

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU

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MARY JONES,

Index No. 12345/03

Plaintiff,

-against-

**NOTICE OF MOTION
TO PRECLUDE**

JOHN JONES,

Assigned to Justice _____

Defendant.

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S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Willard H. DaSilva, sworn to on March 17, 20__, the notice to take deposition upon oral examination of the defendant dated January 17, 20__, and upon all of the papers, pleadings and proceedings heretofore had herein, the undersigned will move this Court at an I.A.S. Part ____ thereof, to be held at the Supreme Courthouse, Supreme Court Drive, Mineola, New York, on April 14, 20__, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order:

(a) precluding the defendant, unconditionally, from presenting any evidence whatsoever in support of his claims and in opposition to the plaintiff's claims and directing that all issues, financial or otherwise, be deemed resolved for the purpose of this action in accordance with the claims of the plaintiff because of the defendant's arbitrary and inexcusable failure and refusal to appear for his oral deposition in this action pursuant to the said notice of deposition dated January 17, 20__; and

(b) directing the defendant to appear for oral deposition in this action on a day certain pursuant to the said notice to take deposition upon oral examination dated May 12, 20__; and

(c) directing the defendant to produce at his said oral deposition the records and documents set forth in the rider annexed to the said notice to take deposition dated January 17, 20__; and

(d) granting to the plaintiff the full costs of this motion, including an award of the full amount of the plaintiff's counsel fees and expenses, and that the plaintiff have execution therefor; and

(e) granting to the plaintiff such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days prior to the return date of this motion.

Dated: Garden City, New York
March 17, 20__

Yours, etc.

DaSilva, Hilowitz & McEvily LLP
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