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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. RALPH P. FRANCO, Justice

TRIAL/IAS, PART 12

**FRANCIS X. BRANDT and
LIBERTY ORTHOTICS, INC.**

NASSAU COUNTY

Plaintiff(s),

INDEX No.: 010776/01
MOTION SEQ. 1,2,3,4

-against-

**VINCENT BENENATI, LAWRENCE J.
BENENATI, GEORGE PLUMMER,
EAST COAST ORTHOTIC PROSTHETICS
CORPORATION, EAST COAST BRACE
CORPORATION and HI-TECH MEDICAL, INC.**

Defendant(s)

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause..... 1 - 6
- Answering Affidavits.....
- Replying Affidavits.....

Motion (Seq. No. 1) by attorneys' for Defendants', George Plummer and Hi Tech Medical that the causes of action be dismissed against them is **granted**. The causes of action against Defendants', Plummer and Hi Tech Medical are **dismissed without prejudice**.

Cross-motion (Seq. No. 2) by attorney for Plaintiff for an Order pursuant to CPLR 2201, staying the motion to dismiss the complaint against Plummer and Hi Tech Medical is **denied as moot**.

Cross-motion (Seq. No. 3) by attorneys' for non-party witnesses, Jamaica Hospital Medical Center and TJH Medical Services for an Order pursuant to CPLR 2304, quashing Plaintiffs' subpoenas dated **December 4, 2001**, and addressed to Pauline Marks and David Rosen is **granted, without** prejudice to depose Marks and Rosen in the future.

Cross-motion (Seq. No. 4) by attorney for Plaintiff for an Order staying the return date of the motion to dismiss brought on by Defendants', George Plummer and Hi-Tech Medical, Inc., pending the depositions of the subpoenaed non-party witnesses and compelling the subpoenaed non-party witnesses to produce documents and appear for depositions is **denied** without prejudice.

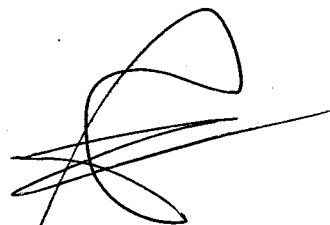
Notwithstanding anything to the contrary, and in accordance with the CPLR, counsel may amend the complaint to add or delete parties' and conduct non-party depositions subsequent to the Preliminary Conference scheduled below and during the discovery stages of this litigation.

A Preliminary Conference (See: 22 NYCRR 202.12) shall be held at the Preliminary Conference Part, located in the lower level of the Supreme Court on **March 27, 2002, at 9:30 A.M.** This

directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require.

Counsel for the Plaintiff shall serve a copy of this Order on all parties. A copy of the Order, with Affidavits of Service, shall be served on the Preliminary Conference Clerk within **eight days after entry.**

Dated: February 28, 2002



Hon. Ralph P. Franco

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ENTERED

MAR 04 2002

**RUSSELL COUNTY
COUNTY CLERKS OFFICE**