| **Windrose Health Invs. LLC v CMI Mgt., LLC** |
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| 2026 NY Slip Op 31727(U) |
| April 10, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 158331/2025 |
| Judge: Verna L. Saunders |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. VERNA L. SAUNDERS, JSC** **PART** **36**

*Justice*

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**INDEX NO.** 158331/2025

WINDROSE HEALTH INVESTORS LLC,
Petitioner,

**MOTION SEQ. NO.** 001

- v -

CMI MANAGEMENT, LLC, PUEBLO RADIOLOGY MEDICAL GROUP, INC., and PUEBLO RADIOLOGY ASSOCIATES, INC.,
Respondents.

**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22

were read on this motion to/for **QUASH SUBPOENA; PROTECTIVE ORDER** .

In this special proceeding, petitioner moves the court, pursuant to CPLR 2304, 3106(b), and 3103(a), for an order quashing a Subpoena dated May 16, 2025, and granting a protective order in petitioner's favor (NYSCEF Doc. No. 1, *verified petition*). The pertinent facts are as follows. In July 2021, Collaborative Imaging LLC ("CI") entered into a contract with respondents pursuant to a Billing Services Agreement ("BSA") through which CI served as the exclusive billing services vendor for respondents. Respondents are radiology medical practice entities. Under the BSA that was scheduled to expire in August 2026, CI was required to, *inter alia*, provide revenue collection management ("RCM") services to respondents, including billing, coding, tracking, and collecting payments from patients and medical payors such as health insurance companies. Prior to CI, Zotec Partners, LLC ("Zotec") was respondents' RCM vendor. In 2023, CI announced that it was entering into a funding agreement with an investor which would result in the change of CI to Collaborative Imaging Technology, LLC ("CIT"). Petitioner is the private equity firm that invested in CI. Respondents deemed the transaction between CI and petitioner as an asset transfer under the BSA, triggering section 9.5 of the BSA which permits any party to the BSA to terminate the contract within 90 days of an asset transfer, or more specifically, "(i) in the event that the other Party sells all or substantially all of its assets to another party, or (ii) upon a merger or consolidation in which the other Party is not the surviving entity."

After negotiations, CIT and respondents entered into a Transition Agreement ("TA") which acknowledged that CI assigned its billing obligations, a portion of its liabilities, and sold certain other assets to CIT. The TA further required that CIT transfer certain data to respondents and their new RCM vendor. Respondents also sought certain information about the CIT's billing practices so that respondents could audit how claims were handled, as well as, review financial allocations to ensure that the distribution due to them was correctly allocated. According to the CIT (also referred to as the "California Plaintiff"), it commenced the California action after respondents breached the TA by demanding audits beyond the scope of the TA and disparaging CIT to CIT's existing clients about how CI handled claims.

Turning now to the application to the quash the petition, petitioner contends that insofar as a motion to compel arbitration in the California action has been filed, which would result in a stay of discovery in said action, discovery sought via the Subpoena herein should also be stayed. Petitioner also asserts that the Subpoena does not provide notice of the circumstances or reasons disclosure is sought or required, which is a requirement under New York law for the enforcement of a third-party subpoena. Lastly, petitioner avers that the third-party Subpoena, consisting of sixty-three (63) requests for production, is overbroad, utterly irrelevant, and seeks documents that are not easily identifiable and thus, unduly burdensome (NYSCEF Doc. No. 6, *memo of law*). In support of the application, petitioner submits a copy of the Subpoena, the California complaint, respondents' "cross-complaint" in the California action, and the California motion to compel arbitration (NYSCEF Doc. No. 8-11).

Respondents, in opposition, argue that petitioner's application should be denied because the documents sought are directly relevant to the claims and cross claims in the California action. They assert that, contrary to petitioner's claim, petitioner acquired the software that the California Plaintiff uses for its RCM business. It also notes that, to the extent the motion to compel arbitration in the California action has been denied,[1] any stay on discovery in the California action has been lifted and the request for a stay of this application should be denied. According to respondents, the Subpoena provides adequate notice of the circumstances or reasons for disclosure since it identifies the parties, the subject matter, and the relevant dates. They posit that even though the notice requirement is minimal, this legal brief should be considered adequate notice if the notice requirement has not already been met. Respondents insist that petitioner is adequately familiar with the California action because that action was filed by petitioner's transactional counsel, McDermott Will & Emery, LLP, on behalf of an entity that petitioner acquired. Respondents posit that petitioner's managing partner serves as a member of the Board of Directors of the California Plaintiff and, therefore, petitioner is aware of the reasons disclosure is sought. All documents sought in the Subpoena are relevant because they concern the transaction between CI and petitioner that culminated in the TA, which both parties now claim the other breached, respondents argue.

