

Juan C. Cervantes, Esq. (NJID #214042017)
MAGGS McDERMOTT & DICICCO, LLC
Allaire Corporate Center
3349 Highway 138
Building C, Suite D
Wall, New Jersey 07719
732-223-9870 T
732-223-7367 F
Attorneys for Plaintiff
Our File No: 5820.0001

SINCERRAE ROSS,

Plaintiff

vs.

CITY OF BAYONNE, et als,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY

DOCKET NO.: HUD-L-1625-20

Civil Action

**ORDER STRIKING DEFENDANTS'
ANSWER WITH PREJUDICE AND
ENTERING DEFAULT JUDGMENT**

This matter having been opened to the Court by Maggs McDermott & DiCicco, LLC, attorneys for the Plaintiff, Sincerrae Ross, appearing, in the presence of/on notice to all parties and/or their respective counsel of record, for an Order striking Defendants' Answer and Affirmative Defenses with Prejudice and entering Default Judgment, and for good cause having been shown;

IT IS on this _____ day of _____, 2023,

ORDERED that the Answers and Defenses of all Defendants, shall be and hereby is stricken with prejudice for violation of prior Court Orders for a failure to appear for depositions pursuant to Rule 4:23-2(b)(3); and it is

FURTHER ORDERED that Default Judgment on the issue of liability, shall be and hereby is entered in favor of Plaintiff and against all Defendants; and it is

FURTHER ORDERED that this matter, shall be and hereby is scheduled for a proof hearing on the issue of damages to commence on the _____ day of _____, 2023; and it is

FURTHER ORDERED that a true copy of this Order be served upon any party who does not receive an electronic notice of this filing within _____ days from the date hereof.

J.S.C.

____ Opposed
____ Unopposed

Juan C. Cervantes, Esq. (NJID #214042017)
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732-223-9870 T
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Attorneys for Plaintiff
Our File No: 5820.0001

FILED

DEC 05 2022

KIMBERLY ESPINALES-MALONEY, J.S.C.

SINCERRAE ROSS,

Plaintiff

vs.

CITY OF BAYONNE, et als,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY

DOCKET NO.: HUD-L-1625-20

Civil Action

**ORDER TO COMPEL DEFENDANTS'
DEPOSITION**

This matter having been opened to the Court by Maggs McDermott & DiCicco, LLC, attorneys for the Plaintiff, Sincerrae Ross, appearing, in the presence of/on notice to all parties and/or their respective counsel of record, and for good cause and exceptional circumstances having been shown, for an Order extending the discovery end date, and for good cause having been shown;

IT IS on this 5th ~~2nd~~ day of December , 2022,

ORDERED that the Answers and Defenses of all Defendants, shall be and hereby is stricken **without prejudice** for failure to comply with Court Orders and appear for depositions pursuant to Rule 4:23-2(b)(3); ~~or it is alternatively~~

~~**ORDERED** that the individual Defendants shall and hereby are directed to appear and attend depositions no later than February 1, 2023, without further delay, adjournment or rescheduling; and it is~~

~~**FURTHER ORDERED** that the discovery period be and hereby is re-opened and the~~

discovery end date be and hereby is extended to February 19, 2023; and it is

~~**FURTHER ORDERED** that the Parties are to complete the following discovery matters within the following time periods:~~

<u>Item</u>	<u>Completion Date</u>
A. Depositions of Defendants by	02/01/2023
B. Depositions of all witnesses by	02/01/2023
C. Discovery End Date	02/19/2023

~~**FURTHER ORDERED** that the trial scheduled for December 5, 2022 is adjourned until discovery has been completed; and it is~~

FURTHER ORDERED that a true copy of this Order be served upon any party who does not receive an electronic notice of this filing within 7 days from the date hereof.

Kimberly Espinales-Maloney
Kimberly Espinales-Maloney, J.S.C.

Opposed
 Unopposed

Primary relief to strike is granted for failure to comply with the deadlines provided by Judge Turula's Order of September 9th Order extending discovery to November 21st in violation of Rule 4:23-2(b)(3) and the reasons set forth on the record today. This is a Track 3 case with 934 days of discovery and a trial date set. Alternative relief denied as moot as well as not meeting the required filing of the request to extend based on exceptional circumstances with the Presiding Judge as required by the Court Rules 4:24-1(c).

Juan C. Cervantes, Esq. (NJID #214042017)
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 Wall, New Jersey 07719
 732-223-9870 T
 732-223-7367 F
 Attorneys for Plaintiff
 Our File No: 5820.0001

FILED**SEP 9, 2022****JOSEPH A. TURULA, P.J. Cv.**

SINCERRAE ROSS,

Plaintiff

vs.

CITY OF BAYONNE, et als,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY

DOCKET NO.: HUD-L-1625-20

Civil Action

**ORDER TO COMPEL DEFENDANTS'
DEPOSITION AND EXTEND
DISCOVERY FOR 60 DAYS**

Trial date remains

This matter having been opened to the Court by Maggs McDermott & DiCicco, LLC, attorneys for the Plaintiff, Sincerrae Ross, appearing, in the presence of/on notice to all parties and/or their respective counsel of record, and for good cause and exceptional circumstances having been shown, for an Order extending the discovery end date, and for good cause having been shown;

IT IS on this 9th day of September, 2022,

ORDERED that the individual Defendants shall and hereby are directed to appear and attend depositions no later than October 31, 2022, without further delay, adjournment or rescheduling; and it is

FURTHER ORDERED that in the event Defendants fail to appear and attend the depositions by October 31, 2022, Plaintiff may move to bar/strike Defendants' Answer in its entirety upon proper application to the Court; and it is

FURTHER ORDERED that the discovery end date be and hereby is extended to November

21, 2022; and it is

FURTHER ORDERED that the Parties are to complete the following discovery matters within the following time periods:

<u>Item</u>	<u>Completion Date</u>
A. Depositions of Defendants by	10/31/2022
B. Depositions of all witnesses by	10/31/2022
C. Plaintiff's expert report by	10/17/2022 11/01/2022
D. Defendant's expert report	11/21/2022
E. Discovery End Date	11/21/2022

~~**FURTHER ORDERED** that the trial scheduled for December 5, 2022 is adjourned until discovery has been completed, and it is~~

FURTHER ORDERED that a true copy of this Order be served upon any party who does not receive an electronic notice of this filing within 7 days from the date hereof.


 Joseph A. Turula P.J.Cv.

Opposed
 Unopposed

Granted. Pursuant to R. 4:24-1(c), the Court finds exceptional circumstances exist to permit the listed discovery to be completed by the corresponding dates. The discovery end date is extended to November 21, 2022, at which point this track 3, Law Against Discrimination case will have 934 days of discovery.

Trial Remains.

Any further requests to extend discovery must be made by formal motion.

No additional discovery, other than listed herein, is permitted without leave of court.

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Telephone: (732) 223-9870
Facsimile: (732) 223-7367
Attorneys for Plaintiff
Our File Number: 5820.0001

SINCERRAE ROSS,	:	SUPERIOR COURT OF NEW
	:	JERSEY
Plaintiff,	:	LAW DIVISION
	:	HUDSON COUNTY
v.	:	DOCKET NUMBER: HUD-L-1625-20
	:	
CITY OF BAYONNE, et als	:	Civil Action
	:	
Defendants	:	NOTICE OF ORAL DEPOSITION
	:	

TO: Via E-Mail
sboraske@floriolaw.com
Stephen J. Boraske, Esquire
FLORIO PERRUCCI STEINHARDT CAPELLI TIPTON & TAYLOR, LLC
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths VIA ZOOM with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following persons whose testimony is to be taken on the following dates and times:

- James M. Davis April 18th at 10:00 a.m.
- Joseph DeMarco April 18th at 2:00 p.m.

- John Coffey April 19th at 10:00 a.m.
- Linda Vanderweeden April 19th at 2:00 p.m.

- Ellen Rickard April 20th at 10:00 a.m.
- Terrence Malloy April 20th at 12:00 p.m.
- Donna Russo April 20th at 2:00 p.m.

MAGGS McDERMOTT & DiCICCO, LLC
Attorneys for Plaintiff

s/ Juan C. Cervantes

BY:

JUAN C. CERVANTES

DATED: March 23, 2023

JCC/mo

cc: State Shorthand Reporting Service (Via E-Mail ssrs@stateshorthand.com)

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO. HUD-L-1625-20

SINCERRAE ROSS,

Plaintiff,

v.

CITY OF BAYONNE, et al.

Defendants.

)
)
)
)
) DEPOSITION OF:
)
) LINDA
) VANDERWEEDEN
)
)
)

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter, as
taken by and before Colleen A. Brown, a Registered
Professional Reporter, Certified Court Reporter of
the State of New Jersey, held Virtually, on
Wednesday, April 19, 2023, commencing at 2:05 p.m.

1 identification.)

2 Q. And then I'll have some questions about
3 it.

4 All right. So I'm just going to start
5 it, the video's concluded. So my first question,
6 right in the middle of the screen, is that Sincerrae
7 sitting at her computer desk?

8 A. Yes.

9 Q. There's another desk to the right of
10 her. Who's sitting there?

11 A. That is --

12 MR. BORASKE: I'm just going to object
13 to the form of this -- of the questioning for the
14 video due to --

15 MR. CERVANTES: I can set some
16 foundation.

17 Ms. Vanderweeden, do you recognize this
18 video?

19 A. I do.

20 Q. In the top, left corner of the video,
21 there's a date of January 27th, 2018. Does this
22 video accurately reflect an incident that occurred on
23 that date?

24 A. It does.

25 Q. Do you need more than that?

1 MR. BORASKE: I'm going to maintain the
2 objection, again, for form, for foundation.

3 But, certainly, the witness can answer
4 your questions, Juan.

5 Q. So that's Sincerrae in the middle of the
6 scene, as you said. Who's in the desk to the right
7 of her?

8 A. It's Veronica Smith.

9 Q. And then there's someone at the copy
10 machine in the bottom, right corner of the screen.
11 Who is that?

12 A. Maggie D'Orio.

13 Q. There are two individuals at the desk.
14 Are those residents of the City of Bayonne?

15 A. I don't know if they're residents.
16 They're customers.

17 Q. Okay.

18 A. Can we have two minutes, please?

19 Q. Yes.

20 MR. CERVANTES: I need to inform you,
21 though.

22 A. I need -- I need to -- I need a break.

23 MR. CERVANTES: I know.

24 Q. Just real quick. For purposes of rules
25 of the deposition, during the break, you're not

1 allowed to talk about the deposition, or the
2 substance --

3 A. That's fine. I need to get air. I
4 really need to get air.

5 (Recess.)

6 MR. CERVANTES: Earlier we went on
7 break, as requested by the witness. During the
8 break, it was realized that the witness will be
9 unable to complete the deposition today. So I'm
10 going to reserve to reschedule her deposition at a
11 later date. And this time we're going to conclude
12 the deposition of -- or I should say not conclude,
13 suspend the deposition of Linda Vanderweeden on
14 today's date.

15 Steve, I don't know if there's anything
16 you want to add to that.

17 MR. BORASKE: No. I think that covers
18 it.

19 The witness is unable, a health
20 emergency, and we understand that the deposition
21 isn't concluded. So we will pick it up and hope that
22 our witness is feeling better as soon as we can.

23 So I'm going to sign off. Thank you.

24 (The deposition adjourned at 3:22 p.m.)

25

CERTIFICATE

1
2 I, Colleen A. Brown, a Registered Professional
3 Reporter and Certified Court Reporter of the State of
4 New Jersey, authorized to administer oaths pursuant
5 to R.S. 41:2-2, do hereby certify that prior to the
6 commencement of the examination, LINDA VANDERWEEDEN
7 was duly sworn by me to testify the truth, the whole
8 truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a
10 true and accurate transcript of the testimony as
11 taken stenographically by and before me at the time,
12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a
14 relative nor employee nor attorney nor counsel of any
15 of the parties to this action, and that I am neither
16 a relative nor employee of such attorney or counsel,
17 and that I am not financially interested in the
18 action.

19
20
21 COLLEEN A. BROWN, CCR, RPR
22 License No. 30X100214500
23 ID No. 830937

24 Dated: May 11, 2023
25

Juan C. Cervantes, Esquire - 214042017

MAGGS McDERMOTT & DiCICCO, LLC

Allaire Corporate Center
3349 Highway 138
Building C, Suite D Wall,
NJ 07719

Telephone: (732) 223-9870

Facsimile: (732) 223-7367

Attorneys for Plaintiff

Our File Number: 5820.0001

		: SUPERIOR COURT OF NEW
SINCERRAE ROSS,	:	JERSEY
	:	LAW DIVISION
Plaintiff,	:	HUDSON COUNTY
v.	:	DOCKET NUMBER: HUD-L-1625-20
	:	
CITY OF BAYONNE, et als	:	Civil Action
	:	
Defendants	:	NOTICE OF ORAL DEPOSITION

TO: Via E-Mail
sboraske@floriolaw.com Stephen
 J. Boraske, Esquire
 FLORIO PERRUCCI STEINHARDT CAPELLI TIPTON & TAYLOR, LLC
 1010 Kings Highway S, Building 2 Cherry
 Hill, NJ 08034

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths VIA ZOOM with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following persons whose testimony is to be taken on the following dates and times:

- Continuation of Linda Vanderweeden: 5/23 at 10:00 am
- Jane Rickard: 5/23 at 2:00 pm
- Terrence Malloy: 5/24 at 10:00 am
- James Davis: 5/24 at 2:00 pm
- Veronica Smith: 5/25 at 10:00 am
- Danielle Bielauskas: 5/25 at 12:00 pm
- Susan Wojtkowski: 5/25 at 2:00 pm

MAGGS McDERMOTT & DiCICCO, LLC
Attorneys for Plaintiff

s/ Juan C. Cervantes

BY: _____
JUAN C. CERVANTES

DATED: May 11, 2023

JCC/mo

cc: State Shorthand Reporting Service (Via E-Mail ssrs@stateshorthand.com)

Juan C. Cervantes, Esquire - 214042017

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Attorneys for Plaintiff

Our File Number: 5820.0001

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SINCERRAE ROSS,	:	JERSEY
	:	LAW DIVISION
Plaintiff,	:	HUDSON COUNTY
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- Continuation of Linda Vanderweeden: 6/27 at 10:00 am
- Jane Rickard: 6/27 at 2:00 pm
- Terrence Malloy: 6/28 at 10:00 am
- James Davis: 6/28 at 2:00 pm
- Veronica Smith: 6/29 at 10:00 am
- Danielle Bielauskas: 6/29 at 12:00 pm
- Susan Wojtkowski: 6/29 at 2:00 pm

MAGGS McDERMOTT & DiCICCO, LLC
Attorneys for Plaintiff

s/ Juan C. Cervantes

BY: _____
JUAN C. CERVANTES

DATED: June 9, 2023

JCC/mo

cc: State Shorthand Reporting Service (Via E-Mail ssrs@stateshorthand.com)

**LAW OFFICES OF
FORMAN, CARDONSKY & TSINMAN, LLC**
2353 St. Georges Avenue, Rahway, NJ 07065
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LOUIS L. FORMAN (1929-1996)
SAMUEL TSINMAN
JUAN C. CERVANTES*

*ALSO MEMBER of Pa. BAR
OF COUNSEL
ROBERT J. CARDONSKY
PATRICIA A. EIGES

February 18, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Monday, February 28th for virtual depositions.

Linda Vanderweeden at 10:00 AM
Veronica Smith at 11:30 AM
Danielle Bielauskas at 2:00 PM; and
Susan Wojtkowski at 3:30 PM AM

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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February 18, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Tuesday, March 1st for virtual depositions.

**Mayor James Davis at 1:00 PM; and
Joseph DeMarco at 3:00 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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February 18, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Wednesday, March 2nd for virtual depositions.

**John Coffey at 12: 00 PM; and
Donna Russo at 2:00 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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February 18, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Tuesday, March 8th for virtual depositions.

**Jane Rickard at 10: 00 AM,
Robert Kubert at 11:30 AM,
Deborah Falciani at 2: 00 PM, and
Terrence Malloy at 3:30 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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JUAN C. CERVANTES*

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PATRICIA A. EIGES

June 15, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Monday, July 11, 2022 for virtual depositions.

**Jane Rickard at 10:00 AM,
Robert Kubert at 11:30 AM,
Deborah Falciani at 2:00 PM, and
Terrence Malloy at 3:30 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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June 15, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Tuesday, July 12, 2022 for virtual depositions.

**John Coffey at 12: 00 PM; and
Donna Russo at 2:00 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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June 15, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Wednesday, July 13, 2022 for virtual depositions.

**Mayor James Davis at 1:00 PM; and
Joseph DeMarco at 3:00 PM**

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

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June 15, 2022

Via email
Stephen J. Boraske, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

RE: Ross v. City of Bayonne, et als.

Dear Mr. Boraske:

With regard to the above matter and in lieu of a more formal notice for deposition, would you kindly produce the following on Thursday, July 14, 2022 for virtual depositions.

Linda Vanderweeden at 10:00 AM
Veronica Smith at 11:30 AM
Danielle Bielauskas at 2:00 PM; and
Susan Wojtkowski at 3:30 PM AM

Kindly mark your calendar accordingly.

Very truly yours
Forman, Cardonsky & Tsinman, LLC

/s/ Juan C. Cervantes
Juan C. Cervantes, Esq.
JC/jt

Juan C. Cervantes, Esquire - 214042017
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Allaire Corporate Center
3349 Highway 138
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Attorneys for Plaintiff
Our File Number: 5820.0001

SINCERRAE ROSS,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	HUDSON COUNTY
v.	:	DOCKET NUMBER: HUD-L-1625-20
	:	C i v i l A c t i o n
CITY OF BAYONNE, et als	:	NOTICE OF ORAL DEPOSITION
Defendants	:	

TO: Via E-Mail sboraske@floriolaw.com
Stephen J. Boraske, Esquire
FLORIO PERRUCCI STEINHARDT CAPELLI TIPTON & TAYLOR, LLC
1010 Kings Highway S, Building 2
Cherry Hill, NJ 08034

PLEASE TAKE NOTICE that in accordance with the Rules of Civil Practice and Procedure, testimony will be taken by deposition upon oral examination before a person authorized by the laws of the State of New Jersey to administer oaths VIA ZOOM with respect to all matters relevant to the subject matter involved in this action, at which time and place you will please produce the following persons whose testimony is to be taken on the following dates and times:

- James M. Davis October 25th at 10:00 a.m.
- Joseph DeMarco October 25th at 2:00 p.m.

- John Coffey October 26th at 10:00 a.m.
- Linda Vanderweeden October 26th at 2:00 p.m.

- Ellen Rickard October 27th at 10:00 a.m.
- Terrence Malloy October 27th at 12:00 p.m.
- Donna Russo October 27th at 2:00 p.m.

MAGGS McDERMOTT & DiCICCO, LLC
Attorneys for Plaintiff

s/ Juan C. Cervantes

BY:

JUAN C. CERVANTES

DATED: October 11, 2022

cc: State Shorthand Reporting Service (Via E-Mail ssrs@stateshorthand.com)

FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR, LLC

By: Stephen J. Boraske, Esquire (172292015)

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FILED

DEC 05 2022

KIMBERLY ESPINALES-MALONEY, J.S.C.

Attorney(s) for Defendants, City of Bayonne, James Davis, Joseph DeMarco, Leen (Jane) Rickard, Robert Kubert, John Coffey, Esq., Donna Russo, Deborah (Lynn) Steneck, Josephine Spagnola, Linda Vanderweeden, Veronica Smith, Danielle Bielauskas, Susan Wojtkowski, Deborah Falciani, Sharon Ashe-Nadrowski, Juan Perez, Janet Convery, Genny Michane, Brian Della Bella, Terrence Malloy and William Weaver (collectively, the "Bayonne Defendants")

SINCERRAE ROSS,

Plaintiff,

v.

CITY OF BAYONNE, JAMES M. DAVIS,
JAMES M. DAVIS, ET AL.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, HUDSON COUNTY

DOCKET NO: HUD-L- 1625-20

Civil Action

**ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE AND GRANTING
BAYONNE DEFENDANTS' CROSS-
MOTION TO QUASH AND/OR FOR A
PROTECTIVE ORDER REGARDING
THE DEPOSITIONS OF DAVIS,
COFFEY, RUSSO, VANDERWEEDEN,
DEMARCO, RICKARD, AND MALLOY**

THIS MATTER having come before the Court by Plaintiff Sincerrae Ross's ("Plaintiff") Motion to Strike Defendants' Answer and Affirmative Defenses, or Alternatively Re-Open and Extend Discovery for 90 Days ("Plaintiffs' Motion"), and further by the Bayonne Defendants' Cross-Motion to Quash and/or For a Protective Order Regarding the Notice of Oral Deposition to Defendants James Davis ("Davis"), John Coffey ("Coffey"), Dona Russo ("Russo"), Linda Vanderweeden ("Vanderweeden"), Joseph DeMarco ("DeMarco"), Ellen Rickard ("Rickard"), and Terrence Malloy ("Malloy") ("Defendants' Cross-Motion"), and the Court having considered the papers submitted herein, ~~and for good cause shown,~~

IT IS HEREBY ORDERED this ___5th___ day of __December___, 2022 as follows:

~~1. Plaintiff's Motion is hereby DENIED to the extent Plaintiff seeks to strike the Bayonne Defendants' Answer and Affirmative Defenses.~~

~~2. The Bayonne Defendants' Cross Motion is hereby GRANTED. Plaintiff's Notices of Oral Deposition to Davis, Coffey, Russo, Vanderweeden, DeMarco, Rickard, and Malloy are improper as a matter of law and are hereby QUASHED and DISMISSED. Plaintiff's Motion is further DENIED to the extent Plaintiff seeks to compel the oral depositions of Davis, Coffey, Russo, Vanderweeden, DeMarco, Rickard, and Malloy.~~

~~In the alternative,~~

~~2. The Bayonne Defendants' Cross Motion is hereby GRANTED. Plaintiff's Notices of Oral Deposition to Davis, Coffey, Russo, Vanderweeden, DeMarco, Rickard, and Malloy are hereby QUASHED pursuant to R. 1:9-2. Plaintiff's Motion is further DENIED to the extent Plaintiff seeks to compel the oral depositions of Davis, Coffey, Russo, Vanderweeden, DeMarco, Rickard, and Malloy.~~

~~In the alternative,~~

2. The Bayonne Defendants' Cross-Motion is hereby GRANTED to the extent the Bayonne Defendants' seek a protective order limiting Plaintiff's Notices of Oral Deposition to Davis, Coffey, Russo, Vanderweeden, DeMarco, Rickard, and Malloy pursuant to R. 4:10-3.

~~3. Plaintiff's Motion is hereby GRANTED to the extent Plaintiff seeks to reopen discovery, extend the discovery end date to February 19, 2023, and adjourn the trial date in this matter until after discovery is completed.~~

~~IT IS FURTHER ORDERED~~ that the discovery period be and hereby is reopened and the new discovery end date shall be ~~February 19, 2023~~; and

~~IT IS FURTHER ORDERED~~ that the Parties are to complete the following discovery matters within the following time periods:

<u>ITEM</u>	<u>COMPLETION DATE</u>
A. Depositions of Defendants by	02/01/2023
B. Depositions of all witnesses by	02/01/2023
C. Discovery end date	02/19/2023

~~IT IS FURTHER ORDERED~~ that the trial in this matter is hereby adjourned until discovery has been completed.

Kimberly Espinales-Maloney
 Hon. Kimberly Espinales-Maloney, J.S.C.

This Order has been uploaded by the Court to the eCourts case jacket. Counsel for the moving party shall serve a copy of this Order on any party who did not receive an electronic notice of this filing within 7 days of the entry of this motion. Motion granted in part and denied in part for the reasons set forth on the record today.

Juan C. Cervantes, Esq. (NJID #214042017)
MAGGS McDERMOTT & DICICCO, LLC
Allaire Corporate Center
3349 Highway 138
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Wall, New Jersey 07719
732-223-9870 T
732-223-7367 F
Attorneys for Plaintiff
Our File No: 5820.0001

SINCERRAE ROSS,

Plaintiff

vs.

CITY OF BAYONNE, et als,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY

DOCKET NO.: HUD-L-1625-20

Civil Action

**NOTICE OF MOTION TO STRIKE
DEFENDANTS' ANSWER WITH
PREJUDICE AND ENTER JUDGMENT
BY DEFAULT**

TO: Stephen J. Boraske, Esq.
FLORIO PERRUCCI STEINHARDT CAPELLI TIPTON & TAYLOR, LLC
1010 Kings Highway S – Bldg. 2
Cherry Hill, NJ 08034
Attorney for Defendants

SIRS:

PLEASE TAKE NOTICE that on Friday, July 21, 2023 at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorneys for the Plaintiff, Sincerrae Ross, shall apply to the Superior Court of New Jersey, Law Division at the Hudson County Courthouse, Jersey City, New Jersey, for a Court Order striking Defendants' Answer and Affirmative Defenses with Prejudice and Entering Judgment by Default against Defendants pursuant to Rule 4:23-2(b)(3).

PLEASE TAKE FURTHER NOTICE that the Plaintiff shall rely upon the supporting Certification, Proof of Service and proposed form of Order.

Pursuant *to Rule 1:6-2 (c)*, the undersigned:

- () requests oral argument;
- () waives oral argument and consents to the disposition on the papers;
- (X) does not request oral argument at this time; however, should this motion be opposed, oral argument will be requested.

I HEREBY CERTIFY that copies of the within Notice of Motion, supporting Certification, within Proof of Service and proposed form of Order were duly served upon all parties in the within matter.

MAGGS McDERMOTT & DICICCO, LLC
Attorneys for Plaintiff

By: /s/ Juan C. Cervantes
JUAN C. CERVANTES, ESQ.

Dated: June 30, 2023

CERTIFICATION OF CALENDAR

I certify that the calendar status to the best of my knowledge is:

Trial date	(X) 10-24-2023
Pre-Trial:	(X) None Set
Trial Readiness Conference	(X) None Set
Settlement Conference Date	(X) None Set
Calendar Call Date	(X) None Set
Arbitration	(X) None Set

MAGGS McDERMOTT & DICICCO, LLC
Attorneys for Plaintiffs

By: /s/ Juan C. Cervantes
JUAN C. CERVANTES, ESQ.

Dated: June 30, 2023

PROOF OF SERVICE

I certify that the within Notice of Motion, supporting Certification, Proof of Service and proposed form of Order have been properly filed and served via *e-courts* filing with the Superior Court of New Jersey/Hudson County Vicinage with true and correct copies thereof having been properly served via *e-courts* filing upon all counsel and/or parties of record:

Stephen J. Boraske, Esq.
FLORIO PERRUCCI STEINHARDT CAPELLI TIPTON & TAYLOR, LLC
1010 Kings Highway S – Bldg. 2
Cherry Hill, NJ 08034
Attorney for Defendants

MAGGS McDERMOTT & DICICCO, LLC
Attorneys for Plaintiffs

By: /s/ Juan C. Cervantes
JUAN C. CERVANTES, ESQ.

Dated: June 30, 2023

Juan C. Cervantes, Esq. (NJID #214042017)
MAGGS McDERMOTT & DICICCO, LLC
Allaire Corporate Center
3349 Highway 138
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Wall, New Jersey 07719
732-223-9870 T
732-223-7367 F
Attorneys for Plaintiff
Our File No: 5820.0001

SINCERRAE ROSS,

Plaintiff

vs.

CITY OF BAYONNE, et als,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : HUDSON COUNTY

DOCKET NO.: HUD-L-1625-20

Civil Action

ATTORNEY CERTIFICATION

JUAN C. CERVANTES, of full age, being duly sworn according to law, upon oath deposes and says:

1. I am an attorney at law of the State of New Jersey and am entrusted with the handling of the within matter, and fully familiar with the facts therein.
2. The initial Complaint in this matter was filed on December 6, 2019, in Essex County and subsequently moved to Hudson County.
3. Defense counsel on behalf of all Defendants filed an Answer on May 1, 2020.
4. The trial date in this matter is October 24, 2023.
5. On December 5, 2022, this Court entered an Order striking the Answers and Defenses of all Defendants without prejudice for failure to comply with Court Orders and appear for depositions pursuant to Rule 4:23-2(b)(3). See Court Order dated December 5, 2022, attached hereto as **Exhibit A**.
6. Previously, on September 9, 2022, this Court entered an Order which compelled the deposition of Defendants pursuant to R. 4:23-5(c), and stated “that in the event Defendants

fail to appear and attend the depositions by October 31, 2022, Plaintiff may move to bar/strike Defendants' Answer in its' entirety upon proper application to the Court[.]” See Court Order dated September 9, 2022, attached hereto as **Exhibit B**.

