SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK**	PART **52M**
Justice	

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SEAN STEER,

                Plaintiff,

          - v -

CITY OF NEW YORK, CONSOLIDATED EDISON
COMPANY OF NEW YORK INC.,DONOFRIO GENERAL
CONTRACTORS CORP., SUB-TECH SERVICES, LLC,

                Defendant.

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CONSOLIDATED EDISON COMPANY OF NEW YORK INC.

                Plaintiff,

          -against-

DONOFRIO GENERAL CONTRACTORS CORP

                Defendant.

---X

INDEX NO.	151948/2020
MOTION DATE	11/24/2021
MOTION SEQ. NO.	001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595199/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for   DISCOVERY   .

      Upon the foregoing documents, plaintiff's motion to compel discovery is denied and

defendant/third-party defendant's cross-motion is granted in part.

      This action arises from an alleged bicycle accident. On August 15, 2019, while riding his

bicycle southbound at the corner of West End Avenue and 63rd Street in Manhattan, plaintiff

alleges he sustained injuries when the wheel of his bike entered a depression in the roadway and

caused him to fall.

Plaintiff's Motion

Plaintiff seeks an order striking defendant Donofrio's answer for its failure to respond to discovery demands dated August 11, 2021. Alternatively, plaintiff seeks an order to compel defendant's compliance. Preliminarily, the Court notes that although plaintiff is unsatisfied with defendant Donofrio's responses to its demands, responses have nevertheless been timely served.

As to the substance of the demands, the Court finds that plaintiff has failed to articulate a factual or legal basis for the discovery sought and agrees with the objections made by defendant in its response. Plaintiff has not cited any deposition testimony or any other documents that serve as a foundation to obtain the additional discovery. Plaintiff's arguments are based solely on speculative arguments that the initiation of a lawsuit is somehow notice of negligence or wrongdoing. The Court is not inclined to make that leap. Moreover, the record before this court is silent as to any substantiated violations for the same type of conduct that plaintiff alleges caused the instant accident. While the Court is not in the position to guide plaintiff as to how to litigate this matter, there are other discovery vehicles that may serve more fruitful and less burdensome than an inquiry into ongoing litigation. Most importantly though, the amended complaint does not allege that Donofrio or any other defendant was negligent in the way it selected and/or hired its subcontractor(s), thus the relevance of the information sought is unclear as it does not relate to any causes of action in the amended complaint.
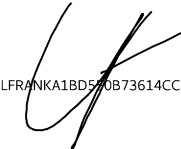
Cross-Motion

Preliminarily, the Court finds that defendant Donofrio has established standing to make the instant application to quash plaintiff's subpoenas to the various non-parties. For the reasons discussed above the Court will grant the portion of the motion seeking a protective order and quashing plaintiff's subpoenas.

Defendants also cross-move pursuant to CPLR § 3124 for an order compelling the plaintiff to provide unrestricted HIPAA-compliant authorizations for medical records related to the injuries he sustained in the May 17, 2016 automobile accident and unrestricted HIPAA-compliant authorizations for medical records related to the injuries the plaintiff sustained in the 2018/2019 ATV accident in Jamaica for which he received medical treatment in the United States. In opposition, plaintiff cites *Jerez v 2141, LLC* 191 AD3d 407, 407 [1st Dept 2021]. In *Jerez* the First Department affirmed the lower courts determination that the defendant had not established entitlement to medical records for an injury to a body part not claimed in that action that occurred at the very latest 8 years before the incident in the subject litigation.

The Court finds that the case cited by plaintiff is distinguishable to the instant action. Here, unlike the plaintiff in *Jerez* plaintiff suffered injuries merely two years before the incident that is the subject of the instant action. Further, unlike in *Jerez*, where the plaintiff testified that the injury was resolved by surgery years before the incident in question, here the passage of time does not weigh in plaintiff's favor.

Further, the plaintiff's injuries that occurred prior to the alleged injuries in this action are in the same general location. As a result of the accident in the instant action, plaintiff alleges to have sustained a fractured left wrist and fractured right elbow. In the 2016 motor vehicle accident, plaintiff sustained injuries to his left shoulder, resulting in surgery, and in either 2018 or 2019 plaintiff was involved in an ATV accident that caused a fracture in his right hand. Because plaintiff' bill of particulars alleges a loss of range of motion, loss of strength and loss of sensation, defendant has established a basis to obtain the discovery sought. The Court notes that plaintiff is not seeking discovery as to a prior injury to the plaintiff's knee. Accordingly, it is hereby

ADJUDGED that plaintiff's motion is denied in its entirety; and it is further

ORDERED that plaintiff is to provide relevant HIPAA compliant authorization(s) for

plaintiff's 2016 injury to his left shoulder; and it is further

ORDERED that plaintiff is to provide a relevant HIPAA compliant authorization(s) for

plaintiff's 2018/2019 injury to his right hand.

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11/29/2021
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE