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(emphasis added).

The CMO reiterates plaintiff's obligation to provide answers to interrogatories verified by each individual plaintiff in accordance with the CPLR. Specifically, section VIII (A)(1)(b) orders:

Plaintiffs shall serve upon all defendants in the action responses to defendants' standard set of interrogatories in accordance with the time line set forth herein. The interrogatories **shall** be answered in full and **verified by each individual plaintiff** according to the CPLR.

(emphasis added).

In the present case, Plaintiff served answers to interrogatories that were signed by her attorney, and did not provide answers to interrogatories signed under oath by Anna Sallaberry herself. Answers to interrogatories signed by an attorney rather than by the party under oath are not in compliance with the CPLR and the CMO.

Defendant also requested Plaintiff to provide information related to Cassidy, a fact witness designated by Plaintiff, and represented by Weitz & Luxenberg. These documents include answers to interrogatories, deposition testimony, and bankruptcy proofs of claim. Counsel for Plaintiff refuses to produce the proofs of claim despite the fact that they are not privileged and are prior statements of a testifying witness concerning the matter in question. There is no valid legal basis for such refusal.

As repeatedly held by the courts in New York, these bankruptcy proofs of claim are discoverable. CPLR 3101 provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of any action." New York courts have consistently held that under general civil discovery principles, prior statements of witness that are relevant to the subject matter of expected testimony and which are not privileged are discoverable. *See Barbour v. People*, 163 Misc.2d 321, 620 N.Y.S.2d 892 (Sup. Ct. Kings County 1994) (holding prior statements of a witness would have to be disclosed if they were in actual possession of a party or witness and concerned subject matter of witness' testimony); *Matter of John G.*, 91 A.D.2d 685, 457 N.Y.S.2d 330 (2d Dep't 1982) (holding prior statements of a witness at a separate hearing in another case was discoverable); *People v. Cavallerio*, 71 A.D.2d 338, 344, 422 N.Y.S.2d 691, 695 (1st Dep't 1979) (holding that a witnesses prior statements from an interview were discoverable). Indeed, the New York courts have held that:

[a]ny evidence that will assist in the preparation for trial and is material and useful to the party seeking disclosure should be provided. In particular, a witness' prior statements which are relevant to the subject matter of his or her expected testimony, and are not privileged, should be provided regardless of the form and regardless when made.

*Barbour v. People*, 163 Misc.2d at 325, 620 N.Y.S.2d at 895; *Matter of John G.*, 91 A.D.2d at 685, 457 N.Y.S.2d at 330 (2d Dep't 1982) ("A witness' prior statements which are relevant to subject matter of his or her expected testimony, and are not privileged, should be provided no matter what the form and no matter when made.").

Moreover, it is well settled that proofs of claim are non-privileged admissions, and as such are discoverable. See *Wachtel v. Equitable Life Assur. Soc. Of the United States*, 266 N.Y. 345 (1935) (admitting into evidence proofs of claim as admissions); *Beasley v. Huntly Estates at Asdsley*, 25 Misc. 2d 43, 137 N.Y.S.2d 784 (Sup. Ct. Westchester County 1954), *aff'd*, 285 A.D. 887, 137 N.Y.S.2d 787 (2d Dep't 1955) (holding proofs of claim are “[s]uch papers [that] may be receivable in evidence as admissions”); *Negrepoint v. A.C. & S. (in re NYCAL)*, Index No. 120894/01 (Sup. Ct. N.Y. County December 11, 2003) (Freedman, J.)(holding that while bankruptcy “proofs of claim are partially settlement documents, they are also presumably accurate statements of fact concerning asbestos exposure” and that “[w]hile [proofs of claim] may be filed by the attorneys, the attorneys stand in the shoes of the plaintiffs and an attorney’s statement is an admission under New York law.”); *Malcolm v. A.W. Chesterton Co., et al. (In re EJDAL)*, Index No. 2002/10666 (Sup. Ct. Erie County, January 3, 2006) (Kane, J.) (holding bankruptcy proofs of claim in asbestos cases are discoverable).

I hereby direct counsel for Plaintiff to serve the verified answers to interrogatories by Friday, November 6, 2009. Further, upon receipt of Plaintiff’s verified answers to interrogatories, Defendant may recommence its examination of Anna Sallaberry by deposition upon application to the Special Master and a showing that such re-deposition is necessary.

I further direct counsel for Plaintiff to produce to defendant Dana the bankruptcy proofs of claim of Plaintiff’s designated fact witness, Cassidy, by Friday, November 6, 2009.

	/S/
	Laraine Pacheco, Special Master November 5, 2009