With respect to relevancy, respondents aver that while the word "WindRose" is not mentioned in the California complaint, the transaction between petitioner and CI is repeatedly alleged in that complaint. They further claim that the transaction was mentioned in several of petitioner's press releases and discussed in the introductory statements of the TA and are therefore material and necessary to the defense of the California complaint and the prosecution of the Cross-Complaint which also discusses the transaction. According to respondents, the California Plaintiff alleges that respondents did not make efforts to learn about the transaction between petitioner and CI. The information sought via the Subpoena, argue respondents, will reveal respondents' efforts to inquire about the transaction, as well as, CI and petitioner's attempts to shield any information about the transaction from CI's then clients, including respondents. The Subpoena seeks information such as communications between CI and petitioner relating to Zotec, the California plaintiff's operating agreements, the corporate structure charts, and WindRose's due diligence before investing in CI. They also posit that petitioner has not offered any evidence as to why the Subpoena is unduly burdensome since petitioner is a sophisticated financial entity which invests in technology companies operating in the health care sector. Lastly, respondents contend that, to the extent the court finds some of the requests to be overly broad, the appropriate remedy is to tailor the requests rather than quash them (NYSCEF Doc. No. 20, *opposition*).

[1] According to respondents, the California Superior Court for the County of Santa Barbara on August 4, 2025, denied the motion to compel arbitration and lifted any stay on discovery in the California action as of that date.

Petitioner, in reply, argues that the information sought via the Subpoena is utterly irrelevant because the dispute in the California action concerns whether CIT or respondents breached the TA. Petitioner notes that because it invested in CI before the TA was entered into, the breach of the TA would necessarily not be related to its prior investment in CI. As relevant here, petitioner posits that the TA supersedes all prior agreements and expressly releases claims arising out of the original BSA, which could be the only possible link between petitioner and the California action. According to petitioner, respondents cannot rely on petitioner having an officer in common with and being affiliated with the California plaintiff to meet the express statutory notice requirement. It reiterates that the sixty-three (63) requests for production, of which sixty-two (62) use the word "all" and fifty-seven (57) use the terms "relating to" or "related to" are burdensome as such requests would require petitioner to review documents multiple times to identify pertinent information. Petitioner asserts that the allegation about respondents not undertaking efforts to be informed about the transaction between CI and petitioner is related to the dispute over whether respondents had a right to terminate the BSA, which is irrelevant to the TA. Further, petitioner avers that any contention as to whether CI provided full disclosure about its transaction with petitioner is moot because that claim relates to whether respondents had the right to terminate the BSA, which has been superseded by the TA. Lastly, petitioner notes that the Subpoena seeks documents that are mostly proprietary and relating to how petitioner determines and monitors its investments and thus, the Subpoena is overbroad and improper (NYSCEF Doc. No. 21, *reply*).

"An application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry" (*Kapon v Koch*, 23 NY3d 32, 38 [2014] [internal citations and quotation marks omitted]). Section 3101(a)(4) does not require the subpoenaing party to demonstrate that it cannot obtain the requested disclosure from any other source (*id.*). If the subpoena complies with the notice requirements, and the disclosure sought is relevant to the prosecution or defense of an action, the motion to quash the subpoena should be denied (*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*, 30 NY3d 656, 661, 70 [2018] [quoting CPLR 3101 [a]). "Moreover, the burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed" (*Gertz v Richards*, 233 AD2d 366, 366 [1st Dept 1996]). "Where disclosure is sought against a nonparty, more stringent requirements are imposed on the party seeking disclosure" (*Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 108 [1st Dept. 2006]).

Here, upon review of the arguments and the proof submitted, the application to quash the Subpoena is denied. Contrary to petitioner's contention, the Subpoena provides adequate notice to petitioner insofar as same identifies the parties, subject matter, relevant dates, and contains the case number of the California action (see *Matter of Kapon v Koch*, 23 NY3d 32, 39 [1st Dept 2014]). As such, the Subpoena provides indicia of notice such that petitioner was apprised of the California action and the circumstances giving rise to the information sought. With respect to relevancy, petitioner fails to convince the court that the Subpoena seeks information that is utterly irrelevant. To the extent petitioner claims that the TA supersedes the BSA such that the documents sought are utterly irrelevant because they concern events arising out of the BSA, petitioner fails to submit copies of the BSA and the TA to meet its burden.

As to the issue of whether the Subpoena is overbroad and improper, the court agrees that certain categories of documents sought in the Subpoena are overbroad. Respondents fail to demonstrate how or why communications between petitioner and CI relating to the Zotec litigation, which occurred before respondents entered into the BSA with CI, is related and relevant to whether the TA was breached. Therefore, portions of the Subpoena seeking information about communications or documents between petitioner and the CI relating to the Zotec litigation are quashed because respondents have failed to rebut petitioner's argument that those requests are utterly irrelevant to the main issue in the California action. In light of New York State's liberal disclosure policy in discovery matters, the court directs the parties to meet and confer to narrow the scope of the other requests in the Subpoena request with respect to breadth and relevancy (see *Sawyer v 1120 Fifth Ave. Corp.*, 238 AD3d 525, 525 [1st Dept 2025]). All other arguments need not be addressed given the findings above. Accordingly, it is hereby

**ORDERED** that the application seeking to quash the Subpoena is denied to the extent that the portions of the Subpoena seeking communications or documents between petitioner and the CI relating to the Zotec litigation are quashed; and it is further

**ORDERED** that the parties shall meet and confer to discuss tailoring the Subpoena in all other respects; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondents shall serve a copy of this decision and order, with notice of entry, upon petitioner, as well as upon the Clerk of the Court in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases.

This constitutes the decision and order of the Court.

**April 10, 2026**

**HON. VERNA L. SAUNDERS, JSC**

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