

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF NEW YORK  
COUNTY OF WESTCHESTER: COMMERCIAL DIVISION

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306A MALCOLM X BLVD LLC, 306 MALCOLM X  
BLVD LLC and 308 MALCOLM X BLVD LLC,

Index No. 53572/2021

Plaintiffs,

- against -

Motion Seq. No. 7

ARTHUR SPITZER, MENDEL DEUTSCH, 306  
MALCOLM NY LLC, UNIVERSAL TITLE LLC a/k/a  
UNIVERSAL ABSTRACT LLC,  
CONNECTONE BANK and  
LARCH LEGACY LLC,

Defendants,

- and -

DAHLIA KALTER, IRA BURSTEIN a/k/a IRA  
BERNSTEIN, MOSES FELDBERGER, BSD REALTY  
HOLDINGS INC., TEPFER & TEPFER PC, and  
POLARIS NATIONAL, LLC d/b/a POLARIS  
FUNDING

Additional Defendants on  
the Counterclaim and  
Cross-Claim.

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WALSH, J.

The following e-filed documents, listed in NYSCEF under document numbers 257-281, 200-307, 313-314 were read on this motion by Defendant Larch Legacy LLC ("Larch") for an order pursuant to CPLR 3124 compelling the production by Plaintiffs 306A Malcolm X Blvd LLC, 306 Malcolm X Blvd LLC and 308 Malcom X Blvd LLC ("Plaintiffs") and Additional Defendants

Dahlia Kalter and Ira Burstein (“Additional Defendants”) of documents withheld on the grounds of privilege. Plaintiffs/Additional Defendants oppose the motion.

Upon the foregoing papers and for the reasons stated herein, Larch’s motion shall be granted in part and denied in part.

### **LARCH’S MOTION TO COMPEL**

#### ***A. Larch’s Contentions in Support of Its Motion to Compel***

In support of its motion, Larch submits: (1) an affirmation from their counsel, Joyce A. Davis, Esq. dated June 7, 2022 (“Davis Aff.”), together with its attached exhibits; (2) an affidavit of Karla Miller, sworn to October 26, 2021 (“Miller Aff.”), together with its attached exhibits; and (3) a memorandum of law.

In her affirmation, Larch’s counsel submits: (1) correspondence from Larch’s counsel and Plaintiffs’ counsel to the Court concerning Larch’s objections to Plaintiffs’ privilege log; (2) various documents produced by Plaintiffs; (3) transcripts of conferences held by this Court addressing Larch’s objections to Plaintiffs’ privilege log at which the Court addressed certain aspects of Larch’s objections and ordered the production of various documents on Plaintiffs’ privilege log. Davis also submits: (1) as Exhibit N “a true and correct copy of the privileged emails selectively disclosed by Plaintiffs, which emails are dated July 27, 2020 and July 28, 2020 and are between Burstein, of Goldstone Capital, LLC [‘Goldstone Capital’], Stephen Friedman, Esq. (‘Friedman’) of Reiss Sheppe LLP (‘Reiss Sheppe’), Mark Nordlicht, Belinda Brandimarti, of Goldstone Capital, and Ahmed Sheikh of Goldstone Capital (the ‘Selectively Disclosed Emails’); (2) as Exhibit O “a true and correct copy of the March 23, 2022 email and the pdf attached to the email and labeled ‘Belinda Brandimarti Email Exhibit B,’” which Davis contends is the email whereby Plaintiffs, Kalter and Burstein produced the Selectively Disclosed Emails without reservation; (3) as Exhibit P “a true and correct copy of the privileged emails dated July 30, 2019, between Adam Levine of Goldstone Capital, Friedman of Reiss Sheppe, Benjamin Gleitman of Reiss Sheppe, Belinda Brandimarti, of Goldstone Capital, Burstein of Goldstone Capital, and Kalter,” which privileged emails Davis contends were selectively disclosed by Plaintiffs, Kalter and Burstein without reservations.

In her affidavit, Karla Miller avers that she is Chief Counsel to Riverside Abstract, LLC (“Riverside”) and that her responsibilities include serving as a liaison between clients and Riverside to resolve problems and ensure that complex transactions close successfully (Miller Aff. at ¶ 2). She avers that on July 31, 2019, Riverside issued title insurance policies to Plaintiffs in connection with their purchase of the Properties (*id.* at ¶ 3). She claims that Friedman represented Plaintiffs at the July 31, 2019 closing and that “Riverside and Friedman have a close working relationship whereby Friedman regularly submits title orders to Riverside and Riverside provides settlement services to close the transactions” (*id.* at ¶ 6). Miller avers that on July 23, 2020, Friedman as Plaintiffs’ counsel called her and advised her “that there was an issue regarding the authorization of prior deeds to the Properties and a \$4,500,000 mortgage encumbering the

Properties and executed in favor of Defendant ConnectOne Bancorp, Inc. a/k/a ConnectOne Bank (the 'ConnectOne Mortgage'). Friedman stated the ConnectOne Mortgage may not have been done with the proper approval and said 'be on the lookout.' More specifically, Friedman explained there was a disagreement among the members of Plaintiffs regarding the authorization of the deeds and the ConnectOne Mortgage but that they were trying to reach a settlement" (*id.* at ¶ 7). She asserts that she inserted a note in the file, which stated, "spoke to stephen Fridman [*sic*]-he says the last deed and MTG were not done with proper authority," and she attaches the note to her affidavit as an exhibit (*id.* at ¶ 8). Miller avers that on September 7, 2020, Riverside received an order to insure a \$1,000,000 mortgage to be executed by 306 Malcolm NY LLC and 625 Bedford LLC in favor of Larch, which mortgage was intended to encumber the Properties and 625 Bedford Avenue, Brooklyn, New York to secure the underlying loan (*id.* at ¶ 9). She asserts that Riverside assigned Title No. RANY-41063 on the Larch Mortgage transaction and that based on her July 23, 2020 conversation with Friedman, she put a note in the Larch Mortgage Title No. RANY-41063 that there was an issue with the authorization of the prior deeds and the ConnectOne Mortgage (*id.* at ¶ 10). She avers that after the July 23, 2020 Friedman conversation and before the closing on the Larch Mortgage, she had another conversation with Friedman regarding the issue he had raised and he said "he was still working out a settlement among the members of Plaintiff" (*id.* at ¶ 11). According to Miller, on September 9, 2020 at 1:48 p.m., she sent Friedman an email asking "Are we good," which email is attached as Exhibit B. In response, at 2:51 p.m., Friedman emailed back and said "Yes" (*id.* at ¶ 13). Miller further contends that on September 25, 2020 at 11:21 a.m., the day the Larch Mortgage was scheduled to close, she emailed Friedman again and said "There is to be an additional mtg on the properties **today**. Is there any problem about approval? Thanks," to which Friedman responded, "Not that I am aware of. Why are you asking" (*id.* at ¶¶ 14-15). She asserts that she responded "You told me previously there was a mtg done without requisite approval. I want to know who may need to approve," and Friedman responded, "No issues on my end" (*id.* at ¶¶ 16-17). Miller avers that based on Friedman's confirmation, Miller's proofing attorney, Menachem Fuchs, Esq. noted on the Larch Mortgage file that the Larch Mortgage was good to close and it closed on September 25, 2020, at which time Riverside issued a loan policy of title insurance to Larch (*id.* at ¶ 18). Subsequent to the filing of this action, she spoke to Friedman on June 3, 2021, reminding him of the above email exchanges, and forwarding him the emails, and stating "See chain below. You told me we were good to close," which is attached as Exhibit C (*id.* at ¶ 19).

In its memorandum of law, Larch asserts that this action is based on "Plaintiffs' claim that they had no knowledge of and never authorized the execution of certain deeds (the 'Disputed Deeds') which transferred properties commonly known as 304 A Malcom X Boulevard, Brooklyn, New York, Block 1676, Lot 43 ('Lot 43'), 306 Malcolm X Boulevard, Brooklyn, New York, Block 1676, Lot 44 ('Lot 44') and 308 Malcom X Boulevard, Brooklyn, New York, Block 1676, Lot ('45') (collectively, the 'Properties') from Plaintiffs to the current record owner Defendant 306 Malcom NY LLC ('306 Malcolm NY'), and that those Disputed Deeds and every encumbrance premised upon those Disputed Deeds, including, *inter alia*, a mortgage in the amount of \$1,000,000 given by 306 Malcolm NY to Larch (the 'Larch Mortgage'), should be deemed void ab initio and cancelled of record" (Larch Mem. at 1). Larch points out that Plaintiffs contend that the Disputed Deeds were signed by Arthur Spitzer and he had no authority to sign the Disputed

Deeds (*id.* at 2). Larch asserts that in its answer/counterclaim, it has asserted that Plaintiffs received \$700,000 from 306 Malcolm NY in connection with the disputed conveyances and Plaintiffs should be estopped from disputing the validity and superiority of the Larch Mortgage. Larch further contends that in connection with the Disputed Deeds, Plaintiffs, through their counsel, explicitly authorized the Larch Mortgage (*id.* at 2-3 and n 2).

Larch contends that while Plaintiffs, Kalter and Burstein have refused to produce certain emails sent, copied or received from non-party Mark Nordlicht (Kalter's husband), Burstein and other representatives from non-party Goldstone Capital LLC ("Goldstone Capital") on the basis that such emails are privileged, the Court should compel the production of these emails because the privilege was waived.

After a recitation of various conferences and correspondence with the Court concerning the waiver issue, Larch argues that on May 3, 2022, following this Court's in camera review of emails identified on Plaintiffs' privilege log, this Court ordered that Plaintiff, Kalter and Burstein produce certain emails either entirely or redacted form, but reserved decision on the emails sent or copied to Mark Nordlicht and Goldstone Capital. According to Larch, the emails at issue for the purposes of this motion are: (1) the emails that include Mark Nordlicht identified by Document Nos. 94, 95, 105-111, 113-131 on the privilege log; (2) the emails that include Goldstone Capital and a third party identified by Document Nos. 45-47, 49, 50, 62, 74, 94, 95, 106-111 and 113-131 on the privilege log; and (3) the emails identified by Document Nos. 1-12, 14-22, 27-36, 38, 40-47, 49-53, 55-57, 60-63, 65, 66, 68, 70-82, 84-92, 94-131, 145-150 on the privilege log (Larch Mem. at 5).

In support of the waiver of privilege, Larch contends that it is entitled to the production of the emails that include third parties Mark Nordlicht or Goldstone Capital because they are not members of Plaintiffs or 16th Avenue Associates (Plaintiffs' sole member). In support, Larch relies on Plaintiffs' Operating Agreements and an organization chart produced by Plaintiffs in discovery, which identifies the managing members of 16th Avenue Associates as Kalter (33.34% interest), Ora Gichtin (33.33% interest), and Kenneth Nordlicht (33.33% interest) (*id.* at 8, *citing* Davis Aff., Exs. K and L). Larch contends that Mark Nordlicht is also not the functional equivalent of Plaintiffs' or 16th Avenue Associates' employee, and his status as Kalter's husband does not provide him with any special privilege with regard to these communications (*id.*).

Larch argues that although Plaintiffs claim that Mark Nordlicht was a consultant for 16th Avenue Associates, Plaintiffs have proffered no evidence to support this contention and even if they had provided such evidence, "the law is clear that documents and communications transmitted between Mark Nordlicht and Reiss Sheppe would only be privileged if Mark Nordlicht was the functional equivalent of Plaintiffs' employee" (*id.*). According to Larch, Plaintiffs cannot establish a single fact to support that Mark Nordlicht was the functional equivalent of Plaintiffs' employee particularly because his presence may not be merely useful or convenient, it must be nearly indispensable (*id.* at 10). Larch also points out that to the extent Plaintiffs assert that Mark Nordlicht was a consultant to the transaction and helped to manage the Properties by consulting on business matters (*i.e.*, the acquisition and management of the Properties), this consultation

constituted business and not legal advice and, therefore, mere attorney involvement does not privilege the business communication (*id.*).

Larch responds to Plaintiffs' claim that a privilege applies because Mark Nordlicht was Plaintiffs' agent by arguing that: (1) Kalter is not one of the Plaintiffs, she is just one of several shareholders of 16th Avenue Associates; (2) Plaintiffs have failed to provide any evidence that Mark Nordlicht was acting as Kalter's agent; (3) "even if such an agency relationship was established, and it was not, the law is clear that attorney-client privilege protection does not apply to agency relationships unless the client demonstrates both a 'reasonable expectation of confidentiality under the circumstances' . . . and 'that disclosure to the third party was necessary for the client to obtain the legal advice'" (*id.* [citations omitted; emphasis added]). Larch asserts that "[t]his necessity element requires involvement of the agent to be 'nearly indispensable' or 'serve some specialize purpose in facilitating attorney-client communications'" (*id.* at 10-11 [citation omitted]). Larch points out that the communications at issue were directly between Plaintiffs' counsel and Mark Nordlicht, a third party compared to the cases on which Plaintiffs rely where the third party was present to facilitate communications between the attorney and client.

In support of the production of the emails that include Goldstone Capital, Larch refutes Plaintiffs' contention that they and Goldstone Capital were united in interest by pointing out that there were no overlapping shareholders among Plaintiffs, 16th Avenue Associates and Goldstone Capital (*id.* at 11-12). Responding to Plaintiffs' claim that the common interest doctrine applies to render the communications between Reiss Sheppe and Goldstone Capital privileged because Reiss Sheppe represented both Plaintiffs and Goldstone Capital<sup>1</sup> in connection with their proposed purchase of the same Properties, Larch argues that pursuant to the Court of Appeals' precedent, the "common interest doctrine only protects communications shared between co-defendants or co-plaintiffs that are deemed necessary for the purpose of mounting a common claim or defense when litigation is pending or reasonably anticipated and the parties 'share a common legal interest'" and it does not "apply to 'clients who share a common legal interest in a commercial transaction or other common problem but do not reasonably anticipate litigation'" (*id.* at 12-13, *quoting Ambac Assur. Corp. v Countrywide Home Loans Inc.*, 27 NY3d 616, 627-628 [2016]). According to Larch, "[t]he fact that Goldstone Capital and Plaintiffs may have shared a common business interest in the Properties does not implicate the common interest doctrine because they were 'made for business purposes, not in anticipation of litigation'" (*id.* at 13). Larch argues that to the extent that Plaintiffs claim that the emails are privileged because Goldstone Capital was acting as their agent, Plaintiffs have provided no proof of this agency relationship and cannot demonstrate a reasonable expectation of confidentiality under the circumstances or that the disclosures were necessary for the Plaintiffs to obtain legal advice (*id.* at 13-14). Larch further argues that "all emails including Goldstone Capital and Mark Nordlicht must be produced as such emails were shared with a third party. Even if Mark Nordlicht was the functional equivalent of an employee of Plaintiffs or 16th Avenue Associates and, therefore, received the benefit of Plaintiffs privilege,

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<sup>1</sup> Larch further argues in a footnote that Plaintiffs have not provided proof that Reiss Sheppe actually represented Goldstone Capital (Larch Mem. at 13, n 3).

which he does not, Larch is still entitled to the emails including Mark Nordlicht for the reasons set forth above” (*id.* at 14).

Larch contends that this Court should order Plaintiffs to produce certain emails for the additional reason that “Plaintiffs selectively disclosed communications dated July 27 and 28, 2019 that are between Burstein . . . Stephen Friedman, Esq. (‘Friedman’) of Reiss Sheppe, Mark Nordlicht, Belinda Brandimarti, of Goldstone Capital, and Ahmed Sheikh of Goldstone Capital, while at the same time relying on the protection of the privilege to withhold other communications between the same parties” (*id.* at 15). According to Larch, these emails were produced on March 23, 2022 without any reservation as to waiver or privilege (*id.*, citing Davis Aff., Ex. O). Larch asserts that this selective disclosure should require the production of all the emails, and at a minimum, “it requires that disclosure of the emails that are part of the same email chain and included in the Privilege Log as emails 116-131” (*id.* at 15). In addition, Larch argues that Plaintiffs selectively disclosed emails dated July 30, 2019 between Adam Levine, Belinda Brandimarti and Burstein (Goldston Capital), Friedman and Benjamin Gleitman, Esq. of Reiss Sheppe and Kalter without any reservation of the right to assert privilege (*id.*, citing Davis Aff., Ex. P). Based on this alleged selective disclosure, Plaintiffs argue that the privilege has been waived and this Court should order the production of the following emails identified on the privilege log (Document Nos. 1-12, 14-22, 27-36, 38, 40-47, 49-53, 55-57, 60-63, 65, 66, 68, 70-82, 84-92, 94-131, 145-150) (*id.*).

Finally, Larch argues that Plaintiffs should be ordered to produce their communications with Reiss Sheppe “regarding the (i) transfer of title to the Properties to 306 Malcolm NY, which Plaintiffs claim they were unaware of and challenge as fraudulent; (ii) negotiations between Plaintiffs, Spitzer and Defendant Mendel Deutsch before and after the transfer of title to 306 Malcom NY and (iii) Larch Mortgage which Plaintiffs’ claim was unauthorized and seek to avoid, because Plaintiffs have placed the subject of those communications at issue in this Action” (*id.* at 16). After reciting the law on the at-issue waiver, Larch asserts that “Plaintiffs have placed their knowledge and authorization of the transfer of the Properties and the Larch Mortgage at issue in this Action” and based on the correspondence between Friedman and Riverside, Larch’s title agent used in connection with the Larch Mortgage, Friedman specifically approved the Larch Mortgage as authorized (*id.* at 18). It is Larch’s contention that Plaintiffs “after placing their knowledge and authorization of said Disputed Deeds and Mortgages at issue, Plaintiffs seek to preclude Larch from obtaining emails that are crucial to the validity of Plaintiffs’ claims (*i.e.*, what they knew at the time of the transactions) and vital to Larch’s defenses, including that Plaintiffs specifically authorized the Larch Mortgage” and Reiss Sheppe/Friedman “should be prohibited from asserting privilege in an effort to avoid producing testimony, documentation, correspondence and other evidence that are crucial to the truth of Plaintiffs’ claims” (*id.* at 19).

#### ***B. Plaintiffs and Additional Defendants’ Contentions in Opposition***

In opposition, Plaintiffs/Additional Defendants submit: (1) an affidavit of Dahlia Kalter, sworn to August 4, 2022 (“Kalter Aff.”); (2) an affidavit of Ira Burstein, sworn to August 4, 2022 (“Burstein Aff.”); and (3) a memorandum of law together with attached exhibits (“Plfs’ Opp. Mem.”).

In her affidavit opposing the production of what Plaintiffs/Additional Defendants contend are privileged communications, Kalter states that she along with Kenneth Nordlicht (her brother-in-law) and Ora Gichtin (her sister-in-law) are the managing members of 16th Avenue Associates, which is the sole member of the Plaintiffs in this case (Kalter Aff. at ¶¶ 3-5). She avers that 16th Avenue Associates was funded through loans from her mother-in-law Barbara Nordlicht (individually and through the Estate of Jules Nordlicht [her deceased father-in-law]) (*id.* at ¶ 7). She asserts that both she and her mother-in-law requested her husband to help in managing the investment funds of 16th Avenue Associates and he was included on communications with Reiss Sheppe because of their request for his assistance (*id.* at ¶¶ 8-9).

In his affidavit, Burstein avers that he is the sole member of Goldstone Capital and that Goldstone Capital retained Reiss Sheppe for numerous legal matters (Burstein Aff. at ¶¶ 4-5). He contends that the emails that Larch is seeking to be produced were communications between Goldstone Capital and its attorney Reiss Sheppe, and Goldstone Capital never intended for the attorney-client privilege to be invaded, and that any disclosure of any email with Goldstone Capital and Reiss Sheppe was either inadvertent or under a reservation of rights (*id.* at ¶¶ 6-8).

In their memorandum of law, Plaintiffs/Additional Defendants' counsel sets forth certain facts about the financing of 16th Avenue Associates from Kalter's mother-in-law Barbara Nordlicht, but fails to explain how he has personal knowledge of the facts asserted and, as such, there is no evidentiary support for the details of the financings (*i.e.*, loans aggregating \$21,926,000 reflected by grid promissory notes in favor of Barbara Nordlicht) (Plfs' Opp. Mem. at ¶¶ 5-6).<sup>2</sup> Plaintiffs/Additional Defendants' counsel states that Mark Nordlicht manages the investment funds at the request of his wife and mother, and was included on the communications with Reiss Sheppe at the request of his wife and mother (*id.* at ¶ 7). Again, without providing the evidentiary basis for his assertions, Plaintiffs/Additional Defendants' counsel contends that the members of Goldstone Partners LLC are 16th Avenue Associates, Elya Management, LLC, Goldstone Capital and Burstein as managing member (*id.* at ¶ 10).

Plaintiffs/Additional Defendants' counsel argues that based on the discovery to date, including the Operating Agreements,<sup>3</sup> Burstein never had an ownership interest in Plaintiffs, and that he had no authority to transfer shares of Plaintiffs to Arthur Spitzer or anyone else because he was not a member of Plaintiffs (*id.* at ¶¶ 11-12). He further asserts without providing any evidentiary support that "[t]he document purporting to have Ira Burstein transfer the shares of Malcolm X to Arthur Spitzer is likewise invalid on its face as Ira Burstein never had the ability to

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<sup>2</sup> *Freedom Mtge. Corp. v Engel*, 198 AD3d 877, 879 (2d Dept 2021) (holding that "the unsworn allegations of fact contained in counsel's memorandum of law . . . are, likewise, without probative value). Furthermore, the hearsay letter to Hon. Robert Drain from Kalter's counsel in Mark Nordlicht's bankruptcy proceeding is also of no evidentiary value (Ex. D).

<sup>3</sup> Again, this statement is without any evidentiary foundation to be accepted for the purposes of this motion.

effectuate such a transfer” (*id.* at ¶ 13).<sup>4</sup> Plaintiffs/Additional Defendants’ counsel argues without evidentiary support that Burstein denies that it is his signature on the assignment of shares documents, and asserts that the signature is fraudulent (*id.* at ¶ 43, n 2). Plaintiffs/Additional Defendants’ counsel points out that the deeds transferring the Properties from Plaintiffs to Malcolm NY were executed by Spitzer on behalf of Plaintiffs, which are attached as Exhibit B (*id.* at ¶ 14). Based on these “facts,” Plaintiffs/Additional Defendants’ counsel submits that there was a broken chain of title since Spitzer did not have the authority to sign on behalf of Plaintiffs and “[t]o date, there is no evidence that has been produced to rectify this deficiency” (*id.* at ¶ 16).

Plaintiffs/Additional Defendants’ counsel argues that the corporation’s attorney-client privilege applies to communications with independent contractors or consultants if the consultant has “‘a significant relationship to the corporation and the corporation’s involvement in the transaction that is the subject of the legal services’” (*id.* at ¶ 18). He quotes various passages from the Court of Appeals’ decision in *Ambac Assur. Corp* to support their contention that the common interest doctrine applies to the communications involving Mark Nordlicht and Goldstone Capital. Plaintiffs/Additional Defendants’ counsel points out that Mark Nordlicht was originally named as a defendant in this case by ConnectOne Bank (NYSCEF Doc. No. 96), but ConnectOne Bank subsequently discontinued the action against Nordlicht because he was a debtor in a bankruptcy proceeding (*id.* at ¶ 22). According to Plaintiffs/Additional Defendants’ counsel, ConnectOne still believes Nordlicht should be a defendant in this case because it has filed a motion in the bankruptcy to lift the automatic stay so that Nordlicht could be made a defendant in this case (*id.* at ¶ 23). As such, Plaintiffs/Additional Defendants’ counsel argues that the common interest privilege should apply to the communications with Nordlicht. Plaintiffs/Additional Defendants’ counsel also argues that Nordlicht was involved in the communications with Reiss Sheppe at the request of his wife and mother and “[t]he privilege log is likewise clear that communications on which Nordlicht was included involved legal issues surrounding the Properties and the instant litigation. These disclosures with Reiss Sheppe were clearly necessary to mount common claims and defenses in this action. Accordingly, their legal interests are sufficiently aligned that the counsel of each was in effect the counsel of all. As such, the communications on which Nordlicht was included are privileged and fully protected from disclosure” (*id.* at ¶ 26).

In support of the privileged nature of the communications with Goldstone Capital, Plaintiffs/Additional Defendants’ counsel asserts that Burstein is the sole member of Goldstone Capital and he is a defendant in this case. He argues that “[c]learly, Ira Burstein’s interests are thus aligned with the parties in the instant litigation . . . [and] the very fact that 16th Ave., Goldstone Partners, and Goldstone Capital have all been the subject of numerous subpoenas and other discovery demands by Larch Legacy and ConnectOne constitutes a clear admission by both those

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<sup>4</sup> The Assignment and Assumption of Membership Interest Agreement dated August 2, 2019 appears suspect because Ira Burstein’s name is misspelled as “Ira Bernstein” and the document asserts that Mr. Bernstein was the holder of a 100% membership interest in Plaintiffs, which contradicts Plaintiffs’ position that 16th Avenue Associates is only owned by Kalter, Kenneth Nordlicht and Ora Gichtin and that Burstein had no authority to sign this assignment (NYSCEF Doc. No. 89). It is alleged that based on this Agreement, Spitzer as Plaintiffs’ alleged 100% owner, illegally transferred the Properties to Defendant 306 Malcolm NY LLC in June 2020.



parties that there was obviously a common interest among all those entities” (*id.* at ¶ 27). Again, without any evidentiary support, Plaintiffs/Additional Defendants’ counsel argues that based on the discovery provided by Plaintiffs, Kalter and Burstein, “Goldstone Capital was assisting with the management of the Malcolm X Properties. Many of the staff of Goldstone Capital was also assisting with the preparation for the 2019 closing when the Plaintiffs first purchased the Properties. Any legal advice given to the Malcolm X entities would therefore be a common interest to legal advice given to Goldstone Capital” (*id.* at ¶ 28).

In response to Larch’s contention that the emails reflected in Exhibit O to the Davis Affirmation were not produced under a reservation of rights, Plaintiffs/Additional Defendants’ counsel argues that Davis has violated Rule 3.3 of the Rules of Professional Conduct by knowingly making a false statement of fact or law to a tribunal because an earlier email than the cover email enclosing the documents sent to Larch’s counsel at 1:17 p.m. (attached as Ex. E) set forth Plaintiffs’ reservation of rights (*id.* at ¶¶ 30-33). Plaintiffs/Additional Defendants’ counsel contends that Larch has failed to provide any law supporting that a party waives its privilege by disclosing communications under a reservation of rights (*id.* at ¶ 34). He further argues that Larch’s sole defense for failing to conduct the proper due diligence is that a vague email from Stephen Friedman excusing them of conducting basic due diligence (*id.* at ¶ 35). He asserts that Larch is not deprived of the information necessary to their defense if it is denied access to Plaintiffs’ privileged communications. In response to the emails produced in Exhibit P to the Davis affirmation, Plaintiffs’ counsel contends that this email was produced inadvertently and it was not until he received Larch’s motion that he even realized of the inadvertent production (*id.* at ¶ 39). According to Plaintiffs/Additional Defendants’ counsel, no discovery has been produced that would “remotely show how private discussions regarding a 2019 closing and subsequent confidential discussions regarding how to proceed legally in the face of the fraud committed by Spitzer/Deutsch, would have any bearing on a defense to Larch’s unauthorized mortgage” (*id.* at ¶ 42).

### ***C. Larch’s Contentions in Further Support of its Motion***

In further support of its motion, Larch submits a reply memorandum of law. In it, Larch argues that it is “entitled to know whether Plaintiffs knew about the emails between Miller and Friedman, when they knew about the emails, and whether Friedman, as Plaintiffs claim, acted on his own and without Plaintiffs’ knowledge when he told Riverside that there were ‘no issues on his end’ in connection with the Larch Mortgage or its authorization . . . Not only have the withheld communications been placed at issue by the claims asserted in Plaintiffs’ complaint, but Plaintiffs knowledge of the authorization of the Larch Mortgage has further been placed at issue by virtue of the email correspondence between Friedman and Miller, and Plaintiffs claims they did not authorize the Larch Mortgage via that email communication . . . Because Plaintiffs expressly deny they authorized the Larch Mortgage via Friedman, despite email confirmation to the contrary, there is no question Plaintiffs placed their communications with Reiss Sheppe vis-à-vis the Larch Mortgage ‘at issue’ and, as such, the invasion of the privilege is necessary to determine the validity of Plaintiffs’ defense” (Larch Reply Mem. at 2-3). Larch contends that the withheld communications are also relevant to Larch’s defense of ratification, laches, waiver, unclean hands,

and equitable estoppel (*id.* at 3). In particular, Larch contends they are relevant to “(i) Plaintiffs admission in the Complaint that they accepted \$700,000 in exchange for the Properties, which ratified the Deeds upon which the Larch Mortgage is premised; (ii) Plaintiffs knowledge of the Deeds and failure to take action to protect such interest resulting in the Larch Mortgage which bars Plaintiffs’ claims under the doctrine of laches and waiver, and (iii) the defenses of unclean hands and equitable estoppel inasmuch as Plaintiffs authorized the Larch Mortgage and now try to cancel it of record” (*id.* at 3-4).

Larch asserts that Plaintiffs have not established through the Kalter and Burstein affidavits that the Reiss Sheppe communications with Mark Nordlicht did not operate as a waiver because Mark Nordlicht was managing 16th Avenue Associates and was once named a defendant in this action. Larch asserts that this Court should not consider the hearsay letter from counsel in the bankruptcy case to support Nordlicht’s role. Larch contends that “Plaintiffs cite no support whatsoever which demonstrates that Kalter’s purported request and her mother-in-law’s request for Nordlicht’s ‘help’ in managing the investments funds funneled through 16<sup>th</sup> Ave. renders Nordlicht the functional equivalent of an employee of 16<sup>th</sup> Ave.” (*id.* at 5). Larch argues that to establish that a consultant is the functional equivalent of an employee, the party seeking protection under the doctrine “must show the consultant ‘assum[ed] the functions and duties of [a] full-time employee’ and has been ‘so thoroughly integrated’ into the corporation’s structure that he or she ‘is a *de facto* employee of the company’” (*id.* at 5-6). Larch repeats that the doctrine does not apply to a third party whose ‘presence is merely useful or convenient, but not indispensable’” (*id.* at 6 [citation omitted]).

According to Larch, Plaintiffs have proffered no evidence that Mark Nordlicht was retained by Plaintiffs as a consultant and that his expertise in financial affairs bears any relation to Reiss Sheppe’s advice or that it was nearly indispensable and “[t]he mere convenience of Nordlicht’s involvement does not render him the functional equivalent of an employee for purposes of invoking the attorney-client privilege” (*id.*). Further, relying on the hearsay letter Larch had previously asked the Court not to consider, Larch argues that Mark Nordlicht’s help was a familial favor and he was not a *de facto* employee (*id.* at 7). Larch argues that “[b]ecause Plaintiffs have failed to proffer any evidence that they retained Nordlicht as a consultant, he was the functional equivalent of Plaintiff’s employee, he was Plaintiff’s ‘agent’ for the purpose of those communications, and his communications were of a legal nature, ‘necessary’ and ‘nearly indispensable’ to Plaintiffs, there is no basis in law to protect Nordlicht’s communications as privileged” (*id.* at 8). Larch refutes that the common interest privilege applies to communications shared with Nordlicht because “the parties do not share a common legal interest, and even if they did, the subject communications were made before the litigation was commenced” (*id.* at 8). According to Larch, the fact that a third-party has an interest in the litigation is insufficient because “the communication must [also] satisfy the requirements of the attorney-client privilege and be made for purposes of obtaining legal advice and be of a legal nature, not commercial nature” (*id.* at 8-9 [citations omitted]). Larch contends that “Kalter’s affidavit makes clear that Nordlicht’s ‘help’ was of a financial nature, as that was his expertise, not of a legal nature. Further, Nordlicht has no interest in the Properties, Plaintiffs, or 16<sup>th</sup> Ave., therefore the communications could not have been made for the purposes of furthering any ‘common legal interest’ between Nordlicht and

Plaintiffs. Lastly, the communication were all made before the litigation was commenced and long before Nordlicht was named as an additional defendant, accordingly they were not made in the context of the litigation or in anticipation of litigation” (*id.* at 9). In conclusion, Larch argues that all communications with Nordlicht should be ordered produced as no privilege attaches to those communications.

In support of the production of communications between Goldstone Capital, Goldstone Partners, Reiss Sheppe and a third party, Larch points out that “[t]he Goldstone Entities have no interest in Plaintiffs or 16<sup>th</sup> Ave nor are they parties to this Action. Even if the Goldstone Entities were parties to this Action, the subject communications were made prior to the commencement or anticipation of this litigation and therefore fall outside the common interest protection. Moreover, there is no indicia . . . indicating that the communications between the Goldstone Entities, Reiss Sheppe and a third party were of a legal nature” since Goldstone was assisting in the management of the Properties and Plaintiffs’ purchase of the Properties (*id.* at 10). Larch further argues that these communications are not privileged because “Plaintiffs have not established . . . that the Goldstone Entities were the ‘functional equivalent of Plaintiffs’ employee,’ Plaintiffs’ ‘agent’ for the purpose of those communications and that the communications including the Goldstone Entities were ‘necessary’ and ‘nearly indispensable’ to Plaintiffs” (*id.*).

In response to Plaintiffs/Additional Defendants’ counsel’s arguments on Plaintiffs’ reservation of rights and/or inadvertent disclosure regarding the emails found in Exhibits O and P to the Davis Affirmation, Larch argues that “[i]t is clear from Plaintiffs’ attorney’s email that waiver was only preserved as to ‘one email from Belinda Brandimarti to Stephen Friedman dated July 27, 2020’ . . . However, Exhibits P and O annexed to Larch’s moving papers show that there are emails dated July 28 and July 30, 2019, which were produced by Plaintiffs and in which no reservation was taken” (*id.* at 12). Larch contends that “[i]rrespective of whether Plaintiffs produced one of the emails with reservation or not, the fact would remain that the privilege was waived because under the clearly established law in New York Plaintiffs are not permitted to selectively disclose privileged emails that they deem beneficial to them while at the same time withhold other privileged emails that are not beneficial (*id.* at 13, *citing Soussis v Lazer, Aptheker, Rosella & Yedid, P.C.*, 91 AD3d 753 [2d Dept 2012]).

### DISCUSSION

This action initiated in March 2021 involves Plaintiffs’ claims that the Properties transferred to Defendant 306 Malcolm NY LLC (an entity in which Defendants Arthur Spitzer and Mendel Deutsch are alleged to hold an ownership interest) on June 25, 2020 were transferred without authority and, therefore, both the deeds transferring the Properties as well as all the underlying encumbrances should be canceled. One such encumbrance is a mortgage given by 306 Malcom NY to Larch to secure Larch’s \$1,000,000 loan made on September 25, 2020 and another such encumbrance is a mortgage given by 306 Malcom NY LLC to ConnectOne to secure ConnectOne’s \$4,500,000 loan made on June 25, 2020. This Court has already held a number of conferences on the dispute over Plaintiffs’ and the Additional Defendants withholding of allegedly

privileged documents. Reiss Sheppe represented Goldstone Capital, Kalter and her companies, 16th Avenue Associates and Plaintiffs, with regard to the original ownership of the Properties on July 31, 2019<sup>5</sup> and the subsequent transfers. Reiss Sheppe originally represented Plaintiffs in this action, but following requests from various counsel for Defendants to be allowed to move to disqualify Reiss Sheppe, Reiss Sheppe withdrew and allowed Plaintiffs/Additional Defendants' current counsel, Shiryak, Bowman, Anderson, Gill & Kadochnikov LLP to substitute in as counsel in November 2021 (NYSCEF Doc. No. 95). Based on a discovery dispute concerning the assertion of privilege by Plaintiffs/Additional Defendants, at a conference held on March 29, 2022, the Court advised Plaintiffs/Additional Defendants' counsel to provide it with the privilege log and the withheld documents for an in-camera review (NYSCEF Doc. No. 263). As reflected on the privilege log, Plaintiffs/Additional Defendants' counsel withheld 150 documents on the basis of privilege (NYSCEF Doc. No. 262). Correspondence from Larch's and Plaintiffs/Additional Defendants' counsel was received in April 2022 (NYSCEF Doc. Nos. 209, 211, 212, 213, 225, 226, 229). The Court held a conference on April 5, 2022 and made initial rulings requiring production of a large number of the documents on the privilege log, but reserved decision on other items. It is the Court's understanding that Plaintiffs/Additional Defendants' counsel has not complied with the Court's rulings maintaining its position that the documents are privileged. This motion ensued. Based on this Court's in camera review and its rulings on the documents on the privilege log contained in the attached Appendix, a large percentage of the withheld documents involved emails that included third parties (*i.e.*, Riverside, Spitzer, Deutsch, seller's counsel, etc.) other than the third parties seemingly at issue in this motion (*i.e.*, Goldstone Capital, Kalter and Nordlicht) for which Plaintiffs/Additional Defendants' counsel clearly had no basis to assert a privilege and such emails must be produced. The issues this Court will now address are: (1) whether the privilege that could have been asserted with regard to communications between Goldstone Capital and Reiss Sheppe was waived because Kalter and/or Nordlicht received the communications; (2) whether Reiss Sheppe's communications with Nordlicht were privileged; and (3) whether Plaintiffs/Additional Defendants nevertheless waived any privilege through selective disclosure and/or placing the emails at issue.

The common law attorney-client privilege, which exempts communications between an attorney and his/her client<sup>6</sup> from disclosure, is codified in CPLR 4503(a) and provides:

Unless the client waives the privilege, an attorney or his or her employee, or any person who obtains without the knowledge of a client evidence of a confidential

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<sup>5</sup> Based on the deeds dated July 31, 2019, the Properties were purchased by Plaintiffs and the deeds were executed by Ira Burstein on behalf of Plaintiffs (*see* NYSCEF Doc. No. 88). Given Plaintiffs and Kalter's contention that Burstein had no authority to sign the assignment of shares to Spitzer, it is unclear how Plaintiffs will be able to argue that these deeds were validly signed on their behalf by Burstein.

<sup>6</sup> "No attorney-client privilege arises unless an attorney-client relationship has been established" (*Sieger v Zak*, 60 AD3d 661, 662 [2d Dept 2009]; *see Matter of Priest v Hennessy*, 51 NY2d 62, 68 [1980]).

communication made between the attorney or his or her employee and the client in the course of professional employment, shall not disclose, or be allowed to disclose such communication . . . nor shall the client be compelled to disclose such communication . . . (CPLR 4503[a]).

CPLR 3101(b) shields privileged attorney-client communications with absolute immunity from disclosure. Because the attorney-client privilege constitutes an obstacle to the truth-finding process, “its ‘invocation . . . should be cautiously observed to ensure that its application is consistent with its purpose’” (*Hoopes v Carota*, 142 AD2d 906, 908-909 [3d Dept 1988], *aff’d* 74 NY2d 716 [1989], *quoting Matter of Jacqueline F.*, 47 NY2d 215, 219 [1979]). The attorney-client privilege “enables one seeking legal advice to communicate with counsel . . . secure in the knowledge that the contents of the exchange will not later be revealed against the client’s wishes” (*People v Osorio*, 75 NY2d 80, 84 [1989]). It must be demonstrated that the information that is claimed to be protected from discovery was in fact a confidential communication made to counsel for the purpose of obtaining legal services or advice in the course of a professional relationship (*Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 379 [1991]; *Rossi v Blue Cross & Blue Shield of Greater NY*, 73 NY2d 588 [1989]; *All Waste Sys., Inc. v Gulf Ins. Co.*, 295 AD2d 379 [2d Dept 2002]). “[T]he privilege is not lost merely by reason of the fact that it also refers to certain nonlegal matters” (*Rossi*, 73 NY2d at 594; *All Waste Sys. Co.*, 295 AD2d 379). To qualify as a privileged attorney-client communication, the communication must concern legal rights and obligations and evidence counsel’s professional skills, such as counsel’s judgment and recommended legal strategies (*Rossi*, 73 NY2d at 594).<sup>7</sup> The burden of establishing that certain documents are privileged and protected from discovery is on the party asserting the privilege, and the protection claimed must be narrowly construed (*Spectrum Sys. Intl. Corp.*, 78 NY2d 371; *148 Magnolia, LLC v Merrimack Mut. Fire Ins. Co.*, 62 AD3d 486, 487 [1st Dept 2009]). The burden cannot be satisfied by counsel’s conclusory assertions of privilege; competent evidence establishing the privilege must be set forth by the party asserting the privilege (*Claverack Coop. Ins. Co. v Nielsen*, 296 AD2d 789 [3d Dept 2002]; *Agovino v Taco Bell 5083*, 225 AD2d 569 [2d Dept 1996]; *Martino v Kalbacher*, 225 AD2d 862 [3d Dept 1996]; *Smith v Ford Found.*, 231 AD2d 456 [1st Dept 1996]). Whether a particular document is protected by a privilege is necessarily a fact-specific determination, usually requiring an in camera review (*Spectrum Sys. Intl. Corp.*, 78 NY2d 371; *see Rossi*, 73 NY2d 588).

“The fundamental questions in assessing whether waiver of the privilege occurred are, whether the client intended to retain the confidentiality of the privileged materials and whether he took reasonable precautions to prevent disclosure” (*Manufacturers & Traders Trust Co. v Servotronics, Inc.*, 132 AD2d 392, 399 [4th Dept 1987]; *New York Times Newspaper Div. of N.Y.*

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<sup>7</sup> It is well settled that where “nonprivileged information is included in an otherwise privileged lawyer’s communication to its client—while influencing whether the document would be protected in whole or only in part—does not destroy the immunity. In transmitting legal advice and furnishing legal services it will often be necessary for a lawyer to refer to nonprivileged matter” (*Spectrum Sys. Intl. Corp.*, 78 NY2d at 378; *see also Matter of Leyton v City Univ. of N.Y.*, 25 Misc 3d 1214[A], 2009 NY Slip Op 52089[U] [Sup Ct, NY County 2009]).

*Times Co. v Lehrer McGovern Bovis, Inc.*, 300 AD2d 169 [1st Dept 2002]; see also *Kraus v Brandstetter*, 185 AD2d 300 [2d Dept 1992] [reasonable expectation the information in the report of the hospital's law committee would remain confidential due to the common interest of each recipient in the hospital's investigation, where all recipients were management employees of the hospital]). Furthermore, as "the waiver inquiry depends heavily on the factual context in which the privilege was allegedly waived," courts should review the particular circumstances of each case to determine whether, and to what extent, waiver occurred (*Matter of Grand Jury Proceedings*, 219 F3d 175, 188 [2d Cir 2000]).

It is well settled that disclosure of an attorney-client communication to a third party or communications with an attorney in the presence of a third party, not an agent or an employee, destroys the confidentiality required for asserting the privilege (*Doe v Poe*, 92 NY2d 864 [1998]; *Aetna Cas. & Sur. Co. v Certain Underwriters at Lloyd's London*, 176 Misc 2d 605 [Sup Ct, NY County 1998], *aff'd* 263 AD2d 367 [1st Dept 1999], *lv dismissed* 94 NY2d 875 [2000]; *People v Osorio*, 75 NY2d 80; *People v Harris*, 57 NY2d 335 [1982], *cert denied* 460 US 1047 [1983]; *Sieger*, 60 AD3d 661). "For the functional equivalent exception to apply, the third-party must assume the functions and duties of a full-time employee. For an agency exception to apply, the party claiming the privilege must demonstrate that it: (1) had a reasonable expectation of confidentiality; and (2) that disclosure to the third party was necessary for the purpose of facilitating legal services to the client . . . Courts may make an exception when the third party is an agent of the attorney or client, because, generally, those situations involve an expectation of confidentiality . . . 'Necessity' requires that the third-party is integral to serve a specialized purpose in facilitating attorney-client communications. Where a third party's presence is merely useful or convenient, but not 'nearly indispensable,' the privilege is lost" (*People v McQueen*, 67 Misc 3d 1206[A], 2020 NY Slip Op 50421[U] at \*3 [Sup Ct, NY County 2020], *lv dismissed* 203 AD3d 447 [1st Dept 2022] [attorney-client privilege did not extend to communications relayed to public relations firm under functional equivalent exception]). To determine whether a consultant or contractor falls within the functional equivalent exception, the inquiry is "whether [the] consultant or other contractor has in practice 'assum[ed] the functions and duties of [a] full-time employee' and has been 'so thoroughly integrated' into the corporation's structure that he or she is 'a de facto employee of the company'" (*Frank v Morgans Hotel Group Mgt.*, 66 Misc 3d 770, 773 [Sup Ct, NY County 2020], *quoting Export-Import Bank of U.S. v Asia Pulp & Paper Co., Ltd.*, 232 FRD 103, 113 [SD NY 2005]). "Courts . . . look at criteria such as 'whether the consultant had primary responsibility for a key corporate job' and could make decisions on the corporation's behalf, whether the consultant enjoyed 'a continuous and close working relationship' with 'the company's principals on matters critical to the company's position in litigation,' and whether 'the consultant is likely to possess information possessed by no one else at the company'" (*id.* [citations omitted]).

In addition to the waiver exception based on the status of the third party as an agent or a functional equivalent employee, another exception to waiver is the common interest doctrine. As the Court of Appeals held in *Ambac Assur. Corp.*:

Generally, communications between an attorney and a client that are made in the presence of or subsequently disclosed to third parties are not protected by the attorney-client privilege. Under the common interest doctrine, however, an attorney-client communication that is disclosed to a third party remains privileged

if the third party shares a common legal interest with the client who made the communication and the communication is made in furtherance of that common legal interest. We hold today, as the courts in New York have held for over two decades, that any such communication must also related to litigation, either pending or anticipated, in order for the exception to apply (*Ambac Assur. Corp.*, 27 NY3d at 620).

To fall within the common-interest privilege, also known as the joint defense privilege, “the privileged communication must be for the purpose of furthering a legal interest common to the client and the third party,” and “[t]he legal interest that those parties have in common must be identical (or nearly identical), as opposed to merely similar” (*Hyatt v State of Cal. Franchise Tax Bd.*, 105 AD3d 186, 205 [2d Dept 2013]). Additionally, since the common-interest privilege is an exception to the rule that the presence of a third party at a communication between counsel and client waives the attorney-client privilege, the communication must have been “made for the purpose of facilitating the rendition of legal advice or services . . . and must have been predominantly of a *legal* rather than a *commercial* nature” (*U.S. Bank N.A. v APP Intl. Fin. Co.*, 33 AD3d 430, 431 [1st Dept 2006]; *see Hyatt*, 105 AD3d at 186). Thus, the common-interest privilege “does not protect business or personal communications” and only applies “to communications . . . with respect to legal advice in pending or reasonably anticipated litigation in which the joint consulting parties have a common legal interest” (*Omni Health & Fitness Complex of Pelham, Inc. v P/A-Acadia Pelham Manor, LLC*, 33 Misc 3d 1211[A] at \*2 [Sup Ct, Westchester County 2011]; *Cohen*, 2015 WL 745712 at \*3; *see Hyatt*, 105 AD3d at 205; *Cohen v Cohen*, 2015 WL 745712 at \*3 [SD NY 2015]).

Finally, “[a] client can waive the attorney-client privilege by placing ‘the subject matter of the privileged communication in issue or where invasion of the privilege is required to determine the validity of the client’s claim or defense<sup>8</sup> and application of the privilege would deprive the

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<sup>8</sup> Thus, “[f]or an at-issue waiver to occur, ‘a party must rely on privileged advice from his counsel to make his claim or defense’” (*Windsor Sec., LLC v Arent Fox LLP*, 273 F Supp 3d 512, 518 [SD NY 2017], *quoting Matter of County of Erie*, 546 F3d 222, 229 [2d Cir 2008]). However, “case law frequently ends the inquiry into ‘at issue’ waiver once it is established that the party does not intend to use such materials as proof” (*Windsor Sec.*, 273 F Supp 3d at 519, *citing Stock v Schnader Harrison Segal & Lewis*, 142 AD3d 210 [1st Dept 2016]; *Manufacturers & Traders Trust Co.*, 132 AD2d 392; *see also IDT Corp. v Morgan Stanley Dean Witter & Co.*, 107 AD3d 451, 452 [1st Dept 2013] [holding that an at issue waiver did not occur because plaintiff “disavows any intention to use privileged materials” and defendant did not show that the materials were necessary to any claims or defenses]; *Alekna v 207-217 W. 110 Portfolio Owner LLC*, 188 AD3d 553 [1st Dept 2020] [First Department reverses trial court’s grant of motion to compel production of copy of due diligence report prepared by defendants’ prior counsel in connection with their purchase of building since defendants represented that they would not use the due diligence report to prove their claim of lack of willfulness and/or knowledge of the rent regulatory scheme of plaintiffs’ apartments]). When that occurs, it is the burden of the party seeking the privileged information “to show why the privileged material is so critical to their [claim or] defense that it would be unfair not to breach attorney-client privilege in order to provide them with it” (*Windsor Sec.*, 273 F Supp 3d at 520).

adversary of vital information” (*Tupi Cambios, S.A. v Morgenthau*, 44 Misc 3d 800, 804 [Sup Ct, NY County 2014], quoting *Jakobleff v Cerrato, Sweeney & Cohn*, 97 AD2d 834, 835 [2d Dept 1983]; *Deutsche Bank Trust Co. of Ams. v Tri-Links Inv. Trust*, 43 AD3d 56 [1st Dept 2007]). “A client can . . . waive the attorney-client privilege ‘by placing the subject matter of counsel’s advice in issue and by making selective disclosure of such advice’” (*Tupi Cambios, S.A.*, 44 Misc 3d at 804, quoting *Orco Bank v Protein Del Pacifico*, 179 AD2d 390, 390 [1st Dept 1992]). Such a waiver “reflects the principle that privilege is a shield and must not be used as a sword” (*American Re-Insurance Co. v United States Fid. & Guar. Co.*, 40 AD3d 486, 492 [1st Dept 2007]).<sup>9</sup>

With respect to the “at issue” waiver, the First Department in *Deutsche Bank* explained:

that a privileged communication contains information relevant to issues the parties are litigating does not, without more, place the contents of the privileged communication itself “at issue” in the lawsuit; if that were the case, a privilege would have little effect . . . Rather, “at issue” waiver occurs “when the party has asserted a claim or defense that he intends to prove by use of the privileged materials (*Deutsche Bank*, 43 AD3d at 64; *Tupi Cambios, S.A.*, 44 Misc 3d 800; see also *Knopf v Sanford*, 65 Misc 3d 463 [Sup Ct 2019] [“A party that affirmatively uses its own privileged information to assert a claim or defense waives the privilege”])

“The ‘at issue’ waiver has been applied when, for example, a client asserts as a defense that he has relied on the advice of counsel . . . However, the waiver has been applied more broadly to cover circumstances in which a client does not expressly claim that he has relied on counsel’s advice, but where the truth of the parties’ position can only be assessed by examination of a privileged communication . . . It has also been held that the attorney-client privilege is not waived when the information sought relates primarily to a plaintiff’s knowledge rather than the legal advice given or information conveyed to counsel” (*Bolton v Weil, Gotshal & Manges LLP*, 4 Misc 3d 1029[A], 2004 NY Slip Op 51118[U] at \*5 [Sup Ct, NY County 2004]). Moreover, selective disclosure is not permitted as a party may not rely on the protection of the privilege regarding damaging communications while disclosing other self-serving communications (*Deutsche Bank*, 43 AD3d 56).

Thus, on this motion, it is Plaintiffs/Additional Defendants’ burden to show that the privilege exists and that it has not been waived (*John Blair Communications, Inc. v Reliance Capital Group, L.P.*, 182 AD2d 578 [1st Dept 1992]; *Manufacturers & Traders Trust Co.*, 132 AD2d 392). However, it is Larch’s burden to show that Plaintiffs/Additional Defendants

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<sup>9</sup> “‘The waiver of the attorney-client privilege . . . normally compels the production of other documents protected by the privilege which relate to the same subject’” (*Matter of Bank of N.Y.*, 42 Misc 3d 171, 176 [Sup Ct, NY County 2013], quoting *Matter of Stenovich v Wachtell, Lipton, Rosen & Katz*, 195 Misc 2d 99, 108 [Sup Ct, NY County 2003]).



“plac[ed] the subject matter of the privileged communication in issue’ or that ‘invasion of the privilege is required to determine the validity of the client’s claim or defense and application of the privilege would deprive the adversary of vital information” (*Credit Suisse First Boston v Urecht-America Fin. Co.*, 27 AD3d 253, 254 [1st Dept 2006]).

To the extent Plaintiffs/Additional Defendants are contending that Goldstone Capital acted as Plaintiffs’ consultant, it is Plaintiffs/Additional Defendants’ burden to show that Goldstone Capital’s employees were the functional equivalent of Plaintiffs’ employee. Given the foregoing standard, Plaintiffs/Additional Defendants have failed to show that the employees of Goldstone Capital have been so integrated into Plaintiffs’ corporate structure as to make them Plaintiffs’ de facto employees (*Export-Import Bank*, 232 FRD 103; *Sieger*, 60 AD3d 661; *William Tell Serv., LLC v Capital Fin. Planning, LLC*, 46 Misc 3d 577 [Sup Ct., Rensselaer County 2014]). Plaintiffs/Additional Defendants have further failed to satisfy the elements necessary to show that Goldstone Capital was their agent (*i.e.*, these parties were unrelated and they have not shown that there was a reasonable expectation that these communications would be kept confidential and that the inclusion of Goldstone Capital in the communications was necessary for the rendition of legal advice). Indeed, given Plaintiffs’ position that Burstein was not a member of Plaintiffs and had no authority to sign the assignment of shares document, Plaintiffs’ position that their communications with Reiss Sheppe that were disclosed to Goldstone Capital should remain privileged is totally unsupported. Furthermore, the emails shared between Reiss Sheppe, Goldstone Capital employees and Nordlicht and/or Kalter are not protected by the common interest privilege because Plaintiffs, Kalter and Burstein have not shown that at the time these communications were made, the parties shared a common interest in pending or anticipated litigation (*Ambac Assur. Corp.*, 27 NY3d 616; *Yemini v Goldberg*, 12 Misc 3d 1141 [Sup Ct, Nassau County 2006]).

The Court does not agree with Larch’s position that any communication between Reiss Sheppe and Mark Nordlicht must be produced on the ground that any privilege was waived by disclosure to third party Mark Nordlicht, who was neither Plaintiffs’ agent nor consultant (*i.e.*, the functional equivalent of Plaintiffs’ employee). Plaintiffs are wholly owned by 16th Avenue Associates. 16th Avenue Associates’ members are Mark Nordlicht’s wife (Kalter), his brother, and his sister-in-law. Based on this Court’s in camera review, although Mark Nordlicht is not a member of 16th Avenue Associates and, therefore, he is not a member of Plaintiffs, the daily operations of 16th Avenue Associates and Plaintiffs appear to be controlled by Mark Nordlicht (despite Kalter’s counsel’s hearsay statements to the bankruptcy court to the contrary). Reiss Sheppe communicated with Mark Nordlicht as though he was Plaintiffs’ agent, and Reiss Sheppe, Plaintiffs, 16th Avenue Associates, Kalter and Mark Nordlicht intended that their communications remain as confidential attorney-client communications. Given the close familial relationship between Mark Nordlicht, the purported funder of 16th Avenue Associates (Mark Nordlicht’s mother), and 16th Avenue Associates’ members (which for all intents and purposes are Plaintiffs) (*i.e.*, Mark Nordlicht’s wife Kalter, and his brother and sister-in-law), and given the work Mark Nordlicht performed for 16th Avenue Associates (and therefore Plaintiffs), Mark Nordlicht acted as their agent and the subjective expectation of confidentiality expressed by Kalter in her affidavit is reasonable (*i.e.*, 16th Avenue Associates/Plaintiffs had a “reasonable expectation of confidentiality under the circumstances”) (*People v Osorio*, 75 NY2d 80). Therefore, because Mark Nordlicht’s participation in emails and meetings where legal advice was discussed was necessary to the rendition of legal advice to Plaintiffs (16th Avenue Associates), the disclosure of privileged communications to Mark Nordlicht as Plaintiffs’ agent did not waive the privilege (*Ross v UKI*

*Ltd.*, 2004 WL 67221 [SD NY 2004]; *St. Louis v Hrustich*, 35 Misc 3d 1232[A] [Sup Ct, Albany County 2012]; *Matter of Sosnow*, 2007 NY Slip Op 51316[U], 841 NYS2d 826 [Sur Ct, Nassau County 2007]).

Based on the precedent established by *Deutsche Bank*, Larch has failed to prove that Plaintiffs should be required to produce the emails based on the at-issue waiver. Here, Plaintiffs/Additional Defendants have not asserted a claim or defense they intend to prove through the use of privileged materials (*cf. BMW Group, 2055 Cruger, LLC v Castlerom Holding Corp.*, 2018 NY Slip Op 31040[U], 2018 WL 2432181 [Sup Ct, NY County 2018]). And while Larch contends that Friedman's email exchanges with Riverside shows that Plaintiffs authorized the closing of the large loan/mortgage as there were no issues over ownership of the Properties on Plaintiffs' end, simply because Plaintiffs/Additional Defendants are denying knowledge of Friedman's purported authorization does not open up Plaintiffs/Additional Defendants' communication with Friedman for Larch's review because "the attorney-client privilege is not waived when the information sought relates primarily to a plaintiff's knowledge rather than the legal advice given or information conveyed to counsel" (*Bolton*, 4 Misc 3d 1029[A], 2004 NY Slip Op 51118[U]). While there is no doubt that these emails may be relevant to Larch's defenses, relevance alone is insufficient to put privileged materials "at issue" since "if that were the case, a privilege would have little effect" (*Deutsche Bank*, 43 AD3d at 64).

To the extent that Plaintiffs/Additional Defendants deny that they knew that their counsel was representing to Riverside that there were no further issues regarding ownership when the Larch mortgage closed, at his deposition, Friedman will not be permitted to invoke the privilege both with regard to the meaning of his emails or with regard to his client's knowledge of the statements he made (*Matter of Ehrlich v Wolf* (127 AD3d 613 [1st Dept 2015], *lv dismissed* 127 AD3d 613 [1st Dept 2015]; *see also William Tell Serv., LLC*, 46 Misc 3d 577). Based on this Court's in camera inspection, Larch cannot be given access to all of Plaintiffs/Additional Defendants' privileged documents based on Larch's at-issue argument. Of course, this ruling may be revisited in the future to the extent additional documents come to light that are relevant to the issue over whether Plaintiffs/Additional Defendants had knowledge of their counsel's statement.

For all the foregoing reasons, Plaintiffs and Additional Defendants Kalter and Burstein shall produce the emails and documents in accordance with this Court's Decision and Order and attached Appendix by no later than 5 p.m. on November 14, 2022.

### **CONCLUSION**

Accordingly, for the reasons stated and based upon the papers aforesaid, it is hereby

ORDERED that the motion by Larch Legacy LLC is granted in part and denied in part as set forth more fully herein; and it is further

ORDERED that counsel shall complete all remaining discovery in this action, including the taking of all depositions, within 40 days of the date of this Decision and Order and there shall be no further extensions of discovery absent exigent circumstances; and it is further

ORDERED that all counsel shall appear for a trial readiness conference on December 23, 2022 at 9:30 a.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
November 10, 2022

ENTER:

  
HON. GRETCHEN WALSH, J.S.C.

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## **APPENDIX**

### **Document No. 1**

First email dated May 7, 2019 (6:26 p.m.) from Ephraim Diamond (abelcapital) to Ahmed Sheikh (Goldstone Capital) attaching "Goldstone NDA" but attachment to email is a copy of lease agreement for 308 Malcom X Blvd. dated June 1, 2013 for the period ending May 31, 2023 between Upreal Gaston LLC (Boaz Gilad-landlord) and Brookland Capital LLC (Boaz Gilad-tenant) together with assignment to lease whereby Upreal Gaston assigns all of its rights under the lease to BG Venture LLC (Boaz Gilad). **There is nothing privileged about this email and it and the attachment must be produced.**

Second email dated May 7, 2019 (10:02 p.m.) from Ahmed Sheikh (Goldstone Capital) to Ephraim Diamond (abelcapital) cc'ing Adam Levine (Goldstone Capital) acknowledging receipt of attachment and telling Levine to have Burstein execute the document (presumably the NDA) in the morning. **There is nothing privileged about this email and it must be produced. Also, Lease attachment must be produced.**

Third email dated May 8, 2019 (12:37 p.m.) from Levine to Ephraim Diamond (abelcapital) cc'ing Ira Burstein and Sheikh in which Levine says please see attached which is presumably the NDA. **There is nothing privileged about this email and it must be produced.**

Fourth email dated May 9, 2019 (12:21 p.m.) from Levine to Ephraim Diamond (abelcapital) cc'ing Burstein, Sheikh and stating that they should all fully execute the NDA and then Diamond should send over the lease. **There is nothing privileged about this email and it must be produced.**

Fifth email dated May 9, 2019 (7:42 p.m.) from Ephraim Diamond (abelcapital) to Levine attaching a copy of the lease referenced above. **There is nothing privileged about this email and it must be produced.**

Sixth email dated May 10, 2019 (11:23 a.m.) from Levine to Stephen Friedman (Reiss Sheppe), Sheikh cc'ing Burstein, Avi Tarshish (Goldstone Capital) and Belinda Brandimarti (Goldstone Capital) attaching a copy of the lease received. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

### **Document No. 2**

Email dated May 31, 2019 (3:48 p.m.) from Levine to Friedman cc'ing Sheikh. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production.**

### **Document No. 3**

First email dated May 31, 2019 (3:56 p.m.) from Levine to seller's counsel Bruce Lederman, cc'ing Friedman, Sheikh in which Levine follows up and their call and identifies buyer of the Properties as Sheikh and their attorney as Friedman and requests that he forward the contract to them. **There is nothing privileged about this email and it must be produced.**

Second email dated May 31, 2019 (4:00 p.m.) from Lederman Levine and cc'ing Friedman and Sheikh attaching the proposed contract of sale and the leases on the Properties he has obtained so far. **There is nothing privileged about this email and it and its attachments must be produced.**

Third email dated June 3, 2019 (4:45 p.m.) from Friedman to Amir Kornblum (Reiss Sheppe) and Benjamin Gleitman (Reiss Sheppe). **This is an internal communication among counsel and the substance of the conversation may be redacted as privileged.**

#### **Document No. 4**

Email dated June 5, 2019 (5:14 a.m.) from Sheikh to Friedman and cc'ing Burstein, Tarshish and Levine. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production.**

#### **Document No. 5**

Duplicate of Document No. 4. It also includes the following additional emails:

Second email dated June 5, 2019 (10:11 a.m.) from Friedman to Sheikh. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

Third email dated June 5, 2019 (7 p.m.) from Sheikh to Friedman, cc'ing Burstein, Tarshish, Levine, Gleitman, Johnson, Kornblum in which Sheikh copies in the body of the email a text conversation between Burstein, Levine and what appears to be the seller of the Properties. **The text conversation is not privileged and must be produced but because this is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and Kornblum, substance of conversation may be redacted.**

#### **Document No. 6**

First email dated May 31, 2019 (3:56 p.m.) from Levine to Lederman, cc'ing Friedman, Sheikh in which Levine follows up and their call and identifies buyer of the Properties as Sheikh and their attorney as Friedman and requests that he forward the contract to them. **There is nothing privileged about this email and it must be produced.**

Second email dated May 31, 2019 (4:00 p.m.) from Lederman to Levine and cc'ing Friedman and Sheikh attaching the proposed contract of sale and the leases on the Properties he has obtained so far. **There is nothing privileged about this email and it and its attachments must be produced.**

Third email dated June 5, 2019 (10:56 a.m.) from Friedman to Lederman (seller's attorney) cc'ing Sheikh, Levine, Kornblum and Gleitman asking Lederman to include Kornblum and Gleitman on all future communication to Friedman and saying he is looking forward to working with Lederman's clients on the transaction. **There is nothing privileged about this email and it must be produced.**

Fourth email dated June 6, 2019 (9:57 a.m.) from Lederman to Friedman cc'ing Sheikh, Levine, Kornblum, Gleitman and rbendov (dabbyinvestments) inquiring if everyone is calling it at 10 a.m.? **There is nothing privileged about this email and it must be produced.**

Fifth email dated June 6, 2019 (10:58 a.m.) from Friedman to Lederman asking Lederman to send over title work/policies/surveys for the Properties. **There is nothing privileged about this email and it must be produced.**

Sixth email dated June 6, 2019 (11:06 a.m.) from Lederman to Ephraim Diamond (abelcapital) cc'ing rbendov (dabbyinvestments) re: 306-308 Malcom X in which Lederman asks them to send him any title policies. **There is nothing privileged about this email and it must be produced.**

Seventh email dated June 6, 2019 (12:00 p.m.) from Ephraim Diamond to Lederman and cc'ing rbendov (dabbyinvestments) in which Diamond states he found the attached (not attached) and states there is a title report from January 2019 in the drop box. **There is nothing privileged about this email and it must be produced.**

Eighth email dated June 6, 2019 (12:06 p.m.) from Lederman to Ephraim (abelcapital) and cc'ing rbendov(dabbyinvestments) re: 306-308 Malcom X in which Lederman asks them to send him the title report or link to the drop box. **There is nothing privileged about this email and it must be produced.**

Ninth email dated June 6, 2019 (12:18 p.m.) from Lederman to Friedman in which Friedman is provided the link to the title report. **There is nothing privileged about this email and it must be produced**

Tenth email dated June 6, 2019 (3:29 p.m.) from Friedman to Brandimarti and cc'ing Burstein, Tarshish and Sheikh in which Friedman forwards them the link to the title report he just received from Lederman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be redacted.**

#### **Document No. 7**

Duplicate of Document No. 6 and should be produced in accordance with that ruling.

#### **Document No. 8**

Duplicate of Document No. 6 (excluding Seventh and Ninth emails) but includes copy of survey and should be produced in accordance with that ruling.

#### **Document No. 9**

First email dated June 6, 2019 (9:09 p.m.) from Gleitman to Kornblum forwarding draft rider.

Second email dated June 6, 2019 (10:42 p.m.) from Kornblum to Gleitman. **These are counsels' internal privileged communications that may be withheld from production as privileged.**

**Document No. 10**

Email dated June 12, 2019 (1:50 p.m.) from Gleitman to Sheikh cc'ing Levine, Burstein, Tarshish, Kornblum/Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production however the attachments must be produced.**

**Document No. 11**

First email dated June 12, 2019 (5:10 p.m.) from Fallon Berger (Riverside) to Friedman cc'ing Yisroel Stamm (Riverside) attaching the preliminary title report for the Properties. There is nothing privileged about this email and the attached title report and both should be produced.

Email dated June 12, 2019 (5:12 p.m.) from Friedman to Gleitman, Kornblum and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**DOCUMENT NO. 12**

This document was inadvertently omitted for the in camera inspection but based on the author and recipients of this email, it appears to be privileged and may be withheld.

**Document No. 14**

First email dated June 13, 2019 (7:45 a.m.) from Lederman to Yisroel Stamm (Riverside) and cc'ing Gleitman, Friedman in which Lederman requests Stamm and stating that they are trying to close this morning and wants a spreadsheet of the total monetary fines and penalties that need to be paid at closing and assume payment of the two mechanic's liens. **There is nothing privileged about this email and it must be produced.**

Second email dated June 13, 2019 (12:21 p.m.) from Yisroel Stamm to Lederman and cc'ing Gleitman, Friedman, Fawn Zakheim, Esq. (Riverside), Rebecca Sooy (Riverside) attaching the requested spreadsheet. **There is nothing privileged about this email and it must be produced.**

Third email dated June 13, 2019 (3:54 p.m.) from Gleitman to Stamm and Lederman and cc'ing Friedman, Zakheim, Sooy in which Gleitman points out an error in spreadsheet based on failure to include Work Orders on all three parcels totaling \$9,676.88. **There is nothing privileged about this email and it must be produced.**

Fourth email dated June 17, 2019 (1:30 p.m.) from Lederman to Gleitman, Stamm, Jonharold Cicero, Esq. (from Lederman's firm) and cc'ing Friedman, Zakheim and Sooy asking if contracts are being signed and where are deposits? **There is nothing privileged about this email and it must be produced.**

Fifth email dated June 17, 2019 (1:33 p.m.) from Friedman to Sheikh, Burstein, Tarshish and Levine and cc'ing Kornblum and Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**



**Document No. 15**

Duplicate of First, Second, Third emails found in Document No. 14 and should be produced in accordance with those rulings. The document also includes the following additional emails:

Fourth email dated June 18, 2019 (5:05 p.m.) from Lederman to Gleitman, Stamm and cc'ing Friedman, Zakheim and Sooy inquiring whether there is any update on contract and wire. There is nothing privileged about is email and it must be produced.

Fifth email dated June 18, 2019 (5:09 p.m.) from Friedman to Burstein, Sheikh, Tarshish, Levine and cc'ing Kornblum and Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**Document No. 16**

Email dated June 19, 2019 (12:39 p.m.) from Friedman to Burstein, Sheikh, Tarshish, Levine. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 17**

Duplicate of Document No. 15 and should be produced in accordance with those rulings (excluding Fifth email) and includes an attached wiring instructions. It also includes the following additional emails:

Fifth email dated June 19, 2019 (1:47 p.m.) from Friedman to Lederman and cc'ing Zahkeim, Sooy, Kornblum, Gleitman, Stamm, Burstein, Sheikh, Levine and Tarshish in which Friedman advises Lederman that the contract and wire will be taken care of today but states he wants a quick call with him regarding the contract. He says the deposit (\$292,500) will be wired but it is to remain in his escrow account until Lederman receives authorization from Friedman for it to be used after they have finalized the contract. He asks for Lederman's agreement at which time wire will be sent. **There is nothing privileged about this email and it should be produced.**

Sixth email dated June 19, 2019 (1:48 p.m.) from Lederman to Friedman and the rest of the cc's in Fifth email in which Lederman agrees to Friedman's requirements. **There is nothing privileged about this email and it should be produced.**

Seventh email dated June 19, 2019 (1:51 p.m.) from Friedman to Burstein, and cc'ing Kornblum, Gleitman, Sheikh, Levine, Tarshish. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**Document No. 18**

Duplicate of Document No. 17 (produce in accordance with Document No. 17) and includes

Email dated June 19, 2019 (2:06 p.m.) from Burstein to Friedman and cc'ing Kornblum, Gleitman, Sheikh, Levine, Tarshish. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**Document No. 19**

Duplicate of Document No. 18 (produce in accordance with that ruling) and includes Email dated June 19, 2019 (2:48 p.m.) from Levine to Burstein, Friedman, and cc'ing Kornblum, Gleitman, Sheikh, Tarshish. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**Document No. 20**

String of emails between Levine, Friedman, Gleitman, Sheikh, Burstein and Tarshish. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and may be withheld from production**

**Document No. 21**

Duplicate of Document No. 17 (excluding Seventh email) and includes Rider to Contract of Sale with seller's comments and should be produced in accordance with those rulings. It also includes the following additional emails:

Seventh email dated June 19, 2019 (2:03 p.m.) from Lederman to Friedman and cc'ing Zakheim, Sooy, Kornblum, Gleitman, Stamm, Burstein, Sheikh, Levine, Tarshish in which Lederman advises Friedman that he just tried to call him in response to his request for call to discuss contract but Friedman was on the phone. **There is nothing privileged about this email and it must be produced.**

Eighth email dated June 19, 2019 (2:22 p.m.) from Friedman to Lederman saying he just tried to call him back and Lederman should call him back at his convenience. **There is nothing privileged about this email and it must be produced.**

Ninth email dated June 20, 2019 (12:45 p.m.) from Lederman to Friedman and cc'ing Gleitman in which Lederman advises Friedman that they have not gotten back the signed contracts and Lederman had further changes to the rider (attached) and asks Friedman to give him a call. **There is nothing privileged about this email and it must be produced.**

Tenth email dated June 20, 2019 (3:08 p.m.) from Friedman to Levine, Burstein, Sheikh and Tarshish. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman/Kornblum and substance of conversation may be redacted.**

**Document No. 22**

First email dated July 9, 2019 (11:50 a.m.) from Levine to Mike Orlik (Eastern Union), Michael Muller (Eastern Union) and cc'ing Burstein, Sheikh, Brandimarti, Tarshish, Friedman, Gleitman in which Levine says from the questions below I believe we need the CAD Files and Title report

and stating they need to discuss loan structure internally but he doesn't think they can push the closing date by a few weeks. **There is nothing privileged about this email which includes third parties from Eastern Union and it must be produced.**

Second email dated July 9, 2019 (12:17 p.m.) from Friedman to Levine, Orlik, Muller, and cc'ing Tarshish, Burstein, Sheikh, Brandimarti, Gleitman and Kornblum attaching the title report. **Both the email and title report must be produced as they were disclosed to third party (Eastern Union) and are therefore not privileged.**

**Document No. 27**

Two email exchanges dated July 25, 2019 between Friedman, Burstein and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production.**

**Document No. 28**

Two email exchanges dated July 25, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh and Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production.**

**Document No. 29**

Two email exchanges dated July 25, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production but the attached publicly filed articles of organization for Plaintiffs must be produced.**

**Document No. 30**

Several email exchanges dated July 25, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 31**

Several email exchanges dated July 25, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 32**

Several email exchanges dated July 25, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 33**

Several email exchanges dated July 25, 2019 and July 26, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and may be withheld from production.**

**Document No. 34**

First email dated June 25, 2019 (11:29 a.m.) from Cicero (Seller's attorney) to Stamm (Riverside) cc'ing Lederman enclosing materials to help clear title to the Properties for the closing. **There is nothing privileged about this email and it must be produced.**

Second email dated June 25, 2019 (11:39 a.m.) from Stamm to Cicero and cc'ing Lederman, Zakheim and Sooy responding the Cicero that they will review and advise if anything further is needed. **There is nothing privileged about this email and it must be produced.**

Third email dated June 25, 2019 (11:54 a.m.) from Cicero to Stamm and cc'ing Lederman, Zakheim, Sooy in which Cicero thanks Stamm for his response. **There is nothing privileged about this email and it must be produced.**

Fourth email dated July 2, 2019 (12:30 p.m.) from Cicero to Stamm and cc'ing Lederman, Zakheim, Sooy in which Cicero asks Stamm if they are cleared for title exceptions on behalf of seller for the closing. **There is nothing privileged about this email and it must be produced.**

Fifth email dated July 3, 2019 (10:55 a.m.) from Zakheim to Cicero, Stamm, and cc'ing Lederman, Sooy in which Zakheim asks certain questions regarding her review of the operating documents of the seller provided and a judicial order from Tel Aviv. **There is nothing privileged about this email and it must be produced.**

Sixth email dated July 3, 2019 (2:25 p.m.) from Zakheim to Cicero, Stamm, and cc'ing Lederman, Sooy in which Zakheim sets forth outstanding items needed to clear title exceptions. **There is nothing privileged about this email and it must be produced.**

Seventh email dated July 8, 2019 (1:48 p.m.) from Cicero to Zakheim, Stamm and cc'ing Lederman and Sooy in which Cicero responds to Zakheim regarding her outstanding items in the Fifth email. **There is nothing privileged about this email and it must be produced.**

Eighth email dated July 8, 2019 (2:33 p.m.) from Zakheim to Cicero, Stam and cc'ing Lederman, Sooy and Bayla Hersh (Riverside) in which Zakheim responds to Cicero's Sixth email states that most of their concerns and questions were not addressed by Cicero. **There is nothing privileged about this email and it must be produced.**

Ninth email dated July 8, 2019 (2:58 p.m.) from Cicero to Zakheim, Stamm and cc'ing Lederman, Sooy and Hersh in which Cicero provides an opinion letter which includes Upreal Gaston and states he will circle back on remaining issues. **There is nothing privileged about this email and it must be produced.**

Tenth email dated July 8, 2019 (3:12 p.m.) from Zakheim to Cicero, Stamm and cc'ing Lederman, Sooy and Hersh thanking Cicero for his response. **There is nothing privileged about this email and it must be produced.**

Eleventh email dated July 11, 2019 (11:13 a.m.) from Lederman to Zakheim, Cicero, Stamm and cc'ing Sooy and Hersh in which Lederman asks Zakheim when they can speak. **There is nothing privileged about this email and it must be produced.**

Twelfth email dated July 11, 2019 (12:38 p.m.) from Cicero to Lederman, Zakheim, Stamm and cc'ing Sooy and Hersh in which Cicero encloses consent of sole member of seller and seller's title affidavit as discussed. **There is nothing privileged about this email and it must be produced.**

Thirteenth email dated July 11, 2019 (5:50 p.m.) from Zakheim to Cicero, Lederman and Stamm and cc'ing Sooy and Hersh and outlining items that are still missing to clear title exceptions. **There is nothing privileged about this email and it must be produced.**

Fourteenth email dated July 22, 2019 (10:54 a.m.) from Cicero to Lederman, Zakheim, Stamm and cc'ing Sooy and Hersh in which Cicero states they are planning to close next week and they need a water meter reading ASAP. **There is nothing privileged about this email and it must be produced.**

Fifteenth email dated July 23, 2019 (11:50 a.m.) from Cicero to Lederman, Zakheim, Stamm and cc'ing Sooy and Hersh in which Cicero encloses various documents for the closing and requests that she prepare a title invoice. **There is nothing privileged about this email and it must be produced.**

Sixteenth email dated July 23, 2019 (12:11 p.m.) from Sooy to Cicero, Zakheim, Lederman, Stamm, cc'ing Hersh in which she advises Cicero that they will prepare the sellers title bill and requests that he forwards the Israeli and NY attorney opinion letters that they need to close. **There is nothing privileged about this email and it must be produced.**

Seventeenth email dated July 23, 2019 (12:20 p.m.) from Cicero to Sooy, Zakheim, Lederman, Stamm, cc'ing Hersh in which Cicero encloses the requested opinion letters. **There is nothing privileged about this email and it must be produced.**

Eighteenth email dated July 23, 2019 (1:19 p.m.) from Zakheim to Cicero, Sooy, Lederman and Stamm and asking if the opinion letter cover all three properties and asking for an executed consent since the other one was unexecuted. **There is nothing privileged about this email and it must be produced.**

Nineteenth email dated July 23, 2019 (1:27 p.m.) from Cicero to Lederman, Zakheim, Sooy and Stamm in which Cicero responds that the opinion letters are for all three properties and contending the executed consent was already provided. **There is nothing privileged about this email and it must be produced.**

Twentieth email dated July 23, 2019 (3:14 p.m.) from Zakheim to Cicero, Sooy, Lederman and Stamm and advising of issues with that consent. **There is nothing privileged about this email and it must be produced.**

Twenty-first email dated July 23, 2019 (3:47 p.m.) from Sooy to Cicero, Zakheim, Lederman, Stamm asking what percentage of each building is residential subject to mansion tax. **There is nothing privileged about this email and it must be produced.**

Twenty-second email dated July 23, 2019 (3:53 p.m.) from Cicero to Sooy, Lederman, Zakheim, and Stamm in which Cicero responds that they are mixed use commercial and not residential. **There is nothing privileged about this email and it must be produced.**

Twenty-third email dated July 23, 2019 (5:11 p.m.) from Sooy to Cicero, Zakheim, Lederman, Stamm and cc'ing Friedman advising that according to CP searches the property is mixed use residential and must be submitted as same or state will come back for mansion tax. **There is nothing privileged about this email and it must be produced.**

Twenty-fourth email dated July 24, 2019 (1:52 p.m.) from Cicero to Sooy, Lederman, Zakheim, and Stamm and cc'ing Friedman in which Cicero sets out things to be done for closing including escrow for mechanic's lien. **There is nothing privileged about this email and it must be produced.**

Twenty-fifth email dated July 25, 2019 (7:17 p.m.) from Zakheim to Cicero, Sooy, Lederman and Stamm and cc'ing Friedman regarding need to bond mechanic's lien for closing. **There is nothing privileged about this email and it must be produced.**

Twenty-sixth email dated July 26, 2019 (4:29 p.m.) from Cicero to Sooy, Lederman, Zakheim, and Stamm and cc'ing Friedman in which Cicero asks Zakheim to circulate the preliminary title invoice. **There is nothing privileged about this email and it must be produced.**

Twenty-seventh email dated July 26, 2019 (4:36 p.m.) from Sooy to Cicero, Zakheim, Lederman, Stamm and cc'ing Friedman advising that the file is currently being split into the 3 parcels and when that is final, Riverside will circulate a preliminary title bill. **There is nothing privileged about this email and it must be produced.**

Twenty-eighth email dated July 26, 2019 (4:59 p.m.) from Friedman to Burstein and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

#### **Document No. 35**

Several email exchanges dated July 25, 2019 and July 29, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

#### **Document No. 36**

Several email exchanges dated July 25, 2019 and July 29, 2019 between Friedman, Burstein, Brandimarti, Levine, Sheikh, Gleitman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 38**

Duplicate of Document No. 34 (excluding Twenty-seventh and Twenty-eighth emails) and should be produced in accordance with those rulings. The document includes following additional emails:

Twenty-seventh email dated July 25, 2019 (7:26 p.m.) from Lederman to Zakheim responding to her email by saying she should be able to take an undertaking that he will bond to get lp removed. **There is nothing privileged about this email and it must be produced.**

Twenty-eighth email dated July 25, 2019 (8:09 p.m.) from Zakheim to Lederman and cc'ing Cicero, Sooy, Friedman and Stamm saying Lederman's request is not usual and they should bond it before closing. **There is nothing privileged about this email and it must be produced.**

Twenty-ninth email dated July 29, 2019 (7:51 a.m.) from Lederman to Zakheim and cc'ing Cicero, Stamm, Sooy and Friedman in which Lederman asks Zakheim if she is available to speak this AM. **There is nothing privileged about this email and it must be produced.**

Thirtieth email dated July 29, 2019 (10:28 a.m.) from Zakheim to Lederman and cc'ing Cicero, Sooy, Stamm, Friedman and Karla Miller, Esq. (Riverside) in which she advises that she and Miller are available tomorrow to discuss the mechanic's lien issue and asking for his availability. **There is nothing privileged about this email and it must be produced.**

Thirty-first email dated July 29, 2019 (10:32 a.m.) from Lederman to Zakheim and cc'ing Cicero, Stamm, Sooy, Friedman and Miller in which Lederman says he's available at 11. **There is nothing privileged about this email and it must be produced.**

Thirty-second email dated July 29, 2019 (10:48 a.m.) from Zakheim to Lederman and cc'ing Cicero, Sooy, Stamm, Friedman and Miller in which she advises that they will call him at 11. **There is nothing privileged about this email and it must be produced.**

Thirty-third email dated July 29, 2019 (11:26 a.m.) from Friedman to Zakheim and cc'ing Sooy, Stamm, Miller, Gleitman, Levine, Burstein, Brandimarti, Sheikh in which Friedman asks Zakheim for title bills and settlement statements. **There is nothing privileged about this email and it must be produced.**

Thirty-fourth email dated July 29, 2019 (11:29 a.m.) from Sooy responding to Friedman and Zakheim's Thirty-third email and cc'ing Stamm, Miller, Gleitman, Levine, Burstein, Brandimarti, and Sheikh in which Sooy attaches the requested title bills. **There is nothing privileged about this email and it must be produced.**

Thirty-fifth email dated July 29, 2019 (11:59 a.m.) from Friedman to Zakheim and cc'ing Sooy, Stamm, Miller, Gleitman, Levine, Burstein, Brandimarti, Sheik in which Friedman thanks her for title bills and asks her to add mansion tax. **There is nothing privileged about this email and it must be produced.**

Thirty-sixth email dated July 29, 2019 (12:09 p.m.) from Sooy to Friedman and Zakheim and cc'ing Stamm, Miller, Gleitman, Levine, Burstein, Brandimarti, and Sheikh in which Sooy responds to Friedman's Thirty-fifth email and asks whether the Properties are 100% residential. **There is nothing privileged about this email and it must be produced.**

Thirty-seventh email dated July 29, 2019 (12:11 p.m.) from Brandimarti to Sooy, Friedman, Zakheim, and cc'ing Stamm, Miller, Gleitman, Levine, Burstein and Sheikh in which Brandimarti states they also need a tax contingency for all 3 properties. **There is nothing privileged about this email and it must be produced.**

Thirty-eighth email dated July 29, 2019 (12:17 p.m.) from Gleitman to Brandimarti, Friedman and cc'ing Levine, Burstein and Sheikh. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and substance of conversation may be redacted and attachment withheld.**

**Document No. 40**

Email dated July 29, 2019 (4:37 p.m.) from Levine to Friedman and Gleitman and cc'ing Burstein and Gleitman and attaching draft tenant letter. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production but attached EIN for 16<sup>th</sup> Ave. Associates should be produced.**

**Document No. 41**

Duplicate of Document No. 40 and adds email dated July 29, 2019 (5:55 p.m.) from Friedman to Levine and Gleitman and cc'ing Burstein and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 42**

Duplicate of Document No. 41 and one more email among the same recipients. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 43**

Duplicate of Document No. 42 and adds one more email among the same recipients. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and may be withheld from production.**

**Document No. 44**

First four emails are email chain dated July 29, 2019 among counsel to seller Nick Yokos, Esq. (Kucker & Brush, LLP) and Friedman, Gleitman, Brandimarti, Burstein, Sheikh, Tarshish, Levine and Kornblum regarding the surrenders for Gilad (principal of seller) and attaching a draft of same. **Given the third party involved in these communications (Yokos), there is no basis for the assertion of privilege and the email should be produced.**



Fifth email dated July 30, 2019 (11:38 a.m.) from Friedman to Gleitman. **This is an internal communication between counsel and substance of conversation may be redacted as privileged.**

**Document No. 45**

Email dated July 30, 2019 (2:17 p.m.) from Levine to Friedman, Benjamin Gleitman and cc'ing Belinda Brandimarti, Burstein and Kalter attaching draft Limited Liability Company Agreements to be used in forming Plaintiffs in which Levine advises Friedman that these are their standard agreements they have on file and to confirm that their use of them is fine. He also states that for all the 16th Ave. is the 100% owner with Kalter signing as managing member. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this email and the attached document and both must be produced.**

**Document No. 46**

Duplicate of Document No. 45 and should be produced in accordance with that ruling. The document includes the following additional email:

Second email dated July 30, 2019 (2:51 p.m.) from Friedman to Levine, Gleitman and cc'ing Brandimarti, Burstein (all Goldstone Capital) and Kalter in which Friedman responds to inquiry about using the standard draft agreements by asking why are they making them so long, they should use a 3 pager and there are some mistakes. He also asks if Dahlia will be signing the closing documents or Burstein. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this document and it must be produced.**

**Document No. 47**

Duplicate of Document No. 46 and should be produced in accordance with that ruling. The document includes the following additional email:

Third email dated July 30, 2019 (3:55 p.m.) from Levine to Friedman, Gleitman and cc'ing Brandimarti, Burstein and Kalter in which Levine responds to Friedman and providing him with the 1-pager he had from Brandimarti and asking if it is okay and he will make two more and that they will get back to Friedman on who is signing the documents. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this email and the attached operating agreement and both must be produced.**

**Document No. 49**

Duplicate of Document No. 47 and should be produced in accordance with that ruling. The document includes the following additional email:

Fourth email dated July 30, 2019 (5:20 p.m.) from Levine to Friedman, Gleitman, Brandimarti, Burstein and Kalter in which Levine sends a friendly reminder to Friedman to send him his 3 page LLC agreement he can use for the Malcolm X Blvd. LLC Agreements. **Given that this**

**communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this document and it must be produced.**

**Document No. 50**

Duplicate of Document No. 49 and should be produced in accordance with that ruling. It also includes the following additional email:

Fifth email dated July 30, 2019 (5:38 p.m.) from Friedman to Levine, Gleitman, and cc'ing Brandimarti, Burstein, and Kalter in which Friedman sends them his 3 page operating agreements to be used in forming Plaintiffs and asks Levine to please have Kalter review so he can incorporate any changes she may have. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this document and it must be produced.**

**Document No. 51**

This is a duplicate of Document No. 34 (all the same rulings apply) (excluding Twenty-eighth email and adds the following emails:

Twenty-eighth email dated July 26, 2019 (5:11 p.m.) from Cicero to Sooy, Zakheim, Lederman, Stamm and cc'ing Friedman in which Cicero attaches his form of escrow letter for closing and asking them to confirm their acceptance of it. **There is nothing privileged about this email and it must be produced.**

Twenty-ninth email dated July 29, 2019 (9:54 a.m.) from Zakheim to Cicero, Sooy, Lederman Stamm and cc'ing Friedman in which Zakheim advises Cicero his escrow letter is approved. **There is nothing privileged about this email and it must be produced.**

Thirtieth email dated July 29, 2019 (10:19 a.m.) from Cicero to Zakheim, Sooy, Lederman, Stamm and cc'ing Friedman in which Cicero attaches execution copy of escrow letter. **There is nothing privileged about this email and it must be produced.**

Thirty-first email dated July 29, 2019 (10:25 a.m.) from Stamm to Cicero, Zakheim, Sooy, Lederman and cc'ing Friedman in which Stamm attaches Riverside's execution of escrow letter. **There is nothing privileged about this email and it must be produced.**

Thirty-second email dated July 29, 2019 (4:17 p.m.) from Friedman to Stamm in which Friedman asks Stamm to call him on this deal. **There is nothing privileged about this email and it must be produced.**

Thirty-third email dated July 29, 2019 (5:21 p.m.) from Stamm to Friedman and cc'ing Sooy in which Stamm forwards to them the title reports for 306 Malcolm X Blvd. and 308 Malcolm X Blvd. **There is nothing privileged about this email and it must be produced.**

Thirty-fourth email dated July 31, 2019 (10:14 a.m.) from Friedman to Stamm and cc'ing Sooy in which Friedman asks Stamm to send him the three Owner's Pro-Formas for the deal. **There is nothing privileged about this email and it must be produced.**

Thirty-fifth email dated July 31, 2019 (10:38 a.m.) from Stamm to Friedman, and cc'ing Sooy, Alan Hirsch, and Zakheim attaching pro formas requested (which are attached and must also be produced). **There is nothing privileged about this email and it must be produced.**

Thirty-fifth email dated July 31, 2019 (10:44 a.m.) from Friedman to Levine, Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 52**

First email dated July 31, 2019 (10:48 a.m.) from Stamm to Friedman and cc'ing Alan Hirsch, Sooy, and Zakheim in which Stamm attaches spread sheet of all the open liens that I sent mid-June and the 3 Tax Contins. Email attaches Tax Search Coninuations. This is not a privileged communication and it must be produced.

Second email dated July 31, 2019 (10:45 a.m.) from Friedman to Levine and Brandimarti **but it contains no privileged communication and must be produced.**

**Document No. 53**

First email dated July 31, 2019 (10:48 a.m.) from Stamm to Friedman and cc'ing Alan Hirsch, Sooy, and Zakheim in which Stamm attaches spread sheet of all the open liens that I sent mid-June and the 3 Tax Contins. Email attaches Tax Search Continuations. **There is nothing privileged about this email and it must be produced.**

Second email dated July 31, 2019 (11:16 a.m.) from Sooy to Stamm, Friedman and cc'ing Alan Hirsch and Zakheim in which Sooy provides a chart reflecting that all the ECBs raised against Parcel III, all occurred off the property. **There is nothing privileged about this email and it must be produced.**

Third email dated July 31, 2019 (11:21 a.m.) from Friedman to Brandimarti and Levine forwarding these emails but providing no confidential communication so email should be produced.

**Document No. 55**

Email dated July 31, 2019 (2:36 p.m.) from Friedman to Burstein and cc'ing Levine, Brandimarti and Gleitman and attaching draft amendment to the contract of sale. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and the email and the draft amendment may be withheld from production.**

**Document No. 56**

First email dated July 31, 2019 (2:02 p.m.) from Alan Hirsch to Sooy, Stamm, Zakheim, Friedman and Cicero advising that they have a 3 p.m. cutoff on payoff or they have to add \$210.64 a day. **There is nothing privileged about this email and it must be produced.**

Second email dated July 31, 2019 (2:10 p.m.) from Cicero to Alan Hirsch, Sooy, Stamm, Zakheim, Friedman in which Cicero asks what is the holdup. **There is nothing privileged about this email and it must be produced.**

Third email dated July 31, 2019 (2:13 p.m.) from Zakheim to Cicero, Alan Hirsch, Sooy, Stamm and Friedman in which Zakheim explains to Cicero that there is an item outstanding on seller's side which is executed escrow, indemnity and undertaking and when will they be received. Also need photo ID for seller's signatory. **There is nothing privileged about this email and it must be produced.**

Fourth email dated July 31, 2019 (2:19 p.m.) from Friedman to Zakheim, Alan Hirsch, Sooy and Stamm in which Friedman attaches photo id. **There is nothing privileged about this email and it must be produced.**

Fifth email dated July 31, 2019 (2:37 p.m.) from Stamm to Friedman, Zakheim, Alan Hirsch and Sooy advising that there are open boiler violations amounting to \$11,000 and stating that if Riverside is paying this, they will need to obtain an expediter and if Riverside is not paying them then they can add \$11,000 as an adjustment on the settlement sheet. **There is nothing privileged about this email and it must be produced.**

Sixth email dated July 31, 2019 (2:37 p.m.) from Friedman to Brandimarti, Levine. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 57**

Frist email dated July 31, 2019 (2:43 p.m.) from Karen Wynter (Riverside) to Alan Hirsch attaching assignment page assigning contract of sale from Goldstone Partner, LLC to Plaintiffs. **There is nothing privileged about the email or the attached assignment page and they must be produced.**

Second email dated July 31, 2019 (2:45 p.m.) from Alan Hirsch to Friedman, Gleitman and attaching the assignment page that is needed. **There is nothing privileged about this email and it must be produced.**

Third email dated July 31, 2019 (2:57 p.m.) from Friedman to Levine and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 60**

First email dated July 31, 2019 (3:55 p.m.) from Isaac Becker (Riverside) to Friedman, Levine, Brandimarti, Burstein, Sheikh, Tarshish, Gleitman, Cicero, Lederman, Alan Hirsch and cc'ing a number of Riverside employees in which Becker attaches the closing statements for this file (not attached) and asks buyer and seller if they would confirm that they are final and execute the attached signature pages. **There is nothing privileged about the email or the attached signatures pages and they must be produced.**

Second email dated July 31, 2019 (3:59 p.m.) from Friedman to Burstein, Levine and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 61**

This is a chain of emails among seller's counsel, buyer's counsel (Reiss Sheppe), Goldstone Capital employees and Riverside regarding various pre-closing details and ending with an email from Levine to Friedman dated July 31, 2019 in which Levine forwards to Friedman the Riverside wiring instructions. **There is nothing privileged about this email chain and it must be produced.**

**Document No. 62**

Email dated July 31, 2019 (5:27 p.m.) from Levine to Friedman and cc'ing Burstein and Kalter in which Levine states that wires were sent to Riverside for the closing and that the wires came from the following entities in the following amounts:

16th Avenue Associates - \$2,000,000

Oceanstar Partners - \$1,215,000

Nordlicht Gifting Trust - \$500,000

**Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this email and the email and the attached confirmation of wire transfers must be produced.**

**Document No. 63**

Email dated July 31, 2019 (5:43 p.m.) from Gleitman to Burstein and Levine. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it and attachment may be withheld from production.**

**Document No. 65**

This is a largely a duplicate of Document No. 61 and the emails should be produced in accordance with those rulings.

The last email in the chain is an email from Levine to Gleitman and Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 66**

Email from Levine dated August 1, 2019 (12:16 p.m.) to Friedman and Brandimarti and cc'ing Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 68**

Email from Brandimarti dated August 1, 2019 (12:56 p.m.) to Friedman and Gleitman and cc'ing Levine and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 70**

Email from Brandimarti dated August 1, 2019 (6:12 p.m.) to Friedman and Gleitman and cc'ing Levine and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it may be withheld from production.**

**Document No. 71**

Email from Levine dated August 2, 2019 (10:35 a.m.) to Friedman and Gleitman and cc'ing Burstein and Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it may be withheld from production.**

**Document No. 72**

Emails among Friedman, Brandimarti, Gleitman, Levine and Burstein dated August 2, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it may be withheld from production.**

**Document No. 73**

Emails among Friedman, Brandimarti, Gleitman, Levine and Burstein dated August 2, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it may be withheld from production.**

**Document No. 74**

Duplicate of Document No. 50 and should be produced in accordance with that ruling. It includes the following additional document:

Sixth email dated August 5, 2019 (10:31 a.m.) from Levine to Kalter and Friedman, cc'ing Gleitman, Brandimarti and Burstein in which Levine sends Kalter the agreements prepared by Friedman and asks her if she has had a chance to review and does she have any questions or comments. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Kalter), no privilege may attach to this email and it must be produced.**

**Document No. 75**

First email dated August 1, 2019 (12:16 p.m.) from Levine to Friedman, Brandimarti and cc'ing Burstein re: 16<sup>th</sup> Avenue wiring instructions. This email is then forwarded in the Second email dated August 1, 2019 (12:23) from Friedman to Cicero and cc'ing Levine, Brandimarti and Gleitman so as to provide seller's attorney with wiring instructions for where to send the rent that they received for August and requesting that they be provided the apartments that paid the August rent. **There is nothing privileged about this email and it must be produced.**

Third email dated August 5, 2019 (3:38 p.m.) from Levine to Friedman, Cicero and cc'ing Brandimarti and Gleitman in which Levine asks Cicero whether the August rent sent yet and if so, to provide the wire confirmation number. **There is nothing privileged about this email and it must be produced.**

Fourth email dated August 5, 2019 (3:54 p.m.) from Cicero to Levine, Friedman and cc'ing Brandimarti and Gleitman and advising that according to his client no one paid August rent unless they were put under the door of the vacant office. **There is nothing privileged about this email and it must be produced.**

Fifth email dated August 5, 2019 (3:57 p.m.) from Gleitman to Levine, Friedman and cc'ing Brandimarti. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and substance of conversation may be redacted.**

**Document No. 76**

This is a duplicate of Document No. 75 and the production should occur in accordance with those rulings. It includes the following additional email:

Sixth email dated August 5, 2019 (4:05 p.m.) from Levine to Gleitman, Friedman and cc'ing Brandimarti and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and substance of conversation may be redacted.**

**Document No. 77**

Email dated August 6, 2019 (6:18 a.m.) from Levine to Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 78**

Email dated August 6, 2019 (7:19 p.m.) from Levine to Friedman, Gleitman and cc'ing Brandimarti and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it and attachment may be withheld from production.**

**Document No. 79**

Email dated August 8, 2019 (12:32 p.m.) from Levine to Friedman, Brandimarti and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and it and attachment may be withheld from production.**

**Document No. 80**

First email dated August 1, 2019 (1:30 p.m.) from Brandimarti to Friedman, Gleitman and Isaac Becker (Riverside) in which she attaches the three invoices for the insurance on the Properties asking Becker to pay for them with the money he is holding in escrow. **There is nothing privileged about this email and the attached survey and they must be produced.**

Second email dated August 2, 2019 (1:28 p.m.) from Becker to Brandimarti, Friedman, Gleitman, and cc'ing Burstein, Levine, Sheikh, Tarshish, and Gitana Brazinskiene (Riverside) saying he will do as Brandimarti requested. **There is nothing privileged about this email and it must be produced.**

Third email dated August 7, 2019 (10:52 a.m.) from Friedman to Becker and cc'ing Burstein, Levine, Sheikh, Tarshish, Brazinskiene, Karen Blaine (Reiss Sheppe), Brandimarti, and Gleitman requesting that Becker send the escrow balance to his firm's escrow account. **There is nothing privileged about this email and it must be produced.**

Fourth and Fifth emails dated August 8, 2019 between Brandimarti, Friedman, Gleitman, Levine, Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman/Gleitman and the substance of the conversation may be redacted.**

**Document No. 81**

This is a duplicate of Document No. 80 (excluding Fifth email) and production should occur in accordance with those rulings.

**Document No. 82**

Emails among Friedman, Brandimarti, Levine and Burstein dated August 8, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 84**

Email dated September 25, 2019 (6:47 p.m.) from Levine to Friedman and cc'ing Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it and its attachments may be withheld from production.**

**Document No. 85**

Email dated September 27, 2019 (12:10 p.m.) from Levine to Friedman and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 86**

This is a duplicate of Document No. 80 and production should occur in accordance with those rulings. It also includes

Fourth email dated September 27, 2019 (12:44 p.m.) from Brandimarti to Friedman and cc'ing Levine and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and the substance of the communication may be redacted.**

**Document No. 87**

Emails between Friedman, Levine and Burstein dated September 27, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**



**Document No. 88**

Emails between Friedman, Levine and Burstein dated September 27, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 89**

Emails between Friedman, Levine and Burstein dated September 27, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 90**

Emails between Friedman, Levine and Burstein dated September 27, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 91**

Emails between Friedman, Levine and Burstein dated September 27, 2019. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 92**

Email dated October 20, 2019 (1:38 p.m.) from Brandimarti to Friedman, Burstein and Levine. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 94**

First email dated November 5, 2019 (1:19 p.m.) from Burstein to Friedman, Gleitman and cc'ing Nordlicht, Herman Meisels (goldengroupny), Spitzer and Levine in which Burstein provides the purchaser information (Henry Walter), lender information (Schartz & Co.) and tells Friedman that they need the contract of sale for the Malcolm X properties because they need to close by Friday because of related transaction so he should please send the contract to Henry Meisels as soon as possible. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital, Nordlicht, Meisels, Spitzer), no privilege may attach to this document and it must be produced.**

Second email date November 5, 2019 (2:53 p.m.) from Friedman to Burstein and Gleitman and cc'ing Nordlicht, Herman Meisels, Spitzer and Levine in which Friedman sends the contract of sale that is ready to be executed. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital, Nordlicht, Meisels, Spitzer), no privilege may attach to this email and its attachment and they must be produced.**

**Document No. 95**

First email dated November 6, 2019 (1:18 p.m.) from Alec Feintuch (levnyc) to Herman Meisels (goldengroupny) cc'ing Joseph Hach (levnyc) and Noele Castillo (levnyc) dated November 6, 2019 attaching a term sheet for Orange Flats and advising that the term sheet is only valid for 48 hours. **There is nothing privileged about this email and it must be produced.**

Second email dated November 7, 2019 (2:16 p.m.) from Spitzer to Burstein and Mark Nordlicht forwarding the first email referenced above. **There is nothing privileged about this email and it must be produced.**

Third email dated November 7, 2019 (3:51 p.m.) from Burstein to Spitzer, Friedman, Deutsche, Herman Meisels and cc'ing Mark Nordlicht, Adam Levine. In it, Burstein advises Friedman that Spitzer and Deutsche will be purchasing Malcom X for \$4.7 million and they have secured a loan for \$4.2 million. He advises that at the close scheduled for early next week, 16th Ave. will receive \$3.8 million net of all expenses. For the \$900,000 balance (Approx) a preferred equity position will be placed on 1097 Prospect Place. **There is nothing privileged about this email and it must be produced.**

Fourth email dated November 7, 2019 (5:37 p.m.) from Burstein to Spitzer and Burstein asks Spitzer to send over title, rent roll, DHCR report and list of building expenses to 1097 Prospect Place. **There is nothing privileged about this email and it must be produced.**

Fifth email dated November 8, 2019 (11:19 a.m.) from Burstein to Spitzer, Friedman, Deutsche, Herman Meisels and cc'ing Mark Nordlicht and Adam Levine in which Burstein asks Spitzer to send over the information referenced in the Fourth email as soon as he can. **There is nothing privileged about this email and it must be produced.**

Sixth email dated November 8, 2019 (12:12 p.m.) from Burstein to Spitzer, Friedman, Deutsche, Herman Meisels, and cc'ing Nordlicht and Adam Levine in which Burstein asks Spitzer if he can do a walk-through on 1097 Prospect Place at any time on Sunday that is convenient for Spitzer. **There is nothing privileged about this email and it must be produced.**

Seventh email dated November November 8, 2019 (1:53 p.m.) from Burstein to Spitzer, Friedman, Deutsche, Herman Meisels. In it, Burstein advises Friedman that Spitzer told him that the Declaration of Restriction on 1097 Prospect Place from Shlomo had been removed and that he had ordered title. Burstein also asks Spitzer for the documentation on this issue. **There is nothing privileged about this email and it must be produced.**

Eighth email dated November 8, 2019 (1:54 p.m.) from Friedman presumably in response to Seventh email and advising that Declaration of Restrictions was not removed and it is still of record. **There is nothing privileged about this email and it must be produced.**

Ninth email dated November 11, 2019 (7:39 a.m.) from Burstein to Friedman and cc'ing Spitzer, Deutsche, Meisels, Nordlicht in which Burstein advises they are ready to close on 1097 Prospect Place on Wednesday and asks Spitzer and Deutsche to please forward the rent roll, DHCR report, expenses and mortgage information on the property and proof that Declaration of Restriction was removed. Also asks Spitzer if they can do a walk through. **There is nothing privileged about this email and it must be produced.**

Eighth email dated November 12, 2019 (9:55 a.m.) from Burstein to Friedman, Mark Nordlicht, cc'ing Spitzer, Deutsche, Herman Meisels in which Burstein advises Friedman that he spoke

with Spitzer regarding his purchase of Malcolm X and that he will be forwarding \$200,000 to Friedman's escrow today as a deposit for the closing of Malcolm X and he asks Friedman to send Spitzer Friedman's escrow information. **There is nothing privileged about this email and it must be produced.**

Ninth email dated November 12, 2019 (10:25 a.m.) from Friedman to Burstein, Mark Nordlicht and cc'ing Spitzer, Deutsche and Herman Meisels in which Friedman attaches is wiring instructions. **There is nothing privileged about this email and it must be produced.**

**Document No. 96**

Email dated November 21, 2019 from Brandimarti to Friedman and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production but publicly document attached must be produced.**

**Document No. 97**

Emails dated November 21 & 22, 2019 from Brandimarti to Friedman and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 98**

Emails dated November 21, 22 & 25, 2019 from Brandimarti to Friedman and Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 99**

Email dated November 25, 2019 (8:34 p.m.) from Friedman to Brandimarti and Burstein responding to emails found in Document Nos. 96, 97 and 98. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 100**

Email dated December 17, 2019 (11:34 p.m.) from Friedman to Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 101**

Email dated December 17, 2019 (11:34 a.m.) from Friedman to Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 102**

Email dated December 17, 2019 (4:26 p.m.) from Friedman to Burstein. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it and its attachment may be withheld from production.**

**Document No. 103**

First email dated January 31, 2020 (2:05 p.m.) from Brandimarti to Stamm and cc'ing Burstein and Becker requesting Riverside to do an updated rush title for 304A-308 Malcom X Blvd.

**There is nothing privileged about this email and it must be produced.**

Second email dated February 3, 2020 (9:51 a.m.) from Brandimarti to Stamm, Sooy and cc'ing Burtein and Becker following up on whether her prior email was received. **There is nothing privileged about this email and it must be produced.**

Third email dated February 3, 2020 (10:08 a.m.) from Brandimarti to Stamm, Sooy and cc'ing Burtein, Becker and Friedman asking what is the earliest they can have title. **There is nothing privileged about this email and it must be produced.**

Fourth email dated February 3, 2020 (10:10 a.m.) from Stam to Brandimarti and cc'ing Burstein, Friedman, Zakheim, Fallon Berger (Riverside) attaching updated title report (not attached). **There is nothing privileged about this email and it must be produced.**

Fifth email dated February 3, 2020 (10:39 a.m.) from Friedman to Stamm, Brandimarti and cc'ing Burstein, Zakheim, Fallon Berger (Riverside), Gleitman in which Friedman thanks Stamm. **There is nothing privileged about this email and it must be produced.**

Sixth email dated February 3, 2020 (10:45 a.m.) from Brandimarti to Friedman, Stamm and cc'ing Burstein, Zakheim, Fallon Berger (Riverside), Gleitman requesting that the title be updated as of today. **There is nothing privileged about this email and it must be produced.**

Seventh email dated February 4, 2020 (11:54 a.m.) from Zakheim to Brandimarti, Friedman, Stamm and cc'ing Burstein, Fallon Berger (Riverside), Gleitman providing updated report. **There is nothing privileged about this email and it must be produced.**

Eighth and Ninth emails are between Friedman and Brandimarti (February 5, 2020). **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and the substance of the communication may be redacted.**

**Document No. 104**

This is a duplicate of Document No. 103 (excluding Ninth email) and it should be produced in accordance with those rulings. The Title Report attached to this document must also be produced.

