

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ORLEANS

AB 524 DOE,

Plaintiff,

v.

Index No.: 21/47386

**LYNDONVILLE CENTRAL SCHOOL DISTRICT;
LYNDONVILLE ELEMENTARY SCHOOL.**

Defendants.

NOTICE OF MOTION

NATURE OF ACTION: Child Victims Act.

MOVING PARTY: Defendants Lyndonville Central School District and Lyndonville Elementary School (collectively the "District").

DIRECTED TO: Plaintiff.

DATE AND TIME: To be determined by the Court.

PLACE: Orleans County Supreme Court.

SUPPORTING PAPERS: Affirmation of Shannon B. O'Neill, Esq., dated January 28, 2022 (with Exhibits A through G).

ANSWERING PAPERS: Answering papers and any notice of cross-motion, with supporting papers, if any, are required to be served at least seven days prior to the return date of this motion, in accordance with CPLR Rule 2214(b).

RELIEF REQUESTED: An Order pursuant to CPLR § 3124 and § 3126: compelling Plaintiff to provide full and complete responses to the District's outstanding discovery demands, without objection, within twenty (20) days; and/or precluding Plaintiff from submitting evidence at trial and dismissing Plaintiff's Complaint in its entirety, together with the costs, disbursements and other relief as this Court deems appropriate.

**GROUNDS FOR RELIEF
 REQUESTED:**

CPLR § 3124, and § 3126.

ORAL ARGUMENT:

Requested.

DATED: January 28, 2022

WEBSTER SZANYI LLP
 Attorneys for Defendants

By: 

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Defendants.

AFFIRMATION OF SHANNON B. O'NEILL

Shannon B. O'Neill affirms the following under penalty of perjury:

1. I am an attorney, duly authorized to practice before the Courts of the State of New York and an associate with the law firm Webster Szanyi LLP, attorneys for defendants Lyndonville Central School District and Lyndonville Elementary School (collectively the "District"). I am fully familiar with the facts and circumstances of this case.

2. I submit this affirmation in support of the District's motion for: (1) an Order pursuant to CPLR § 3124 directing Plaintiff to respond to the District's outstanding discovery demands within twenty (20) days and without objection; and (2) a Conditional Order pursuant to CPLR § 3126 precluding Plaintiff from submitting evidence at trial and dismissing Plaintiff's Complaint in its entirety pursuant to CPLR § 3126, in the event Plaintiff fails to timely respond as directed.

Procedural History

3. Plaintiff commenced this action against the District by filing a Summons and Complaint with the Orleans County Clerk's Office on or about June 11, 2021. A copy of the Complaint is attached as **Exhibit A**.

4. The District served its answer to Plaintiff's Complaint on or about August 4, 2021. A copy of the District's Answer is attached as **Exhibit B**.

5. On or about September 3, 2021, the District served its First Set of Interrogatories to Plaintiff; Request for Production and Inspection of Documents and Things; Demand for Statements, Witnesses, Photographs, Reports and Insurance Coverage; CPLR 3017 Demand for Damages; Demand for Expert Witness Information; and Demand for Medicare/Medicaid Lien Information. Copies of the District's Demands are attached as **Exhibit C**.

6. To date, Plaintiff has failed to provide any response to the District's discovery demands.

Good Faith Effort

7. Due to Plaintiff's failure to respond, my office has sent multiple good faith letters, as described below, in an attempt to resolve the instant discovery dispute.

8. On September 30, 2021, the District sent a letter to Plaintiff notifying him that his discovery responses are past due and requested he respond by October 20, 2021. A copy of the District's letter is attached as **Exhibit D**.

9. The District served another letter on October 11, 2021 requesting a response to its discovery demands. A copy of the October 11, 2021 letter is attached as **Exhibit E**.

10. Plaintiff ignored the District's letters.

11. The District served another letter on November 18, 2021 requesting responses to its discovery demands and notifying Plaintiff that this was our good faith attempt to resolve the discovery issue. A copy of this letter is attached as **Exhibit F**.

12. Again, Plaintiff did not respond.

13. The District served yet another good faith letter on December 8, 2021. The District advised Plaintiff that this letter would be the District's final good faith attempt to obtain discovery responses, and stated that failure to provide discovery responses by December 13, 2021 would result in motion practice. A copy of this correspondence is attached as **Exhibit G**.

14. Prior to filing this motion, I attempted to speak to Plaintiff's counsel on January 26, 2022; however, no one at the counsel's office answered my telephone call and I was unable to leave a voice message because the mailbox is full.

15. It has been months since the District served its discovery demands without receiving a response from Plaintiff. The District's discovery demands are proper and therefore, Plaintiff has waived all objections to the discovery demands by failing to respond. (See *PF2 Securities Evaluations, Inc., v. Fillebeen*, 168 A.D.3d 617, 618 (1st Dept. 2019)).

16. Based upon the foregoing, the District respectfully requests that this Court grant the District's motion to compel in its entirety.

17. As demonstrated above, a good faith effort has been made by the District to avoid motion practice, but Plaintiff's repeated failure to provide the District with the requested responses made this motion necessary.

18. For these reasons, it is respectfully requested that this Court order Plaintiff to provide the District with the requested discovery responses within twenty (20) days pursuant to CPLR Rule 3124. It is also requested that this Court enter an Order conditionally precluding Plaintiff from submitting any evidence at trial, and dismissing

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