Court File No.

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

[ ]

Plaintiffs

- and -

[ ] and [ ]

Defendants

**MOTION RECORD**

February xx, 2022

TO:

Solicitors for the Defendant

Court File No.

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

[ ]

Plaintiffs

- and -

[ ] and [ ]

Defendants

**NOTICE OF MOTION**

The Plaintiffs will make a motion to a judge on April 1, 2022, at 9:30 a.m. or as soon after that time as the motion can be heard at the court house, 114 Worsley Street, Barrie, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard *(choose appropriate option)*

[ ] in writing under subrule 37.12.1(1) because it is (insert one of on consent, unopposed or made without notice);

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

**THE MOTION IS FOR** *(state here the precise relief sought).*

* 1. An Order that the defendant answer the outstanding undertakings and refusals set out on Schedule "A" within thirty (30) days of the Order or such other period as this Honourable Court may direct;
  2. The costs of this motion;
  3. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE** *(specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on).*

* 1. This action arises out of a motor vehicle accident which occured on or about June 5, 2019;
  2. On January 19, 2021, the Defendant attended at an examination for discovery;
  3. The Defendant refused to answer numerous questions and has failed to answer a number of significant undertakings, including;
     1. The hospital records from the night of the accident, including statements provided to medical staff and blood work;
     2. Cell phone records from the hour before until the hour after the accident;
     3. Social media records from three years pre-accident to date.
  4. The Plaintiff cannot make an informed decision as to whether or not the statement of claim needs to be amended to plead additional damages without production of this information;
  5. The Plaintiff cannot proceed to a Pre-Trial Conference or to trial until such time as the Defendant provides the answers to all undertakings and refusals;
  6. Rules 31 and 34.15 of the *Rules of Civil Procedure*;
  7. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion *(list the affidavits or other documentary evidence to be relied on).*

* 1. The pleadings exchanged in this proceeding;
  2. The affidavit of Jane Poole sworn;
  3. Transcripts of the Examination for Discovery of the Defendant
  4. Schedule “A” Refusals and Undertakings Chart dated June 20, 2021;
  5. Such further and other evidence as counsel may advise and this Honourable Court permit.

August 14, 2006 **Plaintiff Firm**

Solicitors for the Plaintiffs

TO:

Court File No. CV-21-0068945-0000

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

[ ]

Plaintiffs

- and -

[ ] and [ ]

Defendants

**AFFIDAVIT OF JANE POOLE**

I, Jane Poole, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate with the law firm of Justitia LLP the solicitors for the Plaintiffs and, as such, have knowledge of the matters contained in this affidavit. Where I rely upon information and belief I state the source of said information and belief.
2. The main issues in this legal proceeding relate to a claim arising out of a motor vehicle accident June 5, 2019.
3. On January 19, 2021 the Defendant, attended at an examination for discovery.
4. At the examination for discovery, he provided a number of undertakings and refusals. Attached to my affidavit and marked as **Exhibit "A"** is a list of the outstanding undertakings and refusals. Broadly, these undertakings and refusals relate to:
   1. The hospital records from the night of the accident, including statements provided to medical staff and blood work;
   2. Cell phone records from the hour before until the hour after the accident;
   3. Social media records from three years pre-accident to date.
5. By letter dated August 15, 2021, Nanse Maat, the counsel with carriage of this file, sent a list of undertakings and refusals to the counsel for the defendant, requesting answers to the undertakings and undertakings. Attached to my affidavit and marked as **Exhibit "B"** is a true copy of this letter.
6. By letter dated September 30, 2021, Nanse Maate repeated her request for answers to undertakings and refusals. To date, we have not received a response to these requests. Attached to my affidavit and marked as **Exhibit "C"** is a true copy of this letter.
7. By letter dated November 29, 2021, Nanse Maate repeated her request for answers to undertakings and refusals, and also indicated that this motion would be brought if defence counsel failed to respond in a timely manner. Attached to my affidavit and marked as **Exhibit "C"** is a true copy of this letter.
8. To date, we have not received a response to these requests.
9. I make this affidavit in support of a Motion for the relief set out therein and for no other or improper purpose.

**SWORN BEFORE ME** at the )

City of Toronto, in the )

Province of Ontario )

this 4th day of January, 2022 )

)

Commissioner for Taking Affidavits **JANE POOLE**

Court File No.

**SCHEDULE “A”**

| **Question #** | **Undertaking** | **Response** | **Court Disposition** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

| **Question #** | **Refusal** | **Response** | **Court Disposition** |
| --- | --- | --- | --- |
|  | Hospital Records |  |  |
|  | Cell Phone Records |  |  |
|  | Social Media |  |  |

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

[ ]

Plaintiffs

- and -

[ ] and [ ]

Defendants

**ORDER**

**THIS MOTION**, made by the Plaintiffs for answers to undertakings and refusals was heard this day at Barrie.

**ON READING THE** Motion Record and Affidavit of Jane Poole, sworn and on hearing the submissions of counsel for the parties;

1. **THIS COURT ORDERS** the Defendant to provide answers to all outstanding Undertakings and Refusals as listed in the attached Schedule “A” Refusals and Undertakings Chart, dated June 20, 2021.
2. **THIS COURT FURTHER ORDERS** that the Defendant, shall pay to the Plaintiffs costs in the amount of $2000.00, inclusive of taxes and disbursements, such costs payable forthwith.

*(Signature of judge, officer or registrar)*

Court File No. CV-21-0068945-0000

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

[ ]

Plaintiffs

- and -

[ ] and [ ]

Defendants

# **MOTION RECORD INDEX**

## **TAB DOCUMENT**

1. Notice of Motion returnable April 1, 2022;
2. Statement of Claim issued November 17, 2019;
3. Statement of Defence dated May 18, 2020;
4. Affidavit of Jane Poole, sworn January 4, 2022;
5. Transcript of the Examination for Discovery of the Defendant taken January 19, 2021;
6. Schedule “A” Refusals and Undertakings Chart dated June 20, 2021.