SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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ALX C21 LLC and REGO II BORROWER LLC,

Plaintiffs,

- v -

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

Defendants.

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INDEX NO. 653993/2023

MOTION DATE 01/30/2024, 03/15/2024

MOTION SEQ. NO. (MS) 001, 002

DECISION + ORDER ON MOTION

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (MS002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35
were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Plaintiffs ALX C21 LLC (ALX) and Rego II Borrower LLC (Rego II, and together with ALX, plaintiffs) bring this action against defendants WF Blue LLC (WF Blue), Gindi C21 IP LLC (Gindi IP, and together with WF Blue, LLC Defendants), and Raymond Gindi (R. Gindi) (collectively, defendants) asserting claims for declaratory judgment, specific performance, breach of contract, unjust enrichment, tortious interference with contract, and breach of the implied covenant of good faith and fair dealing (NYSCEF # 1 – Complaint or compl). Now before the court are two motions. In MS001, defendants move pursuant to CPLR 3211 to dismiss certain causes of action against defendants (NYSCEF # 6). And in MS002, defendants move pursuant to CPLR 2304 and 3103 for a protective order and to quash a subpoena duces tecum issued to non-party Legends Hospitality, LLC (NYSCEF # 17). Both motions are opposed.

For the following reasons, defendants' motion to dismiss is granted in part and denied in part, and defendants' motion to quash and for a protective order is denied.

Background[1]

The Century 21 Bankruptcy

This dispute centers around an alleged commitment to re-open a Century 21 store at the Rego Center shopping mall in Rego Park, Queens, New York (Rego Center) (*see* compl ¶¶ 1, 67-69). Century 21 is a department store chain founded and operated by R. Gindi and his family members IG Gindi, Isaac Gindi, and Eddie Gindi (together, the Gindi Family) (*see id.* ¶¶ 4, 19-20). Its flagship store is located at 22 Cortlandt Street in downtown Manhattan (the Flagship Store) (*see id.* ¶¶ 5, 21). The Gindi Family purportedly operates the Century 21 through numerous corporate entities and affiliates, including the LLC Defendants (*see id.* ¶¶ 3, 20, 70).

Until around September 2020, Century 21 operated stores in thirteen locations, including a store at the Rego Center (the Rego Store) (*see* compl ¶¶ 4-5, 21-22). For the Rego Store, Century 21 occupied 135,000 square feet of retail space pursuant to an Agreement of Lease dated March 22, 2005, between Rego II and Century Rego Realty LLC (Rego Tenant), which is owned and controlled by the Gindi Family (the Rego Lease) (*id.* ¶¶ 4, 22). The Rego Lease commenced on February 23, 2010, and was due to expire on January 31, 2031 (*id.* ¶¶ 24-25).

In 2020, Century 21's operations and finances were significantly impacted by the COVID-19 pandemic (*see id.* ¶¶ 4, 26). Consequently, on September 10, 2020, Century 21 Department Stores LLC and its affiliates, including Rego Tenant, filed for Chapter 11 bankruptcy before the United States Bankruptcy Court for the Southern District of New York (*id.* ¶ 27). Century 21, in turn, closed all thirteen of its stores and rejected the lease for twelve of those stores, including the Rego Lease (*id.* ¶¶ 4, 28). But the lease for the Flagship Store was not rejected because its lessee, Century 21, Inc. (the Flagship Lessee), was not a debtor in the bankruptcy proceedings (*id.* ¶¶ 5, 29).

Because the lease for the Flagship Store was not rejected, the Flagship Lessee remained liable for millions of dollars and was still required to meet rent payments (*see* compl ¶¶ 5, 29). To generate income for rent payments, the Gindi Family sought to repurchase, as part of the bankruptcy proceedings, Century 21's intellectual property, including certain Century 21 trademarks, copyrights, URLs and domain names, social media accounts, customer data, and telephone numbers (the Century 21 IP) (*id.* ¶¶ 2, 30). Once the Century 21 IP was acquired, the Gindi Family intended to reopen the Flagship Store (*id.* ¶ 30).

[1] The following facts are drawn from the Complaint and accompanying exhibits to the parties' submissions. They are assumed true solely for purposes of resolving defendants' motions.

The Gindi Family's Acquisition of Century 21 IP

On October 12, 2020, the Gindi Family formed Gindi IP to purchase the Century 21 IP at an auction scheduled for November 19, 2020 (*see* compl ¶¶ 5, 7, 31-32, 71-72). Plaintiffs allege that it was impossible to predict the amount of the winning bid (*id.* ¶¶ 32-33). Therefore, the Gindi Family approached Alexander's Inc.[2] (Alexander's) for financial backing at the auction (*id.* ¶¶ 7, 34). According to the Complaint, the parties agreed that Alexander's would contribute 40% of the purchase price for the Century 21 IP through its newly formed entity, ALX, and if Century 21 resumed operations at the Flagship Location within five years, it would enter into a new lease at the Rego Center upon the same terms as the rejected Rego Lease (*see id.* ¶¶ 34-36).

The parties consummated the Alexander's financing agreement through the Amended and Restated Operating Agreement of Gindi IP, dated as of November 30, 2020 (the Operating Agreement), which was entered into by and between ALX and WF Blue, an entity allegedly controlled by the Gindi Family (*see* compl ¶¶ 41, 71-72; NYSCEF # 10 – OA).[3] Specifically, under Section 17 of the Operating Agreement, the parties agreed that

> If [Gindi IP] or any affiliate of [Gindi IP] (including, but not limited to, any entities associated with Manager or WF Blue) opens and operates a store in the New York City area within five years of purchasing the [Century 21] IP (the 'New Operator'), then the New Operator, or an affiliate of the New Operator acceptable to ALX in its sole and absolute discretion, shall be required to enter into a lease in the Rego Park Mall, at the same terms as set forth in the existing lease attached hereto as Exhibit B (the 'New Rego Park Lease'). WF Blue and its members, as applicable, shall cause New Operator, or an affiliate of New Operator, to enter into the New Rego Lease as soon as commercially reasonable following any such opening of a New York City store. Notwithstanding the foregoing, ALX, in its sole and absolute discretion, may waive this requirement.

(OA § 17). The parties further acknowledged that "[t]he sole revenue ALX shall receive in connection with its Membership Interest in [Gindi IP] and under this Agreement is rental income associated with the New Rego Park Lease, if any" (*id.*; *see also* compl ¶¶ 47-48). And "[i]f the New Rego Park Lease [was] not entered into within five years of the purchase of the [Century 21 IP], [Gindi IP] (or, at WF Blue's election, WF Blue) [was] required to buy out ALX's Membership Interest pursuant to Section 18" (OA § 17). While Section 18 expanded on these buy-out terms, it made

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[2] ALX and Rego II are affiliates of Alexander's (compl ¶ 2).

[3] Pursuant to Section 13(a) of the Operating Agreement, Gindi IP was to be "managed under the direction of Raymond Gindi on behalf of WF Blue" (compl ¶ 44; OA § 13[a]). Gindi, in turn, signed the Operating Agreement on behalf of WF Blue (OA at 17). Gindi did not sign the Operating Agreement in his personal capacity (*see id.*).

it clear that "Section 17 shall survive the exercise of any rights contained in this Section 18" (compl ¶ 46; OA § 18[e]).

With Alexander's financial backing, Gindi IP made a winning bid of $9 million for the Century 21 IP, with ALX contributing $3.6 million (40%) and WF Blue contributing $5.4 million (60%) (compl ¶¶ 37-41; OA at Ex A). Gindi IP later closed on this acquisition on December 10, 2020 (compl ¶ 50).

