

<b>Austin Schuster Group, LLC v Extell Dev. Co.</b>
2026 NY Slip Op 30960(U)
March 11, 2026
Supreme Court, New York County
Docket Number: Index No. 158302/2023
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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THE AUSTIN SCHUSTER GROUP, LLC,

Plaintiff,

- v -

EXTELL DEVELOPMENT COMPANY, CLINTON PB 27  
LLC,XYZ CORP. 1-20,

Defendant.

INDEX NO. 158302/2023

MOTION DATE 02/06/2026

MOTION SEQ. NO. 009

**DECISION + ORDER ON  
MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 291, 292, 293, 294, 295, 296, 297, 301

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the Plaintiff’s motion to compel is GRANTED.

CPLR § 3101 requires “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof by. . . a party, or the officer, director, member, agent or employee of a party.” As a guiding principle, the words “material and necessary” are to be “interpreted liberally to require disclosure of . . . any facts bearing on the controversy” (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009] [quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 (1968)]).

In this motion, the Plaintiff move for the pro-formas that Abba Barnet testified to at his December 10, 2025 deposition (the **Pro-Formas**). The Plaintiff seeks these Pro-Formas as relevant to, among other things, its unjust enrichment and breach of contract claims in the case.

To be clear, it does not seek the information because it asserts that it has an interest in the

expected revenue/profit that the Defendants would receive. Instead, the Plaintiff seeks the information as evidence that the services that provided had value to the Defendants. As to this, he argues that the Pro-Formas are material and necessary to the prosecution of his claims. He is correct that he is entitled to this information.

For the avoidance of doubt, the Defendants are mistaken that the Plaintiff never made a predicate request before bringing this motion. In fact, the Plaintiff made such a request at Abba Barnett's deposition:

BY MR. MOORE:

Q: So, going back to the RFP and the current plan contemplated for the two parcels, the Gans parcel and the Intrepid parking lot, could you describe the overall plan for the development, mix of commercial, residential, condos? What is the -- the big picture?

THE WITNESS: So that could go in a couple of different directions, actually. We're speaking to a user that we would do a build-to-suit and actually lease them -- build a building and lease it to them, for the -- on the -- on the -- what we call the Westside. What I've been calling the Westside in this -- in this interview. And so we could do that and then the idea would be we could do housing on the -- on the -- what we call the Intrepid lot. That would be one idea. Another idea would be to do only housing on the whole site. Another idea would be to forget the Intrepid and do only some sort of commercial or industrial use on the Westside. So there's still a lot of -- a lot of open possibilities.

*Q: And have you done pro formas on each of those possibilities?*

*A: Definitely. Yeah.*

*MR. MOORE: I'm going to call for the production of those.*

(NYSCEF Doc. No. 294 at 6 [emphasis added]). Following Abba Barnett's deposition, Defendant's counsel, Ian Dumain sent an email dated December 26, 2025 acknowledging and denying the Plaintiff's request:

...

2. At the deposition of Mr. Barnett, you requested production of additional pro formas related to properties in the Gans portfolio. As I believe I mentioned, the parties already exchanged positions on that issue. I attach my letter to prior counsel dated October 6, 2025. For the reasons set out in that letter, Extell declines to search for or produce any additional pro formas. In addition, because ASG did not timely bring this issue to the Court's attention before the October 27, 2025 conference, ASG has waived whatever right it may have had with respect to this category of documents. *See also* my July 18, 2025 email to Matt Blum (attached).

...

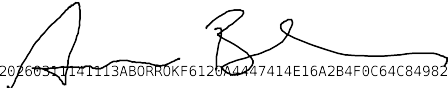
(NYSCEF Doc. No. 295).

Finally, as discussed above, the Defendants are not correct that they do not need to produce this information because the Plaintiff never had an interest and does not claim an interest in the projected cash flows to the Defendant. This misses the point. The point, as discussed above, is that the Plaintiff is entitled to present this information as evidence that its introduction to the sites and the services alleged to have been rendered provided sufficient value to the Defendants to generate the Pro-Formas and otherwise warranting compensation earned by it (*Rivera*, 63 AD3d at 469). As such, the motion is GRANTED.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the Plaintiff's motion to compel is granted; and it is further;

ORDERED that the Defendants shall produce the Pro-Formas within seven days from the date of this order.

  
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3/11/2026  
**DATE**

ANDREW BORROK, J.S.C.  
**ANDREW BORROK, J.S.C.**

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: