

Cherokee Funding II, LLC v Express Funding of Am., LLC
2026 NY Slip Op 31715(U)
April 17, 2026
Supreme Court, New York County
Docket Number: Index No. 653433/2024
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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CHEROKEE FUNDING II, LLC,	INDEX NO. <u>653433/2024</u>
Plaintiff,	MOTION DATE <u>02/10/2026</u>
- v -	MOTION SEQ. NO. <u>018</u>
EXPRESS FUNDING OF AMERICA, LLC, NEAL ZEER, KENNETH BUNN, ALEXANDER FELIX	
Defendants.	DECISION + ORDER ON MOTION
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 479, 480, 481, 482, 483, 484, 485, 499 were read on this motion to COMPEL DISCOVERY.

Plaintiff Cherokee Funding II, LLC (“Cherokee”) moves for an Order (i) finding that Defendant Express Funding of America, LLC (“EFA”) has waived all objections to Cherokee’s Third Set of Requests for the Production of Documents (“Third RFP”), and compelling EFA to produce all documents responsive to the Third RFP, and (ii) finding Defendants Neal Zeer, Kenneth Bunn, and Alexander Felix (“Individual Defendants”) waived all objections, except as to privilege, to Cherokee’s First Set of Requests for the Production of Documents (“Individual RFPs”) and compelling the Individual Defendants to produce all documents responsive to these requests. EFA has not opposed this motion.¹ For the following reasons, Cherokee’s motion is granted in part.

¹ While Cherokee submits in its reply brief that “Defendants’ belated letter-request for an extension of time to oppose—which they filed Friday, March 6, days after their deadline passed—should be denied” (NYSCEF 499), no such request was made. While EFA’s counsel submitted a letter on March 6, 2026, requesting that “Defendants’ discovery motion returnable March 10, 2026 be adjourned pending such a conference” (NYSCEF 498), EFA did not request

A failure timely to object to document requests results in the waiver of all objections except those as to privilege (*see Demurjian v Demurjian*, 184 AD3d 505 [1st Dept 2020] [“The motion court providently deemed the appealing parties’ objections waived under CPLR 3122 as a result of their failure to respond timely”]; *Khatskevich v Victor*, 184 AD3d 504, 505 [1st Dept 2020] [finding that where plaintiff failed to timely object to defendant’s demands, “plaintiff waived objection based on any ground other than privilege or palpable impropriety”]).

Cherokee’s Third RFP and Individual RFPs were served on EFA and the Individual Defendants on July 31, 2025 (NYSCEF 481 [“Madavo Aff.”] ¶ 2; NYSCEF 482–85). Following the parties’ stipulation, written responses and objections were due by September 2, 2026 (NYSCEF 350). Cherokee submits that neither EFA nor the Individual Defendants served any written responses or objections to Cherokee’s document requests by September 2, 2026, or at all (Madavo Aff. ¶ 3). Moreover, since EFA and the Individual Defendants failed to file any opposition to this motion, they have conceded their failure to respond (*Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 [1975] [“Facts appearing in the movant’s papers which the opposing party does not controvert, may be deemed to be admitted”]).

However, one of Cherokee’s Individual Requests is palpably unreasonable and the Court will not compel compliance. Specifically, Request No. 4 seeks, “Documents, including but not limited to bank statements, trading account statements, tax returns, income statements, deeds, receipts, bills of sale and insurance policies, sufficient to show all of Your assets and the value and location of each, including but not limited to the following assets: a. cash; b. jewelry, watches, precious stones or metals; c. real property; d. motor vehicles (including but not limited

an extension of time to file opposition to this motion to this motion, and thus there was no such extension request to deny.

to any cars or boats); e. collectibles (including but not limited to sports memorabilia, coins, vehicles and artwork); f. interests or financial stakes in any corporate entities or organizations, including but not limited to EFA; g. trusts in which You have placed assets or to which You are a beneficiary; and h. investments of any kind, including but not limited to publicly-traded securities and mutual funds” (NYSCEF 483–85).

Such information is more akin to post-judgment discovery and is not appropriate at this stage of the litigation. The fact that Cherokee has a claim for breach of Guarantees against the Individual Defendants does not mean that Cherokee is entitled to this breadth of personal financial information, at least at this stage of the case. In a related context, the First Department has held that even where a party failed to timely respond to demands for production and all objections had been waived, the moving party’s failure to justify the need for tax returns should have resulted in denial of that request (*Demurjian*, 184 AD3d at 505–06 [“A demand for the production of tax returns is disfavored and requires ‘a strong showing of necessity,’ and the inability to obtain the information from other sources. Here, the failure ‘to identify the particular information the tax returns . . . will contain and its relevance to the claims made’ should have been sufficient to deny [the moving party’s] motion to compel”]). Likewise here, Cherokee has not demonstrated the legitimate present need for such personal financial information. Accordingly, this request is stricken.

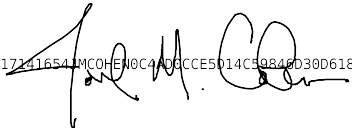
Finally, Individual Request No. 3 states, “[w]ith respect to any document requests that will or have been served on EFA in this lawsuit, all Documents and Communications in Your personal files that are responsive to such requests, including but not limited to text messages and communications sent with any personal email addresses” (NYSCEF 483–85). To the extent the

Individual Defendants are already custodians for EFA whose files have been searched and produced, they need not reproduce such information.

Accordingly, it is

ORDERED that Cherokee’s Motion to Compel is **GRANTED IN PART** and EFA and the Individual Defendants are compelled to produce all documents responsive to the Third RFP and Individual RFPs that are in their possession, custody or control, subject to the modifications noted above.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

4/17/2026
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE