

CITATION: Subbarama v. Sleep Country Canada Inc., 2026 ONSC 3735
COURT FILE NO.: CV-22-00003439-0000
DATE: 2026-06-25

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE:

SUBBARAMA, Raman, **Plaintiff**

AND:

SLEEP COUNTRY CANADA INC., **Defendant**

BEFORE: TZIMAS, RSJ

COUNSEL: SUBBARAMA, Raman, Self-Rep, **Plaintiff**
Email: reachbsr@gmail.com

BARRACK, John and WALJI, Adam for the **Defendant**
Email: john@johnbarrack.com, awalji@hhlip.ca

HEARD: May 20, 2026, In Person

ENDORSEMENT

The Motion

- [1] The defendant brought a motion for an order that the court strike the action from the January 2027 trial list and require the plaintiff to produce all relevant mitigation documents within 60 days of a court order, failing which the action ought to be dismissed with prejudice and costs, pursuant to *Rules* 30.08(2)(b) and 60.12 of the *Rules*.
- [2] The defendant submits that the plaintiff's continued non-compliance with his production obligations both under the *Rules*, and as directed by the court endorsement of February 10, 2026 merits and strong and swift response. The defendant says that the plaintiff continues to disregard his disclosure obligations,

especially as they relate to his efforts to reasonably mitigate his alleged damages following his departure from the defendant's employment. Without that documentary foundation the defendant says that it will not be able to satisfy its own burden to prove that the plaintiff failed to mitigate his damages.

- [3] The defendant also seeks costs thrown away on account of trying to get the plaintiff to comply with his obligations and this motion, in the total sum of \$12,500.
- [4] The plaintiff opposes the relief sought. In his views, he "complied with the Court's direction and has provided materials on a rolling basis, including an initial production on March 31, 2026 and supplemental productions thereafter." He contends that the defendant's characterization of the plaintiff's productions as "inadequate" does not reflect the full record of ongoing compliance. In other words, he says that the defendant's request for "broader categories of documents amounts to a disagreement over the scope of the disclosure, rather than a failure to satisfy his disclosure obligations.
- [5] Finally, he argues that the defendant failed to identify any procedural prejudice that could not be addressed through the ongoing production and ordinary trial processes. In the plaintiff's view the defendant's actual difficulty relates to "litigation inconvenience' as opposed to any "material prejudice."
- [6] For the reasons that follow, this motion is dismissed. However, I draw the parties' attention to the specific additional requirements I have imposed on the plaintiff.

Background

- [7] Before I turn to my decision, it is necessary to situate this motion in its proper context. This is a wrongful dismissal action. The plaintiff alleges that he was constructively dismissed from his employment at the defendant. The defendant

says that a central issue in this action will be whether the plaintiff reasonably mitigated his alleged damages.

- [8] During the submissions I learned that there are 6 other related actions concerning the same defendant and plaintiffs who include this plaintiff's wife.
- [9] On further review, I also learned that on May 1, 2025 the defendant bought a motion for a stay of this and the six other actions pending the resolution of a Toronto commercial list action. The motion was dismissed with costs of \$3,500 for each of the seven plaintiffs. I cannot ignore the fact that although the judge on that motion did not make any express finding about the defendant's underlying motive for the motion, she alluded to a "potential inference" that the request for a stay, may have been "a tactic to wear down the employees so that they walk away from their actions."
- [10] On October 20, 2025, a simplified proceeding trial for this action was scheduled for four days, for the week of March 16, 2026. The pre-trial was scheduled for January 20, 2026.
- [11] Two days before the pre-trial, the plaintiff terminated his relationship with his counsel and attended the pre-trial conference as a self-represented litigant.
- [12] At the pre-trial, the defendant's counsel raised concerns about the trial going ahead as planned. He thought that the trial length might exceed the four days set aside for trial if the plaintiff were to represent himself. He also noted that the plaintiff's failure to sign-off on an Agreed Statement of Facts would lengthen the trial. On balance counsel suggested that the only way to manage the noted concerns was to adjourn the trial. The plaintiff thought he might be retaining new counsel, but he opposed the idea of an adjournment. The Associate Judge advised the parties that if they wanted an adjournment, they would have to write to the Regional Senior Judge to make that request.

- [13] The defendant wrote to my office on January 21, 2026 to ask for an adjournment. I scheduled a case management conference for February 10, 2026. At that attendance, I concluded, albeit reluctantly, that a short adjournment, with very strict conditions attached to it was apt in the circumstances. I refer the parties to my endorsement of February 10, 2026 where a detailed timetable was ordered.
- [14] On April 20, 2026, the defendant's counsel wrote to me to advise that the plaintiff had not "meaningfully complied" with his production obligations set for March 31, and asked that the case be struck from the trial list. The defendant sent a further letter on April 30, 2026, advising that the plaintiff's productions remained outstanding and that the case ought to be struck from the trial list.
- [15] In response, I ordered and scheduled a formal motion to be brought, I outlined a timetable, and ultimately, the motion was argued on May 20, 2026. In my May 1, 2026 endorsement, I expressly noted that I expected to receive an explanation *by the defendant* on why the productions were inadequate. I also asked that a Bill of Costs be provided to support the request for costs \$12,500.

ANALYSIS

- [16] In my consideration of the parties' submissions, I find fault with both sides.
- [17] The plaintiff has clearly misunderstood the parameters of my order of February 10, 2026; he is deliberately producing the minimum and seems to be doing so on the misguided view that he is trying to be efficient. He does not understand that it is not in his interest to minimize his disclosure; if his evidence on his mitigation efforts is minimal to non-existent, a trial judge could draw the adverse inference that no mitigation efforts were undertaken. The jeopardy for the plaintiff is very real.
- [18] In his submissions, the plaintiff described his compliance to be a production "on a rolling basis, including initial production on March 31, 2026 and supplemental

productions thereafter.” In his written submissions he refers to “successive productions refining and supplementing the evidentiary record already before the court.” He also raises concerns about the defendant seeking “additional categories of documents beyond those already produced in relation to mitigation. This reflects a disagreement as to scope rather than an absence of disclosure.” Finally, the plaintiff submitted that there was “no specific procedural prejudice” to the defendant “that could not be addressed through ongoing production and ordinary trial processes.” He added that the relief sought was neither necessary nor proportionate in the circumstances.

- [19] My overriding difficulty with these submissions is that *at no time* was the plaintiff given permission by the court to satisfy his disclosure obligations “on a rolling basis.” At paragraph 6 (b) and (c) of my endorsement of February 10, 2026, the plaintiff was given until March 31, 2026 “to produce his mitigation documents and to provide his comments on the Agreed Statement of Facts.” *Nothing* in that language allowed for ongoing or rolling productions.
- [20] While it is true that all parties have an ongoing obligation to update their productions as they become aware of additional relevant documents, they have an obligation to produce as comprehensive a disclosure as possible so that the matter may proceed to trial efficiently and without delay. Otherwise, the process would become never-ending.
- [21] Insofar as the plaintiff takes issue with whether the defendant’s concern is about prejudice or litigation inconvenience, he fails to appreciate that litigation inconvenience translates into legal costs. If he is causing the defendant to incur additional costs, it will be the plaintiff who will ultimately have to pay for those “inconvenient” costs. It would be most unfortunate if the plaintiff were to succeed in obtaining a damages award, only to see it reduced by the costs incurred by the defendant as a result of the plaintiff’s obstructive behaviour. It will be even more

unfortunate for the plaintiff if he were to lose his claim on account of his failure to satisfy his disclosure obligations but be liable for the defendant's costs.

[22] In this instance, and in an effort to assist the plaintiff and provide him with a roadmap on how to complete his disclosure, I find the following deficiencies:

[23] **March 31, 2026 Productions:**

- i. The plaintiff describes the exhibits as “representative documents.” He has an obligation to produce ALL relevant documents pertaining to his mitigation efforts, not just representative documents.
- ii. The signature page of an unknown lease agreement: a signature page, without the actual document is useless and meaningless. If the plaintiff considers the “commercial lease” to be relevant to his mitigation efforts, he must produce the complete document.
- iii. The share purchase agreement: as with the commercial lease agreement, the signature page, on its own, is of no value. If the plaintiff considers this agreement to be relevant to his mitigation efforts, he must produce the full agreement.
- iv. Value of the shares and the financial terms of the transaction: Having revealed to the defendant that the plaintiff entered into a share purchase agreement as a way of mitigating his damages, the critical components of that initiative rest with the value of the shares that would have been issued, or in any event the financial terms of the transaction. The plaintiff is wrong in his conclusion that since his efforts to initiate certain business ventures (it is not clear to me if there was more than one such effort), did not produce any income, he does not have to produce the relevant underlying documents. The issue to be determined is his mitigation efforts.

The success or failure of those efforts stands separate and apart from whether any efforts were undertaken. In this regard, I agree with the defendant's submission that the proceeds of the share sale may bear directly on whether the plaintiff reasonably mitigated his alleged damages. The value of the business the plaintiff sought to pursue after his departure from the defendant is relevant to the overall assessment of whether and what employment business activities might offset or mitigate the plaintiff's claim for damages.

[24] **Mitigation Addendum Documents, of April 23, 2026:** Regrettably, this communication by the plaintiff adds nothing to his underlying production obligations, and respectfully, it is not in accordance with the court's order of February 10, 2026. As already explained in the preceding paragraph, the plaintiff's dispute with a third party over the share purchase agreement, the difficulties he says he encountered, and his further suggestion that he did not receive any income or business earnings, does not mean that the transaction is not relevant to the plaintiff's mitigation efforts. "No realized income," as the plaintiff alleges, does not mean that if that dispute is eventually resolved, there might not be some realized income. But even if the plaintiff is ultimately unsuccessful in the resolution of his dispute with the third party, the relevant issue in this action will be the fact of his mitigation efforts. Against these considerations, having produced the signature page of the share purchase agreement, the plaintiff must produced the complete agreement. Otherwise the signature page alone amounts to nothing.

[25] **April 30 / May 1 Supplementary Productions:**

- i. **Bank Statements:** The productions are selective. There is no explanation for the gaps in the productions. The plaintiff alleges that he was constructively dismissed on October 19, 2022. His productions, such as they are, suggest that he began to earn

income from January 2025 onwards. He describes the period of November 2022 – May 2024 as having “no realized income,” the period between August 2023 to October 2024 as “no revenue generated,” and the period between November 2024 to January 2025 as “no income.” That suggests to me that on the face of this chronology, the mitigation period would commence from October 20, 2022 and extend until January 2025.

I understand the plaintiff’s logic in describing the November 2022-February 2023 as the baseline statements to establish his financial situation immediately following his alleged termination. A fact-finder would need that information to then make sense of the statements that follow.

But I do not understand the basis for the gap in statements between February 2023 and April 2024, and then the gap between August 2024 and January 2025. The whole period is relevant and the plaintiff *must* produce the totality of these statements. If such statements are not within his possession or control, he must say so, but also describe in detail the efforts he undertook to obtain them.

- ii. **Corporate Financial Records:** These are missing completely. Since the plaintiff attempted to start his own business, *even if* that initiative was ultimately unsuccessful, he must substantiate his comments elsewhere that no revenues were generated. Insofar as he has differentiated between no revenues generated for one of the periods and no income earned for a different period, by his own productions, the plaintiff has put into question what exactly was generated when he did not draw an income. These productions are relevant.

- iii. **Funds being transferred:** The preceding concern is compounded by the indication in the plaintiff's personal bank statements that funds were transferred to and from the corporate accounts identified in the March 31, productions. This movement of funds underscores the relevance of the financial documents for the corporate accounts, and they must be produced. What funds were being transferred, why were they transferred, what were the underlying objectives, and do they reflect an attempt at mitigation, are all relevant issues.

To be clear, the legal implications of such productions is a separate issue and beyond the scope of this motion. In other words, whether starting business, as opposed to searching for alternate employment amounts to mitigation may be a legal issue to be decided at trial. At this stage, the plaintiff must produce all relevant evidence on his mitigation efforts and he must do so forthwith. He cannot pick and choose which relevant records he discloses. And since he is self-represented, I especially wish to caution him on this misguided selective production. Though he may not appreciate it, hiding behind superficial arguments about proportionality and necessity to limit productions actually runs the serious risk of compromising his own credibility and creating unnecessary litigation risk.

- iv. **Personal Bank Statements BR to BR:** The inclusion of at least a transfer of \$150,000, without further explanation may be contradicting the plaintiff's indication that he did not earn any income. It may also offer some explanation for his own differentiation between no income earned and no revenues earned. This difficulty serves to underscore the difficulty with the plaintiff's incomplete productions.

- [26] Turning to the defendant's submissions, although they were helpful to the court insofar as they highlighted deficiencies in the plaintiff's productions, when the defendant's counsel wrote to my office on April 20, 2026 to request that the case be struck from the trial list for January 2027, I was left with the impression that the plaintiff had failed to produce *any* relevant documents. Counsel indicated that there had not been any meaningful compliance with my endorsement of February 10, 2026.
- [27] On my review of the respective motion materials and submissions, what I discovered was different from what the defendant's counsel alleged. Instead, what I discovered were typical disagreements over the *adequacy of productions*, their scope, and their quality. The request that the case be struck from the trial list altogether, echoed earlier attempts to derail the progress of this action. The motion ought to have been about the relevance and adequacy of the answers provided, as opposed to a blanket suggestion of a complete failure. When I factor in the plaintiff's difficulties differentiating between relevance and necessity, largely because he is self-represented, the situation before me is one of incomplete compliance as opposed to no meaningful compliance. Even if the plaintiff may be testing the limits of his obligations, on balance, and at this stage, the attempt to strike the case from the trial list is rather overzealous and not the best use of court resources.
- [28] Building on that observation, I find that the plaintiff's productions, such as they are, provide the outer contours of what he considers to be his mitigation efforts. More to the point, they provide a basic foundation for the defendant to frame their defence theory and legal positioning. In that sense, the defendant's concern about not knowing the case to meet or the inability to prepare for trial was rather overstated. Even with the burden on the defendant regarding the issue of mitigation, the plaintiff's inadequate productions, would open the door for a trial judge to draw negative inferences against the plaintiff.

- [29] Moreover, given the defendant's intention to engage in additional examinations of the plaintiff, the better course of action would have been to proceed to conduct such examinations, followed, if necessary, by a motion to compel answers to refusals.
- [30] Where does that leave the progression of this case? All told, even though the plaintiff is intelligent and may be trying to leverage his position as a self-represented litigant to contain his production obligations, I am prepared to give him one last chance to complete his productions. Given the additional guidance provided in this endorsement and what ought to be produced, he should have no difficulty satisfying his obligations. In addition, since he did not suggest that he did not have the outstanding documents, he should be able to complete the task in short order.
- [31] Accordingly, the plaintiff shall have until **July 10, 2026** to complete his productions with a specific focus on the following items:
- i. Complete personal bank statements for the period November 2022 until January 2025;
 - ii. Complete corporate financial records as they relate to the business ventures and initiatives between November 2022 and January 2025;
 - iii. A complete copy of the Share Purchase Agreement attached the signed page already produced;
 - iv. All available information concerning the values of the shares associated with the share purchase agreement as well as any share sales;

- v. Confirmation that the commercial lease that was produced in the April 30 productions is the same that is referenced in the March 31 productions;
- vi. Full particulars of the efforts to find alternate employment in the period between November 2022 and January 2025. Such materials ought to include, but may not be limited to, production of a resume / CV that may have been used to support employment applications, a listing of all applications that were made, the number of interviews that the plaintiff may have had, and any other documents to complete the plaintiff's position on mitigation;
- vii. All of these productions are to be incorporated with the productions already made into a sworn affidavit so that the defendant is not left with any concerns over whether the plaintiff is providing unsworn evidence; and
- viii. The defendant is granted permission to examine the plaintiff for up to 6 hours on any questions that may arise from the plaintiff's productions.

[32] To avoid future arguments about relevance, necessity, or proportionality concerns by the plaintiff, I wish to be clear that the noted production requirements are relevant and proportional to the claim being advanced by the plaintiff.

[33] Regarding the Agreed Statement of Facts, I disagree with the defendant that the plaintiff's answers without explanation for the disagreement fails to meaningfully comply with the court order of February 10, 2026. That said, I would strongly encourage the plaintiff provide the reasons for his disagreement as I expect that this could go a long way to promoting settlement negotiations but also help focus the trial preparation.

- [34] Insofar as the trial date is concerned, that date was fixed as peremptory on the parties in my endorsement of February 2026 and I am not prepared to change that schedule at this time. After the July 10 deadline, additional productions that may result from undertakings to examinations or from third parties, may be produced until September 30, 2026. For any other documents that are within the plaintiff's control and that ought to have been produced by July 10, the plaintiff will need to obtain a court order to add them to his productions. Except for strict updates to the productions, no additional productions by the plaintiff will be permitted after September 30, 2026. That means that if the plaintiff fails to meet his production obligations, he may be confronted with negative inferences about his failure to engage in any mitigating steps, or to put it in plain terms, the trial judge may conclude that he failed to take any steps to mitigate his damages. This would be an unfortunate development.
- [35] Against these terms, I strongly encourage the plaintiff to reevaluate his decision to remain self-represented. Although I suspect there may be cost limitations to retaining legal counsel, I am genuinely concerned that the plaintiff may be creating greater prejudice to himself by the way he is going about to satisfy his obligations as a plaintiff in this litigation.
- [36] Finally, on costs, I reserve them to the trial judge. Although costs should ordinarily follow the event before the court, I would have ordered them in the cause.
- [37] More significantly, as I already noted, I have some concerns by the eagerness with which the defendant proposed the striking of the case from the trial list. I recognize that this option was identified as a possible remedy for the plaintiff's potential non-compliance. However, as I already discussed, it would have been better for the defendant to examine the plaintiff, as counsel indicated he intended to do before resorting to this motion. On that latter note, although the case has been brought under the simplified rules, in the circumstances of the case I would

not have had any difficulty permitting examinations of the plaintiff of up to 6 hours, and I have done so in the terms outlined in the preceding paragraphs.

- [38] Recognizing that if the plaintiff fails to satisfy the terms of this endorsement, that will attract cost consequences, the trial judge will be in a better position to evaluate the plaintiff's overall performance as that relates to the costs that may attract.

RSJ E. Ria Tzimas

Date: June 25, 2026