**Document No. 105**

First email dated March 17, 2020 (7:01 p.m.) from Herman Meisels to Friedman, cc'ing Burstein, Mark Nordlicht, Shmelka Guttman, David Augenstein. Meisels asks Friedman to get a call together to schedule the closing for 306, 306a and 309 Malcolm X Properties. **There is nothing privileged about this email and it must be produced.**

Second email dated March 18, 2020 (4:38 p.m.) from Friedman to Herman Meisels in which Friedman states that based on the feedback he has received, his sense is that "our clients are not

prepared at the moment to sell the properties” but he would follow up again. **There is nothing privileged about this email and it must be produced.**

Third email dated March 18, 2020 (4:46 p.m.) from Mark Nordlicht to Friedman and cc'ing Herman Meisels, Burstein, Shmelka Guttman, David Augenstein in which Nordlicht “elaborates” on Friedman’s email by stating that given the Covid pandemic, he did not want to waste resources on a transaction that is not likely to close but if Meisels (e.g., his clients) could demonstrate that they had financing immediately available and were ready to close, they would “gladly reconsider.” **There is nothing privileged about this email and it must be produced.**

Fourth email dated March 18, 2020 (4:54 p.m.) from Friedman to Mark Nordlicht responding to Mark Nordlicht’s email stating simply “Thank you.” **There is nothing privileged about this email and it must be produced.**

Fifth email dated March 18, 2020 (5:08 p.m.) from Mark Nordlicht to Friedman responding to Friedman’s thank you with his own thank you. **There is nothing privileged about this email and it must be produced.**

#### **Document No. 106**

First email dated July 15, 2020 (9:03 p.m.) from Mark Nordlicht to Spitzer recapping the terms of sale for the Properties (2 million cash and 2.5 million note secured by various properties). **There is nothing privileged about this email and it must be produced.**

Second email dated July 17, 2020 (8:27 a.m.) from Spitzer to Mark Nordlicht, Joseph Fried (Spitzer’s lawyer), Burstein, David Levy and Dahlia Kalter in which Spitzer is looping in his attorney (Fried) who will be representing him following this email. **There is nothing privileged about this email and it must be produced.**

Third email dated July 17, 2020 (4:56 p.m.) from Mark Nordlicht to unknown recipient (presumably Friedman) in which Mark Nordlicht states that the future communications should be lawyer to lawyer and that they are distressed with the current situation and he lays out various issues that need to be addressed. First, they cannot move forward if the bank is being told that the transaction price is greater than \$4.5 million. He states they communicated that previously and he fears that is why their side’s signatures were “borrowed.” He states if that is what happened they need to unwind it ASAP and we can walk away friends. He further states that they no longer have clean title and they did not agree to that so this needs to be resolved immediately. Second, he states that if there was some misunderstanding and the transaction will be as they understand it (they are taking a 3.2 million mortgage on a sale price of 4.5 million) then they stand ready to close but they need all the information on the collateral immediately for the loan portion of the deal so they can move forward. **This email would have been privileged based on Nordlicht being Plaintiffs’ agent, but because it was forwarded to the Goldstone Capital parties based on the Fourth email, it must be produced.**

Fourth email dated July 17, 2020 from Mark Nordlicht to Friedman and cc'ing Sheikh, Burstein and Kalter in which Nordlicht advises Friedman of conversation he had with Spitzer in which he told Spitzer he needs it unwound immediately and Spitzer is saying he wants to close Tuesday.

**Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and its attachment and they must be produced.**

**Document No. 107**

First email dated July 17, 2020 (9:46 a.m.) from Spitzer to Mark Nordlicht attaching appraisal report for 58 Route 46 in Morris County, New Jersey. **There is nothing privileged about this email and it and its attachment must be produced.**

Second email dated July 17, 2020 (10:05 a.m.) from Mark Nordlicht to Burstein and Friedman in which Nordlicht forwards the first email and the attachment and advises that Spitzer said he looking into what happened on the high print and it was a mistake. Nordlicht says Spitzer will have to prove it and they will not move forward unless they are comfortable. He also talks about the building referenced in the appraisal in terms of being the primary collateral on the note associated with the transaction for the Properties to Spitzer. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and it must be produced.**

**Document No. 108**

This is a duplicate of Document No. 106 (excluding Fourth email) and should be produced in accordance with those rulings.

**Document No. 109**

This is a duplicate of Document No. 106 and should be produced in accordance with those rulings. The document also includes the following email:

Third email is dated July 20, 2020 (9:45 a.m.) from Mark Nordlicht to Friedman and cc'ing Ahmed Sheikh and Ira Burstein in which Nordlicht asks Friedman to reach out to Spitzer's lawyer to get the problem resolved by the end of the day (i.e., what does Spitzer intend to be the amount of the recorded mortgage and the price being reported publicly) or else Spitzer needs to unwind what they did immediately and if Spitzer doesn't do it, Plaintiffs are keeping the building. **Given the inclusion of Burstein and Sheikh (third parties) on this email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and this email must be produced.**

**Document No. 110**

This is a duplicate of Document No. 109 that simply adds Friedman's response (July 20, 2020 at 10:07 a.m.) to Nordlicht's email (Third email of Document No. 109) which is sent to Nordlicht and cc'ing Ahmed Sheikh and Burstein stating that he emailed Spitzer's lawyer and will call him if Nordlicht has his phone number. **Given the inclusion of Burstein and Sheikh (third parties) on this email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and this email must be produced.**

**Document No. 111**

Email dated July 27, 2020 (11:16 a.m.) from Nordlicht to Friedman cc'ing Burstein and Ahmed Sheikh labeled "Atty Client Privilege" in which Nordlicht provides a draft email he prepared for

Friedman to send to Spitzer. **Given the inclusion of Burstein and Sheikh (third parties) on this email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and this email must be produced.**

**Document No. 112**

Duplicate of Document 111 and production should occur in accordance with that ruling. It also includes the following additional emails in chain.

Second email dated July 27, 2020 (12:35 p.m.) from Friedman to Nordlicht and cc'ing Burstein and Sheikh in which Friedman provides his revised version of Nordlicht's email that he would be willing to send to Spitzer. **Given the inclusion of Burstein and Sheikh on this email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and this email must be produced.**

**Document No. 113**

Duplicate of Document No. 112 and production should occur in accordance with that ruling.

Third email dated July 27, 2020 (12:36 p.m.) is Nordlicht's response to Friedman's email which is sent to Friedman and cc's Burstein and Sheikh and states "Works for me." **Given the inclusion of Burstein and Sheikh (third parties) on this email and, therefore, Friedman's 12:35 email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and these emails must be produced.**

Fourth email dated July 27, 2020 (12:41 p.m.) from Friedman to Nordlicht, cc'd to Burstein and Sheikh in which he thanks Nordlicht and asks him if his email to Spitzer should be copied to just Nordlicht or should it include Burstein and Sheikh? **Given the inclusion of Burstein and Sheikh (third parties) on this email, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and this email must be produced.**

**Document No. 114**

Duplicate of Document No. 113 (excluding Fourth email) and should be produced in accordance with that ruling.

**Document No. 115**

Duplicate of Document 113 and should be produced in accordance with that ruling. It also includes the following additional email:

Fifth email dated July 27, 2020 (12:47 p.m.) from Nordlicht to Friedman and cc'ing Burstein and Sheikh in which Nordlicht responds to Friedman's inquiry by saying he should copy all of them on his email to Spitzer. **Given the inclusion of Burstein and Sheikh (third parties) on these emails, any privilege that could have been asserted based on Nordlicht as Plaintiffs' agent has been waived and these emails must be produced.**

**Document No. 116**

Email dated July 27, 2020 (4:45 p.m.) from Belinda Brandimarti (Goldstone Capital) to Friedman, Burstein and Sheikh and cc'ing Mark Nordlicht advising that the insurance policies on

the properties are due to expire on August 1, 2020 and that ACRIS is currently showing an ownership change in the Properties from Plaintiffs to 306 Malcolm NY LLC, 306A Malcolm NY LLC and 308 Malcolm NY LLC and to renew the policies the Properties must be owned by Plaintiffs. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and it must be produced.**

**Document No. 117**

Duplicate of Document No. 116 and should be produced in accordance with that ruling. It also includes the following additional email:

Second email dated July 27, 2020 (5:40 p.m.) from Friedman to Belinda Brandimarti (Goldstone Capital), Burstein, Sheikh and cc'ing Nordlicht in which Friedman responds to Brandimarti's email and advises that there is nothing they can do unless the Properties are transferred back before 8/1/20 and it is a problem because even if the new owners are carrying insurance, they are not covered by it. He further corrects her email by saying that the Properties were only transferred to 306 Malcolm NY LLC and that is the entity that owns all three. Finally, he states they will advise her if they hear from Spitzer. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and it must be produced.**

**Document No. 118**

Duplicate of 117 and should be produced in accordance with that ruling. It also includes the following additional emails:

Third email dated July 27, 2020 (6:07 p.m.) from Belinda Brandimarti to Friedman, Burstein, Sheikh and cc'ing Nordlicht in which Brandimarti responds by thanking Friedman and stating that she will sit tight and wait. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and it must be produced.**

Fourth email dated July 27, 2020 (6:10 p.m.) from Friedman to Brandimarti, Burstein, Sheikh and cc'ing Nordlicht in which Friedman advises that unfortunately that is what they are all doing and that he has reached out to Henry Meisels to try to get things moving and someone should contact Spitzer to advise him of the lack of insurance as of 8/1/20. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this email and it must be produced.**

**Document No. 119**

Duplicate of Document No. 118 (excluding Fourth email) and should be produced in accordance with that ruling.

**Document No. 120**

Duplicate of Document No. 118 and should be produced in accordance with that ruling. It also includes the following additional email:



Fifth email dated July 27, 2020 (6:26 p.m.) from Mark Nordlicht to Friedman, cc'ing Brandimarti, Burstein, Sheikh in which Nordlicht states that he spoke to Spitzer and relayed the urgency given the insurance problem. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 121**

Duplicate of Document No. 120 and should be produced in accordance with that ruling. It also includes the following additional email:

Sixth email dated July 27, 2020 (6:52 p.m.) from Friedman to Nordlicht cc'ing Brandimarti, Burstein and Sheikh in which Friedman responds to Nordlicht's email and asks Nordlicht how did Spitzer respond? **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 122**

Duplicate of Document No. 121 and should be produced in accordance with that ruling. It also includes the following additional email:

Seventh email dated July 27, 2020 (6:56 p.m.) from Nordlicht to Friedman cc'ing Brandimarti, Burstein and Sheikh in which Nordlicht responds to Friedman's inquiry by stating that Spitzer is a "master on pushing off but said he wd get back to me quickly with details on unwind." **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 123**

Duplicate of Document No. 122 (excluding Seventh email) and should be produced in accordance with that ruling. It also includes the following additional emails:

Eighth email dated July 28, 2020 (1:53 p.m.) from Nordlicht to Friedman and cc'ing Brandimarti, Burstein, Sheikh in which Nordlicht reports that he is meeting Spitzer one last time tomorrow morning and he will report back to everyone afterwards. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

Ninth email dated July 28, 2020 (2:02 p.m.) from Friedman to Nordlicht and cc'ing Brandimarti, Burstein, Sheikh in which Friedman thanks Nordlicht for update.

**Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 124**

Duplicate of Document No. 123 (excluding Ninth email) and should be produced in accordance with that ruling.

**Document No. 125**

Duplicate of Document No.123 and should be produced in accordance with that ruling It also includes the following additional email:

Tenth email dated July 28, 2020 (2:03 p.m.) from Burstein to Friedman, Nordlicht and cc'ing Brandimarti and Sheikh in which Burstein wishes Nordlicht good luck.

**Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 126**

Duplicate of Document No. 125 and should be produced in accordance with that ruling. It also includes the following additional emails:

Eleventh email dated July 31, 2020 (6:29 p.m.) from Brandimarti to Burstein, Friedman, Nordlicht and cc'ing Sheikh in which Brandimarti requests an update to confirm insurance is in place as the insurance company is reaching out to her regarding renewal. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

Twelfth email dated July 31, 2020 (6:29 p.m.) from Friedman to Brandimarti, Burstein, Nordlicht and cc'ing Sheikh in which Friedman responds to Brandimarti that he doesn't have any update. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 127**

Duplicate of Document No. 126 (excluding the Twelfth email) and should be produced in accordance with that ruling.

**Document No. 128**

Duplicate of Document No. 126 (excluding Twelfth email) and should be produced in accordance with that ruling. It also includes the following email:

Thirteenth email dated July 31, 2020 (6:32 p.m.) from Nordlicht to Brandimarti and cc'ing Burstein, Friedman and Sheikh in which Nordlicht advises Brandimarti that he was told that the buyers have paid for insurance. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 129**

Duplicate of Document No. 128 and should be produced in accordance with that ruling. It also includes the following email:

Fourteenth email dated July 31, 2020 (6:33 p.m.) from Brandimarti to Nordlicht and cc'ing Burstein, Friedman and Sheikh in which Brandimarti thanks Nordlicht for his update. **Given that**

**this communication is between a number of unrelated parties (Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 130**

Duplicate of Document No. 121 and should be produced in accordance with that ruling. It also includes the following email:

Email dated August 3, 2020 (10:31 a.m.) from Mark Nordlicht to Friedman, cc'ing Brandimarti, Burstein and Sheikh in which Nordlicht thanks Friedman for his help and stating that they are going to need him to bring the transaction home. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 131**

Duplicate of Document No. 130 and should be produced in accordance with that ruling. It also includes the following emails:

Email dated August 3, 2020 (11:43 a.m.) from Sheikh to Nordlicht and cc'ing Friedman, Burstein in which Sheikh thanks Friedman for his help and says he will call him later that day. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

Email dated August 3, 2020 (11:48 a.m.) from Friedman to Sheikh, Nordlicht and cc'ing Burstein responding to Nordlicht and Sheikh's thank you emails by telling them they are welcome and if they need anything further from him even though the deal is being handled by someone else, they should let him know. **Given that this communication is between a number of unrelated parties (i.e., Goldstone Capital and Nordlicht), no privilege may attach to this document and it must be produced.**

**Document No. 145**

Email dated March 13, 2021 (9:32 p.m.) from Sheikh to Friedman and Matthew Sheppe copying them on a text from Spitzer. **The text from Spitzer must be produced but the A/C privileged communication between Goldstone Capital and its attorney may be redacted.**

**Document No. 146**

Duplicate of Document No. 145 but adds email dated March 13, 2021 (9:45 p.m.) from Sheikh to Friedman and Matthew Sheppe copying them on a text from Spitzer. **The text from Spitzer must be produced but the A/C privileged communication between Goldstone Capital and its attorney may be redacted.**

**Document No. 147**

Duplicate of Document No. 146 but adds email dated March 13, 2021 (10:08 p.m.) from Sheppe to Sheikh and Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 148**

Email dated March 22, 2021 (11:33 a.m.) from Sheikh to Sheppe and Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 149**

Duplicate of Document No. 148 but adds email dated March 22, 2021 (11: 46 a.m.) from Sheppe to Sheikh and Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**

**Document No. 150**

Email dated March 23, 2021 (3:12 p.m.) from Sheppe to Sheikh and cc'ing Friedman. **This is an A/C privileged communication between Goldstone Capital employees and their attorney Friedman and it may be withheld from production.**