ALX C21 LLC v WF Blue LLC
2026 NY Slip Op 31501(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 653993/2023
Judge: Anar R. Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45M

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ALX C21 LLC and REGO II BORROWER LLC,

Plaintiffs,

- v -

WF BLUE LLC, GINDI C21 IP LLC, and RAYMOND GINDI,

Defendants.

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INDEX NO.	653993/2023
MOTION DATE	11/24/2025, 12/08/2025
MOTION SEQ. NO.	003, 004

DECISION + ORDER ON MOTION

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 86-94, 114-115, 120 were read on this motion to/for REVIEW ORDER REFEREE/DISCLOSURE.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 95-109, 116-119, 121 were read on this motion to/for REVIEW ORDER REFEREE/DISCLOSURE.

In Motion 003, Plaintiffs ALX C21 LLC (ALX) and Rego II Borrower, LLC (Rego II) (together, "Plaintiffs") move to review and partially vacate Judicial Hearing Officer ("JHO") Alan C. Marin's November 18, 2025 ruling regarding document discovery (NYSCEF Doc. No. 88) (the "November Report"). In Motion 004, Plaintiffs move to review and partially vacate JHO Marin's December 3, 2025 ruling regarding document discovery (NYSCEF Doc. No. 98) (the "December Report"). Defendants WF Blue LLC ("WF Blue") and Gindi C21 LLC ("Gindi C21") (together, "Defendants") oppose the Motions.

Relevant Factual and Procedural History

For a recitation of the facts in this action, the Court refers to the Decision and Order (Chan, J.) on Motion 001 (*ALX C21 LLC v WF Blue LLC*, 2024 NY Slip Op 32116[U] [Sup Ct, NY County 2024]) (NYSCEF Doc. No. 38). Briefly, this action arises out of the alleged failure to reopen a Century 21 department store in the Rego Center shopping mall (the "Rego Center") in Rego Park, Queens, New York. In September 2020, the Century 21 department store chain founded by Defendant Raymond Gindi and his family (the "Gindi Family") closed its 13 locations, including its flagship location on Cortlandt Street in Manhattan (the "Flagship Store") and its location in the Rego Center (the "Rego Store"), and filed for bankruptcy protection (*id.* at *2). Rego II, Rego Center's owner, had leased 135,000 square feet of retail space to nonparty Century Rego Realty LLC in March 2005 (the "Rego Lease") (*id.*). Apart from the lease for the Flagship

Store, Century 21 rejected 12 of its 13 store leases, including the Rego Lease, in the bankruptcy proceeding (*id.*).

The Gindi Family sought to repurchase Century 21's intellectual property (the "Century 21 IP") at a bankruptcy auction (*id.* at *2), and approached Plaintiffs' affiliate, nonparty Alexander's, Inc. ("Alexander's"), for financial assistance (*id.* at *3 n 2). The Gindi Family proposed that if Alexander's helped finance the purchase and Century 21 resumed operations in New York City within five years, Century 21 would enter into a new lease on the same terms as the Rego Lease and reopen the Rego Store (*id.* at *3). Alexander's accepted the Gindi Family's proposal (*id.*).

The Gindi Family formed Gindi C21 to acquire the Century 21 IP, and Alexander's formed ALX to invest in Gindi C21. Section 17 in the Amended and Restated Operating Agreement of Gindi C21 (the "Operating Agreement") dated November 30, 2020 and entered into between ALX and WF Blue, an entity controlled by the Gindi Family, reflected the parties' agreement that if Gindi C21 or its affiliates, including entities associated with WF Blue or Raymond Gindi, opened and operated a store within New York City within five years of purchasing the Century 21 IP, then the new operator or its affiliate shall be required to enter into a new Rego Lease "as soon as commercially reasonable" (*id.*). In November 2020, Gindi C21 successfully bid $9 million for the Century 21 IP, and ALX made a capital contribution of $3.6 million in Gindi C21 (*id.* at *4). WF Blue and ALX later executed a Membership Interest Purchase Agreement dated March 5, 2021 (the "MIPA"), under which WF Blue purchased all of ALX's membership interests in Gindi C21 for $3.6 million (*id.*).

In May 2022, the Gindi Family announced that Century 21, in partnership with nonparty Legends Hospitality ("Legends"), would reopen a Century 21 store at its former flagship location (*id.*). In May 2023, Defendants rejected ALX's demand that they cause the new operator of the Cortlandt Street store or its affiliate to enter into a new Rego Lease (*id.*, *5). In subsequent communications with Alexander's, the Gindi Family identified Legends as the new operator (*id.*).

Plaintiffs commenced this action against WF Blue, Gindi C21, and Raymond Gindi in August 2023. The Complaint pleads six causes of action for: (1) a declaratory judgment; (2) specific performance; (3) breach of contract; (4) unjust enrichment; (5) breach of the implied covenant of good faith and fair dealing; and (6) tortious interference with contract (NYSCEF Doc. No. 1 [Complaint]). Pursuant to this Court's Decision and Order of June 21, 2024, the claims against Raymond Gindi have been dismissed, and the fourth cause of action for unjust enrichment and the sixth cause of action for tortious interference with contract against Defendants have been dismissed (*see ALX C21 LLC*, 2024 NY Slip Op 32116[U], *18). Although the decretal paragraphs in this Decision and Order do not explicitly state, the fifth cause of action for breach of the implied covenant of good faith and fair dealing has also been dismissed, as the Decision and Order reads, in pertinent part, that "[g]iven this substantial factual overlap between the two claims, plaintiffs' implied covenant claim should be dismissed as duplicative [of the breach of contract cause of action]" (*id.*, *14).

In the meantime, discovery disputes arose between the parties. On September 29, 2025, this Court issued an order referring the matter to JHO Marin "for the purpose of supervising the remainder of discovery" (NYSCEF Doc No. 82 [9/29/2029 Order]). The referral further provided

that "the parties shall abide by any and all guidelines and/or procedures set by JHO Marin to be followed during the discovery process in this matter" and that "all discovery motions in this matter, except motions … [for] contempt, shall be returnable before JHO Marin" (*id.* at 1).

Pursuant to these directives, JHO Marin instructed the parties to produce a random sampling of documents withheld for privilege for *in camera* review [NYSCEF Doc No. 91 [JHO Marin's 10/21/2025 email] at 5). Plaintiffs had previously asserted that Defendants' privilege log was deficient, as it contained "the same non-specific, boilerplate description: 'Attorney-Client Communication for purpose of legal advice'" (NYSCEF Doc. No. 89 [Plaintiffs' 7/8/2025 letter] at 6). JHO Marin issued the November Report on November 18, 2025. JHO Marin determined that Defendants were not out of compliance with Rules of the Commercial Division of the Supreme Court (22 NYCRR 202.70 [b]) Rule 11-b and that "the issue of boilerplate labeling" was not viable (NYSCEF Doc. No. 88 at 1). JHO Marin directed the parties to disclose certain documents, including ordering Plaintiffs to produce an unredacted copy of Bates document no. 2980 because it "contains requests for information," and determined that the parties properly withheld the other documents identified in their privilege logs (*id.* at 1-2).

Two days later, Plaintiffs' counsel emailed JHO Marin and requested clarification with respect to the rulings on document nos. 2980 and 22321, proposed producing redacted versions instead, and furnished JHO Marin with proposed redacted versions (NYSCEF Doc. No. 93 [Plaintiffs' 11/20/2025 email] at 1; NYSCEF Doc. No. 92 [document no. 2980]). Notably, Plaintiffs' counsel did not send the email to Defendants' counsel. In response, JHO Marin issued a second report dated November 21, 2025, essentially adhering to the November Report with respect to both documents (NYSCEF Doc. No. 94 [Second November Report]).

At JHO Marin's direction, Plaintiffs sought leave to serve subpoenas upon nonparties HSBC Bank USA, N.A., Flagstar Bank, N.A., and JPMorgan Chase Bank, N.A. for information related to five bank accounts Defendants had identified in an interrogatory response (NYSCEF Doc. No. 104 [Plaintiffs' 11/12/2025 letter application] at 1). Defendants opposed the application (NYSCEF Doc. No. 105 [Defendants' 11/25/2025 letter]).

JHO Marin held a conference on November 26, 2025, to discuss the letter application as well as the non-custodial documents requested in Plaintiffs' first and second notices for discovery and inspection (the "RFPs") (NYSCEF Doc. No. 97 [Handler affirmation], ¶ 32; NYSCEF Doc. No. 116 [Defendants' mem of law] at 11). Thereafter, Plaintiffs' counsel sent JHO Marin an email summarizing Plaintiffs' demands together with copies of the RFPS and Defendants' responses (NYSCEF Doc. No. 106 [Plaintiffs' 11/26/2025 email]). Defendants' counsel, in response, stated that "[t]he only specific non-custodial requests raised in Plaintiffs' November 14 email are: (i) construction agreements for the Flagship Store renovation (First RFP No. 10), and (ii) certificates of formation for certain Century 21 entities (First RFP No. 11)" (NYSCEF Doc. No. 98 at 5).

JHO Marin issued a report on December 1, 2025, partially granting Plaintiffs' requests (NYSCEF Doc. No. 97, ¶ 34). After Plaintiffs sought clarification of the report's findings (NYSCEF Doc. No. 107 [Plaintiffs' 11/3/2025 email]), JHO Marin amended the report, issuing the December Report on December 3, 2025. In the December Report, JHO Marin granted Plaintiffs' application to serve subpoenas for information related to five designated bank accounts

but limited their scope to "copies of checks or proof-of-transaction documents between Defendants and Legends" for the period between April 1, 2022 through January 31, 2025, and ordered that "[t]he requested subpoenas are otherwise quashed" (NYSCEF Doc. No. 98 at 4). As to the 11 categories of non-custodial documents, JHO Marin directed Defendants produce the following: bank statements (item no. 11); quarterly financial statements (item no. 10); agreements with Legends (item no. 1); leases/licenses concerning the Century 21 store (item no. 2); management and licensing agreements concerning the Century 21 store and/or its intellectual property (part of item no. 3); and, certificates of formation concerning Century 21 (part of item no. 4) (*id.* at 5-6). JHO Marin denied the balance of Plaintiffs' requests to compel (*id.* at 6). Additionally, regarding ESI, JHO Marin ordered Defendants to run 18 specific search terms against 10 custodians (*id.* at 6-7).

Plaintiffs move to review and vacate that part of the November Report directing them to exchange document no. 2980 in unredacted form and seek an order holding that they properly withheld the document from disclosure.[1] Plaintiffs also move to review and vacate that part of the December Report denying their request to compel Defendants to produce certain records and modifying the nonparty subpoenas. They seek an order compelling production of those documents and removing the limitations placed on the subpoenas.

Legal Analysis

CPLR 3104 provides for the supervision of discovery by a referee (*see Oldcastle Precast, Inc. v Steiner Bldg. NYC, LLC*, 224 AD3d 413, 413 [1st Dept 2024]), and CPLR 3104 (d) states that "[a]ny party or witness may apply for review of an order made under this section by a referee. The application shall be by motion made in the court in which the action is pending …[and] shall set forth succinctly the order complained of, the reason it is objectionable and the relief demanded."

"Courts have 'broad discretion in the supervision of pretrial disclosure'" (*Denenberg v SDK Heiberger, LLP*, 237 AD3d 423, 423-424 [1st Dept 2025] [citation omitted]). The deference afforded to a trial court in its discovery determinations "'extends to its decision to confirm a referee's report, so long as the report is supported by the record'" (*Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc.*, 11 NY3d 843, 845 [2008] [citation omitted]). The standard of review on a challenge to a Special Referee's ruling is whether the determination is "clearly erroneous or contrary to law" (*Matter of Hinduja Global Solutions, Inc. v HBI Group, Inc.*, 232 AD3d 566, 567 [1st Dept 2024], citing *CIT Project Fin. v Credit Suisse First Boston LLC*, 7 Misc 3d 1002[A], 2005 NY Slip Op 50406[U], *2 [Sup Ct, NY County 2005]). Where there are no evidentiary hearings or transcripts available for review, "the court's concern … must shift to determining whether or not the Referee properly exercised her [or his] discretion" (*Kaplan v Einy*, 209 AD2d 248, 451 [1st Dept 1994]). Consequently, "the report of a Referee shall be confirmed whenever the findings contained therein are substantially supported by the record and the Referee has clearly defined the issues and resolved matters of credibility" (*Kaplan*, 209 at 248 [citations omitted]; *see also Surgical Design Corp. v Correa*, 21 AD3d 409, 411 [2d Dept 2005]).

[1] Plaintiffs are not challenging JHO Marin's ruling on document no. 22321 at present because JHO Marin has revised his initial ruling and has asked for additional information before he makes a final determination (NYSCEF Doc. No. 87 [Handler affirmation] at 3 n 3).

The November Report (Motion 003)

Document no. 2980 is an email thread beginning May 17, 2023 through May 24, 2023 between Alexander's' in-house counsel, Steven Borenstein and Elana Butler, and outside counsel, Matthew Handler and Daniel Ansell (NYSCEF Doc No. 92; NYSCEF Doc No. 87, ¶ 8). Plaintiffs contend that JHO Marin erred in directing them to produce the document in unredacted form, on the grounds that the document is shielded from disclosure under the attorney-client and work product privileges and had been prepared in anticipation of litigation.

Defendants, in opposition, urge the Court to deny the motion based on Plaintiffs' *ex parte* email to JHO Marin on November 20, 2025, which resulted in the Second November Report. Defendants contend that JHO Marin correctly determined that document no. 2980 is not protected by the attorney-client or work product privileges, as its content concerns requests for information and scheduling issues, and that the document was not prepared solely in anticipation of litigation. Defendants further contend that Plaintiffs waived the trial preparation privilege by failing to claim it in their privilege log.

Plaintiffs, in reply, repeat their earlier arguments. Plaintiffs also respond that their *ex parte* email to JHO Marin was not improper and conformed to the procedure for submitting documents for *in camera* review.

As a preliminary matter, the Court declines to deny the motion because of Plaintiffs *ex parte* communication. *Ex parte* communications, apart from communications on procedural or ministerial matters, are generally impermissible (*see Costalas v Amalfitano*, 23 AD3d 303, 304 [1st Dept 2005]; *see also* Rules of Prof Conduct [22 NYCRR 1200.0] rule 3.5 [a] [2] [i]). Indeed, Section III.B of this Court's Part 45 Practices and Procedures[2] expressly prohibits such communications. Review of Plaintiffs' November 20, 2025 email shows that Plaintiffs did not contact JHO Marin on a ministerial or procedural matter. Rather, Plaintiffs "request[ed] clarification on certain findings" (NYSCEF Doc No. 93 [November 20, 2025 email]). Contrary to Plaintiffs' contention, this request plainly concerned a substantive issue because it challenged the merits of JHO Marin's rulings. Equally unpersuasive is Plaintiffs' argument that they were merely following the procedure for submitting documents for *in camera* review. Plaintiffs had already furnished JHO Marin with an unredacted version of the document before JHO Marin issued the November Report. Nonetheless, the Court declines to deny the motion on the basis of Plaintiffs' improper *ex parte* communication. JHO Marin's Second November Report did not alter the original November Report, and thus, Defendants have not suffered any prejudice (*see e.g. B.G. Equipment Co. v American Ins. Co*., 61 AD2d 247, 249 [4th Dept 1978] ["the decision was not unfairly influenced by counsel's ex parte communication with the court"]). In future, the parties are advised to adhere to this Court's Part Practices and refrain from engaging in any *ex parte* communications.

[2] The Part 45 Rules are available at https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/ARP-Part-45-Rules.pdf.

The Attorney-Client Privilege

CPLR 3101 (b) expressly shields privileged matter from disclosure. The attorney-client privilege "fosters the open dialogue between lawyer and client that is deemed essential to effective representation" (*Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 377 [1991]). "The privilege is intended to ensure that 'one seeking legal advice will be able to confide fully and freely in his attorney, secure in the knowledge that his confidences will not later be exposed to public view to his embarrassment or legal detriment'" (*Matter of New York Civ. Liberties Union v New York State Off. of Ct. Admin.*, — NY3d —, 2025 NY Slip Op 05784, *3 [2025] [citation omitted]), though the privilege may be waived (*see* CPLR 4503 [a]). The burden rests with the party invoking the privilege to demonstrate its entitlement to the protection (*Spectrum Sys. Intl. Corp.*, 78 NY2d at 377). This requires the party to "show[ ] that the communication at issue was between an attorney and a client 'for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship,' that the communication is predominantly of a legal character, that the communication was confidential and that the privilege was not waived" (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 27 NY3d 616, 624 [2016], quoting *Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588, 593-594 [1989]).

This Court conducted an *in camera* review of the unredacted version of document no. 2980 and finds that JHO Marin properly determined that the document is not protected by the attorney-client privilege. To begin, the attorney-client privilege applies to communications involving in-house corporate counsel and outside counsel (*see Rossi*, 73 NY2d at 592), and here, the parties do not dispute that the email thread involved Alexander's in-house and outside counsel. The subject line for each email also reads "C21 – Privileged and Confidential" (NYSCEF Doc No. 92), although that fact, by itself, is not dispositive (*see National Day Laborer Org. Network v United States Immigration & Customs Enforcement*, 486 F Supp 3d 699, 692 [SD NY 2020] ["the label affixed to a document is not itself dispositive as to whether the privilege applies"]).

"[E]mail communications that merely seek to schedule a call regarding a legal matter are not privileged so long as they do not convey or seek legal advice" (*Kleeberg v Eber*, 2019 WL 2085412, *21, 2019 US Dist LEXIS 80428, *60 [SDNY, May 13, 2019, No. 16-CV-9517 (LAK) (KHP)]). Several emails in the thread at issue here concern scheduling and logistics, and are not protected under the attorney-client privilege (*see Mesquite Creek Wind LLC v Mars Wind, Inc.*, 2024 NY Misc LEXIS 73497, *2 [Sup Ct, NY County, Sept. 13, 2024, index No. 655535/2021, Borrok, J.]; *Chelsea Hotel Owner LLC v City of New York*, 2024 WL 323216, *3, 2024 US Dist LEXIS 16636, *9-10 [SDNY, Jan. 29, 2024, No. 21-CV-3982 (ALC) (RWL)]). Several other emails contain "requests for information," as described by JHO Marin (NYSCEF Doc. No. 88 at 1). One email contains an excerpt from an article published from a public source. In sum, the correspondence does not contain legal advice and does not convey an attorney's assessment of Plaintiffs' legal position in this action. Because the emails are not primarily or predominantly legal in character, JHO Marin's order that document no. 2980 should be disclosed is not clearly erroneous or contrary to law.

Attorney Work Product

CPLR 3101 (c) directs that "[t]he work product of an attorney shall not be obtainable," and thus, an attorney's work product is immune from disclosure (*see Spectrum Sys. Intl. Corp.*, 78 NY2d at 376-377). Documents prepared by an attorney that reflect the attorney's private mental impressions and legal conclusions, strategies, opinions, theories, research and analysis qualify as work product (*see Matter of Peerenboom v Marvel Entertainment, LLC*, 160 AD3d 439, 439-440 [1st Dept 2018]; *Venture v Preferred Mut. Ins. Co*., 153 AD3d 1155, 1158 [1st Dept 2017]; *Smith v City of New York*, 49 AD3d 400, 401 [1st Dept 2008]). The party invoking the privilege must demonstrate its entitlement to the protection (*Spectrum Sys. Intl. Corp.*, 78 NY2d at 377).

Here, document no. 2980 does not contain any legal work, analysis, strategy or theory or anything from which to divine an attorney's thought process, mental impression, or legal strategy. One email appears to transmit an attached document, but the attachment is not part of document no. 2980. Transmitting a document without any accompanying analysis does constitute work product (*see Stevens v Cahill*, 2015 WL 851976, 2015 NY Misc LEXIS 12473, *2-3 [Sur Ct, NY County, Feb. 24, 2015, index No. 2013-2228/C, Mella, J.]). Likewise, requesting information, such as the names of potential witnesses, does not reflect an attorney's work product (*see Gottwald Sebert*, 172 AD3d 445, 445 [1st Dept 2019] [list of individuals interviewed in connection with an internal investigation not privileged where "there was no legal advice, no legal recommendations or attorney thought processes revealed in the interview lists"]; *Hoffman v Ro-San Manor*, 73 AD2d 207, 211 [1st Dept 1980] ["[t]he discovery of witnesses, even though the result of the attorney's zeal and investigative efforts, does not qualify as an attorney's work product"]). The emails, therefore, are not materials that are "uniquely the product of a lawyer's learning and professional skills" (*Brooklyn Union Gas Co. v American Home Assur. Co*., 23 AD3d 190, 191 [1st Dept 2005]). JHO Marin's ruling that document no. 2980 should be disclosed is not clearly erroneous or contrary to law.

Documents Prepared in Anticipation of Litigation

Under CPLR 3101 (d) (2), "materials … prepared in anticipation of litigation or for trial … may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Unlike the attorney-client and work product privileges, the trial preparation privilege is not absolute (*see Gama Aviation Inc. v Sandton Capital Partners, L.P*., 99 AD3d 423, 424 [1st Dept 2012]). The party seeking the protection must establish that the document "was prepared primarily, if not solely, in anticipation of litigation" (*JP Foodservice Distribs. v Sorrento, Inc*., 305 AD2d 266, 266 [1st Dept 2003]). If this burden has not been met, then the party seeking the disclosure need not show its substantial need for the material and that the material could not be obtained without undue hardship (*see Peralta v New York City Hous*., 169 AD3d 1071, 1074-1075 [2d Dept 2019]).

First, Plaintiffs have not waived this privilege by failing to assert it in their privilege log. The case cited by Defendants in support of this proposition, *Anonymous v High School for Envtl. Studies* (32 AD3d 353 [1st Dept 2006]), is distinguishable. The defendants in that action failed to exchange a privilege log (*id*. at 359), whereas here, Plaintiffs timely exchanged a privilege log (*see*

CPLR 3122 [b]) and withheld document no. 2980 from disclosure. That Plaintiffs may have neglected to specifically claim the trial preparation privilege on their log does not equate to a waiver of the privilege absent a showing that Plaintiffs deliberately claimed the wrong privilege in their log (*see e.g. Gama Aviation Inc.*, 99 AD3d at 424 [plaintiff waived the work product privilege when it "deliberately chose to use the label 'Trial Preparation Privilege' instead of 'Work Product Doctrine' in its revised log"]). Nevertheless, based on this Court's *in camera* review, document no. 2980 does not contain any material prepared solely or primarily in anticipation of litigation (*see Peralta*, 169 AD3d at 1075; *Commerce & Indus. Ins. Co. v S.H. Laufer Vision World*, 225 AD2d 313, 314 [1st Dept 1996]). JHO Marin's ruling that document no. 2980 should be disclosed is not clearly erroneous or contrary to law.

Accordingly, Plaintiffs' motion to review and vacate the November Report with respect to Bates document no. 2980 is granted to the extent of granting a review, the balance of the motion is denied, and the November Report is confirmed.

The December Report (Motion 004)

Plaintiffs challenge the limitations JHO Marin placed on the scope of the subpoenas they sought to serve upon three nonparty banks, arguing that JHO Marin impermissibly shifted the burden of demonstrating whether the discovery was material and necessary from the responding party to the subpoenaing party. Plaintiffs add that JHO Marin compounded the error by limiting the nonparty discovery to transactions involving Legends, and ordering that "[t]he requested subpoenas are otherwise quashed" (NYSCEF Doc No. 98 at 4). Defendants had never moved to quash the subpoenas.

Plaintiffs further assert that JHO Marin erred in denying their request to compel Defendants to produce non-custodial documents sought in Plaintiffs' RFPs (NYSCEF Doc No. 98 at 5). JHO Marin directed Defendants to produce documents responsive to five of eleven categories and denied the production of documents in six others, specifically, store operation agreements (first RFP no. 10); store construction agreements (first RFP no. 10, second RFP no. 15); key Century 21 employee agreements (second RFP nos. 3-13); store merchandise/logistics agreements (second RFP no. 14); online store agreements (second RFP no. 15); and organizational charts concerning Century 21 (second RFP no. 2)[3] (*id*. at 5-6). Plaintiffs insist that these documents will reveal which Defendant or which of their affiliates were involved in reopening and operating the Flagship Store and Century 21's online store, and should therefore be produced.

Defendants maintain that the nonparty subpoenas seek utterly irrelevant and overbroad information and that the sole purpose of serving the subpoenas is to harass them. Defendants note that Plaintiffs, who waited more than two years before seeking bank records, are now requesting seven years of records for every transaction on those accounts, even those wholly unrelated to the operation of the Flagship Store. As for the non-custodial documents, Defendants contend that the December Report should be confirmed because JHO Marin correctly determined that many of the requested records lack a connection to the "core issue" (NYSCEF Doc. No. 116 at 12). Defendants argue that these requests are duplicative, and in any event, the request to compel is moot because

[3] The item numbers assigned to these categories in the December Report do not match the item numbers in Plaintiffs' first or second RFPs.

responsive documents have already been produced. Defendants particularly note that they have produced the agreement between their affiliates and Legends dated February 24, 2022, which shows that Legends was obligated to furnish "pre-opening services" and to "manage and operate the Flagship Store" (NYSCEF Doc. No. 118 [Term Sheet between Legends, Century 21 USA, LLC and Century 21 Ecom, LLC] at 1 [§ 1 [A], [B]).

The Nonparty Subpoenas

At the outset, Plaintiffs correctly point out that the scope of disclosure is quite broad, because "all matter material and necessary in the prosecution or defense of an action" is discoverable (CPLR 3101 [a]; *see also Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]). That said, the scope of discovery is not unlimited, as CPLR 3103 (a) provides that "[t]he court may at any time on its own initiative … make a protective order denying, limiting, conditioning or regulating the use of any disclosure device."

Here, JHO Marin did not err in *sua sponte* directing Plaintiffs to file an application for leave to serve the nonparty subpoenas and in issuing a protective order (*see HAI-2, LLC v Blackrock Fin. Mgt., Inc*., 213 AD3d 527, 528 [1st Dept 2023]), as Plaintiffs argue. The subpoenas at issue seek bank statements dating from January 2019 to the present and "[d]ocuments sufficient to show the individual(s) and/or entity(ies) who own and/or control the Accounts" (NYSCEF Doc. No. 104 [exhibits A-C]). JHO Marin properly narrowed the scope of the subpoenas, based on this Court's determination in its June 21, 2024 Decision and Order regarding the basis for the relevance of information sought in a subpoena that Plaintiffs had served upon Legends. In that Decision and Order, the Court observed that "[t]he crux of the parties' dispute is whether [Defendants] breached their contractual obligations to [P]laintiffs by re-opening the Flagship Store through an agreement providing that Legends . . . would 'open and operate' the Flagship Store," and so finding the subpoena relevant as it was "generally targeted at fleshing out the relationship (economic and otherwise) between [D]efendants and Legends and Legend's awareness of, among other things, the terms of Operating Agreement, the MIPA, and the LLC Defendants' relationship with Alexander's" (*see ALX C21 LLC*, 2024 NY Slip Op 32116[U], *17). In view of that decision, JHO Marin's determination is not clearly erroneous or contrary to law, as it merely operated to limit disclosure to material previously held to be relevant, and JHO Marin properly exercised his discretion in limiting the nonparty subpoenas to "copies of the checks paid or proof-of-transaction documents between defendants and Legends" (NYSCEF Doc. No. 98 at 4).

Additionally, JHO Marin properly narrowed the timeframe for responsive documents to April 1, 2022 through January 31, 2025, based on a December 10, 2024 letter confirming that Legends was no longer involved as of that time (*id.*). Given that Legends and nonparties Century 21 USA, LLC and Century 21 Ecom, LLC signed the term sheet governing their relationship on February 28, 2022 (NYSCEF Doc. No. 118 at 11), Defendants have shown that bank records that pre-date 2022 are "utterly irrelevant to any proper inquiry" (*Matter of Kapon*, 23 NY3d at 38 [internal quotation marks and citation omitted]). And while JHO Marin acknowledged that commercial reasonableness is an issue best left to the trier of fact (NYSCEF Doc. No. 98 at 4), Plaintiffs, in response, have failed to demonstrate that the records are material and necessary for the prosecution of their claims. Indeed, Section 17 of the Operating Agreement recites that "WF Blue … shall cause New Operator, or an affiliate of New Operator, to enter into the New Rego

Lease as soon as commercially reasonable following any such opening of a New York City store" (*ALX C21 LLC*, 2024 NY Slip Op 32116[U], *3). Plaintiffs have not set forth how bank records from 2019 to 2022—*i.e.*, a period prior to the reopening of the Flagship Store—would likely lead to material evidence of what may be commercially reasonable following the Flagship Store's reopening.[4]

The Non-Custodial Documents

JHO Marin denied Plaintiffs' request to compel the production of "[t]hat part of item 3 seeking construction or operating agreements (Among other things, we have the November 30 2020 Operating Agreement and MIPA)," "[t]hat part of item 4 seeking operating agreements and organizational charts concerning Century 21," and item nos. 5 to 9 because they lacked a connection to the "core issue" (NYSCEF Doc No. 98 at 6). Item nos. 5 to 9 are:

> "5. Employment/consulting agreements involving key Century 21 employees
> 6. Merchandise/inventory agreements concerning Century 21
> 7, 8 and 9. Agreements concerning the opening of the Century 21 store, the launch of the Century 21 entities" (*id.*).

"A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is 'material and necessary' – i.e., relevant" (*Forman v Henkin*, 3 NY3d 656, 661 [2018], citing CPLR 3101 [a] [1]). In this case, JHO Marin properly determined that the requested documents are not material and necessary, and this ruling is neither clearly erroneous nor contrary to law (*see Kingston v Breslin*, 38 AD3d 614, 615 [2d Dept 2007] [referee appointed to supervise discovery properly exercised discretion in determining that certain documents were not material and necessary]). JHO Marin recognized that, according to the June 21, 2024 Decision and Order, "[t]he crux of the parties' dispute is whether the LLC Defendants breached their contractual obligations to [P]laintiffs by re-opening the Flagship Store through an agreement providing that Legends that would 'open and operate' the Flagship Store" (NYSCEF Doc No. 98 at 3). JHO Marin also recognized that Defendants' counsel had confirmed that Legends was no longer involved with the Century 21 store (*id.* at 4). The Court agrees that disclosure of documents responsive to item nos. 5 through 9 and the balance of item nos. 3 and 4 is not warranted as Plaintiffs have not demonstrated that such disclosure would yield material and necessary information on their breach of contract claims.

Accordingly, it is hereby

ORDERED that the Motion brought by Plaintiffs ALX C21 LLC and Rego II Borrower, LLC to review and vacate that part of the Report of JHO Alan C. Marin dated November 18, 2025 directing Plaintiffs to disclose Bates document no. 2980 in unredacted form (Motion 003) is granted to the extent of granting a review, and the balance of the motion is denied; and it is further

[4] Defendants submit that Rego II has already leased the space that the Rego Store had previously occupied (NYSCEF Doc No. 119 [4/25/2024 email]).

ORDERED that the Court confirms the Report of JHO Alan C. Marin dated November 18, 2025 in its entirety and orders that the parties shall comply with the report within thirty (30) days of the e-filing of this Decision and Order; and it is further

ORDERED that the motion brought by Plaintiffs ALX C21 LLC and Rego II Borrower, LLC to review and vacate that part of the Report of JHO Alan C. Marin dated December 3, 2025 limiting the scope of certain nonparty subpoenas and denying their request to compel Defendants WF Blue LLC and Gindi C21 LLC to produce certain document discovery (Motion 004) is granted to the extent of granting a review, and the balance of the motion is denied; and it is further

ORDERED that the Court confirms the Report of JHO Alan C. Marin dated December 3, 2025 in its entirety and orders that the parties shall comply with the report within thirty (30) days of the e-filing of this Decision and Order.

The foregoing constitutes the Decision and Order of this Court.

April 9, 2026
DATE

ANAR R. PATEL, A.J.S.C.

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**