21, 36, 40, 44, 46, 48.)

During the depositions of Goffner, Rodriguez, and non-party Herman Hochberg, a member of the Wyckoff Board of Trustees, the witnesses were directed by counsel not to answer certain questions propounded by Hoffman concerning the KCDA investigation, based on asserted public interest and attorney-client privileges. Hoffman, who appears pro se, now moves for an order precluding "the Defendants" – apparently meaning the defendants in both the breach of contract and defamation actions – from introducing any evidence at the time of trial regarding the investigation of Wyckoff by the KCDA, or, in the alternative, directing that "they appear for further depositions and answer all questions . . . related to the investigation by the KCDA and the response by Wyckoff to that investigation." (Order to Show Cause at 1-2.) Hoffman also seeks an order directing the defendants to produce certain electronically stored information (ESI), already produced to him in the form of text-searchable PDFs, in its original (i.e. native) format, "including original file name []with regard to word documents and PDF files, and with original sender and recipient, and subject information, in outlook format, with regard to email." (Id. at 2.) Finally, Hoffman requests that the court "lift[] the confidentiality protection afforded to deposition testimony" under the confidentiality orders stipulated to by the parties and entered in the two actions, and extend the time for him to file the Note of Issue.[1] (Id.)

[1] It is noted that the instant motion was filed only in the breach of contract action, and that the order to show cause bears solely the caption of that action. The text of the order to show cause, however, refers to "the above captioned actions" and seeks relief against "the Defendants." (Order to Show Cause at 1.) Hoffman's affirmation in support, filed contemporaneously with the order to show cause, bears the captions of both the breach of contract and defamation actions. As noted above, the court has been coordinating discovery in the two actions. The actions have not, however, been formally consolidated or joined for discovery and trial. Defendants in both actions are represented by the same counsel, and have had ample opportunity to make their positions known to the court. Nevertheless, as Hoffman has not formally moved in both actions, the court will grant relief only with respect to the breach of contract action. The parties are strongly encouraged to work together to apply the court's decision to any related or overlapping issues in the defamation action, without resorting to further motion practice.

Privilege

In opposition to the branch of the motion seeking an order of preclusion or further depositions, Wyckoff contends that only Gary Goffner has asserted the public interest privilege and refused to answer questions related to the KCDA investigation. (Def.'s Memo. In Opp. at 5.) Wyckoff characterizes the public interest privilege as affording Goffner a "right to decline disclosure of statements he may have given to the KCDA in connection with its investigation." (Id.) According to Wyckoff, "the privilege is possessed by the person making statements to investigators with regard to the contents of such statements" (id. at 2) and "gives all such witness [sic] the option of whether to disclose their statements made to an investigating DA." (Id. at 6.) Wyckoff takes the position, however, that "information conveyed by the KCDA to a witness is not the subject of the public interest privilege." (Id. at 3.)

The authorities cited by Wyckoff do not state or otherwise support his contention that the public interest privilege may be asserted by a witness who has given information to a governmental agency. (See Melendez v City of New York, 109 AD2d 13 [1st Dept 1985] [District Attorney invoked privilege in opposition to motion to compel disclosure of grand jury testimony and tape-recorded statement of police officer taken in conjunction with investigation]; Ruggiero v Fahey, 103 AD2d 65 [2d Dept 1984] [District Attorney opposed disclosure of grand jury testimony]; see also Sanchez v City of New York, 201 AD2d 325 [1st Dept 1994] [defendant moved to compel District Attorney to disclose plaintiff's statements made in connection with investigation].)

Given the nature of the privilege, the lack of authority supporting its invocation by witnesses who communicate with prosecuting authorities is not surprising. As the Court of Appeals has explained, the public interest privilege "inheres in certain official confidential

information in the care and custody of governmental entities." (Matter of World Trade Ctr. Bombing Litig. v Port Authority of New York & New Jersey, 93 NY2d 1, 8 [1999] [WTC] [privilege invoked by the Port Authority of New York and New Jersey, which, the Court noted, is a State agency].) "[T]he privilege envelops confidential communications between public officers, and to public officers, in the performance of their duties, where the public interest requires that such confidential communications or the sources should not be divulged." (Id. [internal quotation marks and citation omitted].) "The justification for the privilege is that the public interest might otherwise be harmed if extremely sensitive material were to lose this special shield of confidentiality." (Id.)

Prosecuting authorities are in the best position to assess whether or not the public interest is likely to be harmed by disclosure. Indeed, the Court of Appeals has repeatedly stated that entitlement to the privilege requires "that an agency claiming some special governmental-public interest 'cone of silence' demonstrate the specific public interest that would be jeopardized by an otherwise customary exchange of information." (WTC, 93 NY2d at 8; Cirale v 80 Pine St. Corp., 35 NY2d 113, 119 [1974] [holding that what constitutes sufficient harm to the public is a judicial determination and "requires that the government agency come forward and show that the public interest would indeed be jeopardized by a disclosure of the information. Otherwise, the privilege could be easily abused . . . ."]; see also 4D West's N.Y. Prac. Series, Commercial Litig. in N.Y. State Cts. § 103:10 [4th ed Haig] ["Only a government agency can invoke the privilege and, as a result, practitioners' ability to seek protection of sensitive documents under the privilege is limited"].)

In any event, Hoffman represents in his reply affidavit that he "seeks information from the defendants concerning matters conveyed by the District Attorney's Office to the hospital's

witnesses, not the other way around." (Hoffman Reply Aff. ¶ 4 [emphasis omitted].) As Wyckoff concedes that information conveyed to Goffner by the KCDA is not privileged, there appears to be no dispute that Hoffman is entitled to question Goffner about information he acquired from the KCDA concerning Hoffman. Although Wyckoff contends that Goffner in fact answered questions on this subject at his deposition (see Def.'s Memo. In Opp. at 2-3), the court finds that Hoffman may have been deterred from conducting a full inquiry by overbroad and impermissible speaking objections during the depositions of Goffner (see e.g. Goffner Dep. [Hoffman Aff. In Supp., Exh. B] at 82-87), as well as the depositions of Rodriguez and Hochburg.[2] During a telephone conference with the parties on December 18, 2015, the court also precluded questioning by Hoffman about matters subject to the "prosecutorial privilege"[3] pending briefing of this sensitive issue. (See Compliance Conf. Order dated Dec. 10, 2015; Ltr. from Hoffman dated Dec. 14, 2015.)

The court accordingly holds that Hoffman is entitled to re-open the depositions of Goffner and Rodriguez for the requested questioning – i.e., questioning concerning matters conveyed by the KCDA to the hospital's witnesses. As the public interest privilege is properly invoked by the District Attorney, however, and aims to protect important government interests (see WTC, 93 NYd at 8-9), the court will require that Hoffman give the KCDA notice before conducting any further deposition at which testimony concerning the investigation will be sought. This will afford the KCDA an opportunity to raise any objection it may have to such testimony.

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[2] Although, as noted, Wyckoff contends that Goffner alone invoked the public interest privilege during his deposition, the record reflects that the privilege was the subject of heated discussion during the continued deposition of Rodriguez in the defamation action on December 23, 2015. (See Continued Dep. of Rodriguez [Hoffman Aff. In Supp, Exh. C] at 65-73.)

[3] This was the term used by the parties to refer to the public interest privilege during discovery conferences prior to the briefing of this motion.

Hoffman also seeks to depose Goffner, Rodriguez, and Hochberg about a March 1, 2012 meeting of the Wyckoff Board of Trustees, during which the KCDA investigation was discussed. (See Hoffman Aff. In Supp. ¶¶ 15-19.) The minutes of the meeting record Goffner as stating, among other things, that board members "were not properly advised by Mr. Hoffman" when the first KCDA subpoena was presented. (Minutes of March 1, 2012 Board of Trustees Meeting at 8 [Hoffman Aff. In Supp., Exh. D].) Jeff Ruggiero, an attorney for Wyckoff, then gave a "D.A. Investigation Update," which the minutes summarize as follows: "Mr. Ruggiero stated from his conversation with the DA he can state what he knows." (Id. at 9.) According to the minutes, on the motion of Goffner, the meeting then went "into Executive Session." (Id.)

Hoffman contends that disclosure of what was said at this meeting is critical because Wyckoff allegedly deleted a digital recording of the meeting. (Hoffman Aff. In Supp. ¶ 16.) Wyckoff, in opposition, contends that the executive session was never recorded, and that communications with counsel regarding the KCDA update are protected by the attorney-client privilege.[4] (Def.'s Memo. In Opp. at 4-5.)

It is well settled that the burden of establishing that otherwise discoverable material is protected is on the party asserting the privilege; that "the protection claimed must be narrowly construed; and its application must be consistent with the purposes underlying the immunity." (Spectrum Sys. Intl. Corp. v Chemical Bank, 78 NY2d 371, 377 [1991] [Spectrum].) "The privilege is of course limited to communications – not underlying facts." (Id. at 377, citing

[4] Although Hoffman does not point in his papers to any example of a witness refusing to answer questions related to the March 2012 meeting on the grounds of attorney-client privilege, Wyckoff does claim the privilege in its memorandum in opposition. (Def.'s Memo. In Opp. at 4-5.) At the deposition of Hochberg, counsel for Wyckoff did, on at least one occasion unrelated to the March 2012 meeting, advise Hochberg not to disclose communications made "with Counsel present." (Hochberg Dep. at 30 [Hoffman Aff. In Supp., Exh. F].) Counsel also gave a general instruction to Hochberg not to disclose any communications with counsel for Wyckoff, stating: "I want to give an instruction on the record to the Witness. . . . When Mr. Hoffman asks you a question 'did anyone ever tell you,' or a question that's phrased similarly to that, I counsel you to exclude from your answer communications between you and Counsel for the hospital, because those are privileged." (Id. at 29-30.)

Upjohn Co. v United States, 449 US 383, 395-396 [1981].) Indeed, this Department has held that "[t]he attorney-client privilege applies only to confidential communications with counsel, not to information obtained from or communicated to third parties or to underlying factual information." (Eisic Trading Corp. v Somerset Mar., Inc., 212 AD2d 451, 451 [1st Dept 1995] [internal citations omitted]; Kenford Co., Inc. v County of Erie, 55 AD2d 466, 469 [4th Dept 1977] ["It has long been settled that information received by the attorney from other persons and sources while acting on behalf of a client does not come within the attorney-client privilege"].) "Yet it is also the case that, while information received from third parties may not itself be privileged, a lawyer's communication to a client that includes such information in its legal analysis and advice may stand on different footing. The critical inquiry is whether, viewing the lawyer's communication in its full content and context, it was made in order to render legal advice or services to the client." (Spectrum, 78 NY2d at 379 [internal citation omitted].)[5]

As noted above, the March 1, 2012 minutes state that Ruggiero updated the Wyckoff Board of Trustees on the KCDA criminal investigation of the hospital, which at that point remained pending. Hoffman does not dispute that Ruggiero was outside counsel to the hospital (see Def.'s Memo. In Opp. at 4), and that he provided his update confidentially, in a closed-door meeting with executives and board members. Wyckoff has sufficiently demonstrated, based on this context, that the communications are protected by the attorney-client privilege. (See Rossi v Blue Cross & Blue Shield of Greater New York, 73 NY2d 588, 593 [1989] [holding that internal memorandum from corporate staff attorney to corporate officer was privileged, where

[5] In Spectrum, the Court of Appeals held that the attorney client privilege protected the report of counsel hired to conduct an internal investigation of alleged misconduct by its client's employees. The Court reasoned that the report was "primarily and predominantly of a legal character," as it provided an "assessment of the client's legal position" and evidenced the attorney's "motivation to convey legal advice." (Id. at 380.) Significantly, as the Court explained, an investigative report is not "privileged merely because an investigation was conducted by an attorney; a lawyer's communication is not cloaked with privilege when the lawyer is hired for business or personal advice, or to do the work of a nonlawyer." (Id.)

memorandum was an "internal, confidential document" authored by a person who had no other role than as the corporation's attorney, and covered the subject of the plaintiff's imminent defamation suit].) The attorney-client privilege exists, in substantial part, to "foster[] the open dialogue between lawyer and client that is deemed essential to effective representation." (Spectrum, 78 NY2d at 377.) Consistent with this policy, the court will preclude Hoffman from questioning witnesses as to what was said about the KCDA investigation during the executive session of the March 1, 2012 meeting.

As noted, however, the attorney-client privilege protects communications, not underlying facts. (Spectrum, 78 NY2d at 377.) The understanding of Goffner, Rodriguez, and Hochberg concerning the KCDA's alleged investigation of Hoffman, or as to Hoffman's response to KCDA subpoenas, is not information protected by the attorney-client privilege. This is true whether the witnesses' understanding of these matters was acquired through "updates" by Wyckoff attorneys, or otherwise. (See Kenford Co., Inc., 55 AD2d at 469-470.) Hoffman should be afforded an opportunity to inquire as to these matters. Any inquiry as to legal advice about these matters is, of course, protected by the attorney client privilege.

With respect to the branch of the motion seeking to have Wyckoff reproduce all ESI in its native format, Hoffman acknowledges that Wyckoff has produced approximately 16,000 documents in text-searchable PDF form. (Hoffman Aff. In Supp. ¶ 22.) Hoffman contends, however, that the production is "unusable because email and word documents have been stripped of their narrative descriptions in the file names of the materials and replaced with a reference number," i.e., a bates stamp number. (Id. ¶ 21.) As a result, Hoffman asserts, he has had difficulty searching for specific documents within the production. (Id. ¶ 22.) Hoffman also asserts – for the first time in his reply affirmation – that a production of native files will contain

metadata that will enable him to "determine conclusively when [each] document was first prepared and on what earlier document it was modeled." (Hoffman Reply Aff. ¶ 30.)

Hoffman does not submit his initial document request(s) on this motion or point to any demand for native files and metadata in those requests. Nor does it appear that any ESI stipulation was entered into between the parties. Although Hoffman claims that he has long requested native files, he relies for this contention on an unattached email sent "to Wyckoff's prior counsel, Arnold and Porter in 2014," which he quotes as follows: "When we last spoke about the e-discovery stipulation you indicated that you would ask your client if it was able to produce the electronic documents I requested in there [sic] native format. Please advise on the status of that inquiry." (Hoffman Aff. In Supp. ¶ 21.) At best, this email is an inquiry, not a demand. Although it appears that Hoffman made subsequent document demands (see Compliance Conf. Order dated Dec. 10, 2015 [referring to "July 3 document demands"]), Hoffman does not claim on this motion that those demands sought production of documents in native format.

In 150 Nassau Associates LLC v RC Dolner LLC (96 AD3d 676, 677 [1st Dept 2012]), this Department held that a defendant was not required to reproduce ESI documents in native format where that defendant had already produced the documents in a searchable PDF format, the plaintiff "[had] not request[ed] the documents in the 'native' file format . . . until its reply on its own motion to compel," and the plaintiff "admitted that the only benefit of requiring [the defendant] to produce these documents again is [plaintiff's] convenience." In contrast, Courts have required reproduction of ESI in a different format than was initially provided by a defendant, including native format with accompanying metadata, where the plaintiff specifically requested that format in its initial document requests, and the defendant did not timely object to

the requested form of production. In these cases, however, there typically have been additional factors warranting reproduction. (See e.g. Brandofino Communications, Inc. v Augme Tech. Inc., 2014 WL 302227, * 1-2, 5 [Sup Ct, NY County, Jan. 24, 2014, Index No. 652639/11, Oing, J.] [ordering reproduction of ESI already provided in PDF format, where plaintiff's initial document demand specifically requested production in the form of text-searchable TIFF files with a Concordance load file and associated metadata, and "defendants' initial production was made in accordance with these instructions, without any objection," the Court also noting that defendants "continu[ed] to receive documents on the Concordance platform from plaintiff, but seek now to deny plaintiff access to this same benefit"]; Dartnell Enter., Inc. v Hewlett Packard Co., 2011 WL 4486937, * 3-4 [Sup Ct, Monroe County, Sept. 13, 2011, Index. No. 02709/06, Stander, J.] [ordering reproduction of ESI already produced in hard copy where plaintiff had specifically requested production of ESI in its native electronic format, and defendant did not assert that the documents were unduly difficult or burdensome to produce in that format, the Court also noting that "Plaintiff has shown inconsistencies as to the information available from the hard copy and the native electronic format"]; see also Aguilar v Immigration & Customs Enforcement Division of the U.S. Dept. of Homeland Sec., 255 FRD 350, 357 [SD NY, Nov. 21, 2008, Index No. 07 Civ. 8224, Mass, M.J.] [holding that "Courts generally have ordered the production of metadata when it is sought in the initial document request and the producing party has not yet produced the documents in any form"].)

Here, Hoffman makes no showing that he demanded production of native files prior to Wyckoff's substantial production of 16,000 documents. Although it is "undoubtedly true" that Wyckoff's production could be searched more easily had the documents been provided in native format with metadata, Hoffman also makes no showing that "the additional searchability that

[he] might gain through access to the metadata is [] critical to [his] pretrial preparation." (See Aguilar, 255 FRD at 361-362.) Hoffman has had substantial time to familiarize himself with the documents produced in response to his discovery requests. His asserted difficulty in searching the documents cannot support the imposition of the burden of reproduction on Wyckoff, particularly given that the documents were produced in a text-searchable format. Indeed, following a compliance conference at which searchability was addressed, Wyckoff provided plaintiff with additional instructions for searching the already-provided documents. (See Email from Robert Gross [Counsel for Wyckoff], dated Dec. 28, 2015 [Gross Aff., Exh. 2].) Under these circumstances, the court declines to order reproduction in native format of Wyckoff's entire production.

The court does find, however, that a native file production of one already-produced document may lead to relevant evidence. As Hoffman correctly argues, there is an issue in this action as to the circumstances under which his October 20, 2011 employment agreement was prepared and executed.[6] Metadata relating to the timing and preparation of this agreement is therefore relevant. The court will accordingly order Wyckoff to produce the final and any draft versions of the document, in native format with accompanying metadata.

The branch of the motion seeking to lift the confidentiality protection afforded to deposition testimony under the parties' Stipulation and Order for the Production and Exchange of Confidential Information (Confidentiality Order) will be denied. Hoffman argues that "there is no unique or valid reason for deposition testimony to remain confidential," and that "[t]hese

[6] More specifically, Wyckoff's counterclaims plead that Hoffman signed the October 20 agreement because he feared, based on a report by Wyckoff's CFO on October 19, that he would be terminated imminently and wished to increase his severance benefits. (See Answer ¶¶ 44-52.) The metadata associated with the agreement will show, among other things, when the document was created and edited. This information may bear on Wyckoff's assertion that the October 19 CFO report had some influence on the creation of the October 20 agreement.

materials must be provided to trial witnesses and non-trial fact witnesses in order for your affirmant to prepare for trial."[7] (Hoffman Aff. In Supp. ¶ 28.) These bare assertions do not warrant the blanket denial of confidentiality protection to deposition testimony. Wyckoff, in opposition, states that it "consent[s] in principle . . . that deposition testimony may be shown by [Hoffman] to persons during in-person meetings that he intends, in good faith, to call as trial witnesses as long as (a) the portions of such testimony are shown to Wyckoff in advance, and (b) such persons are given copies of the Confidentiality Stipulations and Orders in these suits, and (c) they sign the confidential[ity] agreements" attached to the orders. (Def.'s Memo. In Opp. at 10.)

Although the court considers Wyckoff's proposal to be a good faith offer of compromise, the court is concerned that requiring Hoffman to disclose the identities of his potential trial witnesses, and the specific portions of deposition testimony that he intends to show those witnesses, will intrude upon Hoffman's trial strategy. The court will therefore modify the Confidentiality Order to permit a party to disclose deposition testimony designated as Confidential Information to persons that the party intends, in good faith, to call as trial witnesses, during in-person meetings with such persons, provided that, prior to disclosure, (i) such persons

[7] As is typical of confidentiality orders modeled on the New York City Bar Association template, the parties' order provides that confidential information may be disclosed to "trial and deposition witnesses, if furnished, shown or disclosed in accordance with paragraphs 9 and 10, respectively, hereof." (Confidentiality Order ¶ 5 [f] [Gross Aff., Exh. 3].) Paragraph 9 provides, in full: "Should the need arise for any of the parties to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such party may do so only after taking such steps as the Court, upon motion of the disclosing party, shall deem necessary to preserve the confidentiality of such confidential information." Paragraph 10 provides, in its entirety: "This Stipulation shall not preclude counsel for the parties from using during any deposition in this action any documents or information which have been designated as 'Confidential Information' under the terms hereof. Any stenographer or deposition witness who is given access to Confidential Information shall, prior thereto, be provided with a copy of this Stipulation and shall execute the certificate annexed hereto. Counsel for the party obtaining the certificate shall supply a copy to counsel for the other party." The order thus does not expressly permit disclosure of information designated as confidential to witnesses outside the context of trial or depositions, unless the parties agree to such disclosure. (See id. ¶ 5 [g] [permitting disclosure to "any other person agreed to by the parties"].)

are given copies of the Confidentiality Order; and (ii) they sign and notarize the Agreement With Respect to Confidential Material attached to the order. The disclosing party shall maintain the original of each executed Agreement With Respect to Confidential Material and make it available at trial, should the person be called as a witness, or as otherwise ordered by the court.

It is accordingly hereby ORDERED that the motion of plaintiff David N. Hoffman (Hoffman) for an order of preclusion and for other relief is granted solely to the following extent:

It is ORDERED that Gary Goffner, Ramon Rodriguez, and Herman Hochberg shall each appear for a continued deposition in this action. Questioning during these witnesses' depositions shall be consistent with this decision. The continued deposition of each witness shall be limited to three hours; and it is further

ORDERED that Hoffman shall serve the Kings County District Attorney's Office by personal delivery with a copy of this decision/order, with notice of entry. Such service shall be made at least fourteen days prior to any deposition described above, and proof of service shall be e-filed within two days after service; and it is further

ORDERED that defendant Wyckoff Heights Medical Center (Wyckoff) shall promptly produce the final and any draft versions of Hoffman's October 20, 2011 employment agreement, in native format with accompanying metadata. Such production shall be made within 30 days of the date of entry of this order; and it is further

ORDERED that the Stipulation and Order for the Production and Exchange of Confidential Information (Confidentiality Order), so-ordered on January 7, 2014, is modified to the following extent: A party may disclose deposition testimony designated as Confidential Information to persons that the party intends, in good faith, to call as trial witnesses, during in-person meetings with such persons, provided that, prior to disclosure, (i) such persons are given

copies of the Confidentiality Order; and (ii) they sign and notarize the Agreement With Respect to Confidential Material attached to the order. The disclosing party shall maintain the original of each executed Agreement With Respect to Confidential Material and make it available at trial, should the person be called as a witness, or as otherwise ordered by the court. Nothing herein shall be deemed to restrict the parties' rights to disclose Confidential Information in other circumstances, upon agreement; and it is further

ORDERED that the deadline for plaintiff to file the Note of Issue in this action is extended to September 26, 2016. Dispositive motions, if any, shall be brought within sixty days of the filing of the Note of Issue.

This constitutes the decision and order of the court.

Dated: New York, New York
July 25, 2015

MARCY FRIEDMAN, J.S.C.