7. On March 23, 2023, this Firm forwarded a Notice of Oral Deposition to defense counsel via email and regular mail, scheduling depositions of seven individual Defendants over the course of the dates April 18, 2023, April 19, 2023 and April 20, 2023. See Notice of Oral Deposition dated March 23, 2023, attached hereto as **Exhibit C**.

8. Depositions of three individual Defendants were completed on April 18, 2023, and April 19, 2023; the deposition of individual Defendant Linda Vanderweeden began on April 19, 2023, however the deposition was suspended when the witness did not return from a break she requested after being shown a video of an incident that occurred between her and the Plaintiff. See Deposition Transcript of Linda Vanderweeden, attached hereto as **Exhibit D**.

9. Counsel for Defendants indicated that Defendant Vanderweeden had a “health emergency,” but no further information has since been provided. See **Exhibit D**.

10. Thereafter, counsel for Defendants advised that the three witnesses that were scheduled to appear on April 20, 2023, would be unavailable to sit for depositions.

11. On May 11, 2023, this Firm forwarded a Notice of Oral Deposition to defense counsel via email and regular mail, scheduling depositions of six individual Defendants, as well as the continuation of the deposition of Defendant Vanderweeden, over the course of the dates May 23, 2023, May 24, 2023, and May 25, 2023. See Notice of Oral Deposition dated May 11, 2023, attached hereto as **Exhibit E**.

12. Prior to May 23, 2023, counsel for Defendants advised that none of the noticed Defendants would appear for depositions. No exceptional circumstances were provided for

Defendants' unavailability.

13. On June 9, 2023, this Firm forwarded a Notice of Oral Deposition to defense counsel via email and regular mail, scheduling depositions of six individual Defendants, as well as the continuation of the deposition of Defendant Vanderweeden, over the course of the dates June 27, 2023, June 28, 2023, and June 29, 2023. See Notice of Oral Deposition dated June 9, 2023, attached hereto as **Exhibit F**.

14. Counsel for Defendants, without providing exceptional circumstances, advised that none of the noticed Defendants would appear for deposition on these dates.

15. Perhaps most egregiously, on each day prior to the date of scheduled depositions the undersigned was not informed that no Defendants intended to appear until after 4:30 p.m., despite the undersigned requesting confirmation in the morning.

16. It is believed that the delay in informing the undersigned until late in the day was an underhanded tactic to further frustrate the Plaintiff while demonstrating Defendants' complete lack of indifference to this matter.

17. Notably, Plaintiff was deposed over a year ago on March 30, 2022.

18. Defendants have been sent notices for depositions on six different occasions. See **Exhibit C**, **Exhibit E**, and **Exhibit F**; see also Notices for Deposition dated February 18, 2022, and June 15, 2022, attached hereto as **Exhibit G**; see also Notice of Oral Deposition dated October 11, 2022, attached hereto as **Exhibit H**.

19. In order to avoid having certain Defendants give deposition testimony, including Bayonne Mayor James Davis who previously had an application to quash his deposition notice denied (see Order for Protective Order dated December 5, 2022, attached hereto as **Exhibit I**), Defendants have continually interfered with Plaintiff's right to obtain Defendants' depositions by

adjourning and refusing to appear for depositions, even when such conduct has constituted a violation of Court Orders.

20. During the pendency of this action the undersigned has repeatedly attempted to amicably cooperate with Defendants; however, the same cannot be said of Defendants, who appear steadfast in their effort to make a mockery of Plaintiff, Plaintiff's counsel and the Court through their continued failure to comply with Plaintiff's Notices for Oral Depositions and Court Orders.

21. It is respectfully submitted that Defendants are out of opportunities to make amends for their conduct.

22. Accordingly, in the interests of justice, Plaintiff requests the ultimate sanction of Defendants' Answer and Affirmative Defenses being stricken with prejudice and Default Judgment being entered against Defendants and in favor of Plaintiff, in accordance with Rule 4:23-2(b)(3), due to continued failure of Defendants to appear for deposition subsequent to the Court Order dated December 5, 2022, which struck Defendants' Answer and Affirmative Defenses without prejudice for failure to comply with previous a Court Order compelling their depositions.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

MAGGS McDERMOTT & DICICCO, LLC
Attorneys for Plaintiffs

By: /s/ Juan C. Cervantes
JUAN C. CERVANTES, ESQ.

Dated: June 30, 2023