WF Blue's Acquisition of ALX's Interest in Gindi IP and the Subsequent Reopening of the Flagship Store

Several months after purchasing the Century 21 IP, WF Blue purchased ALX's entire membership interests in Gindi IP pursuant to a Membership Interest Purchase Agreement dated March 5, 2021 (compl ¶ 51; NYSCEF # 11 – MIPA). In consummating this purchase, the parties "reaffirm[ed] [their] respective obligations in connection with" Section 17 of the Operating Agreement and preserved ALX's "rights and claims" arising thereunder (MIPA §§ 5.2, 5.4). R. Gindi executed the MIPA on behalf of WF Blue and Gindi IP (*see* compl ¶ 54; MIPA at 8). Plaintiffs allege that the Gindi Family now owns (either directly or indirectly) 100% of both WF Blue and Gindi IP (compl ¶¶ 72-75).

The next year, in or around May 2022, the Gindi Family announced via a press release that the Flagship Store would reopen in a partnership with Legends Hospitality (Legends) (*see* compl ¶¶ 55-56). Plaintiffs state, upon information and belief, that the Flagship Store's reopening was consummated through an agreement between Legends and the Gindi Family, Gindi IP, WF Blue and/or some other affiliated or associated entity or entities (the Legends Agreement) (*id.* ¶ 57). As alleged, pursuant to the Legends Agreement, Legends would (1) be paid to act an "agent" for the Gindi Family, Gindi IP, WF Blue and/or some other affiliated or associated entity or entities and, in turn manage day-to-day operations of the Flagship Store, and (2) license the Century 21 IP from Gindi IP for purposes of reopening, operating, and managing the Flagship Store (*id.* ¶ 58). The Flagship Store officially reopened on May 16, 2023 (*id.* ¶ 60).

By plaintiffs' account, public statements made by various members of the Gindi Family indicate that it was the Gindi Family who caused the Flagship Store's reopening (*see* compl ¶¶ 61-64, 81). Hence, plaintiffs posit, pursuant to Section 17 of the Operating Agreement, the entity operating the Flagship Store is the "New Operator" (*see* compl ¶¶ 65-66). Plaintiffs believe that through the Legends Agreement, defendants evaded their contractual obligation under the Operating Agreement by making it seem as if it was Legends, and not the Gindi Family, who was opening and operating the Flagship Store (*see id.* ¶¶ 59, 82-83).[4]

[4] Plaintiffs allege, without any meaningful support, various purported indicia of Gindi IP and WF Blue being "alter egos" of the Gindi Family, including that (1) neither entity has employees, officers, or manager other than the Gindi

ALX consequently demanded that defendants cause the New Operator or its affiliate to enter into a new lease to reopen the Rego Store (*see* compl ¶ 67). Defendants rejected ALX's demand and have subsequently reaffirmed their position that Century 21 is not required to reopen the Rego Store because Legends is operating the Flagship Store (*see id.* ¶¶ 68-69).

Procedural History

Plaintiffs commenced this action on August 17, 2023. The Complaint asserts six causes of action, including claims against all defendants for (1) declaratory judgment (*see* compl ¶¶ 88-93), (2) specific performance (*id.* ¶¶ 95-100), (3) breach of contract (*id.* ¶¶ 102-106), (4) unjust enrichment (*id.* ¶¶ 108-113), (5) breach of the implied covenant of good faith and fair dealing (*id.* ¶¶ 120-126); and as against only R. Gindi, (6) tortious interference with contract (*id.* ¶¶ 115-118). On November 10, 2023, defendants moved to dismiss certain of plaintiffs' claims (NYSCEF # 6).

With defendants' motion to dismiss pending, plaintiffs served their Subpoena Duces Tecum on non-party Legends (*see* NYSCEF # 20 – the Legends Subpoena). Through the Legends Subpoena, plaintiffs seek from Legends (a) documents and communications "concerning th[is] Action, the [] Operating Agreement, Century 21, the Century 21 IP, the Century 21 Legends Partnership, the Century 21 Reopening, the Century 21 Store, the Complaint, the MIPA, the 2022 Press Release, the 2023 Press Release, and/or the Rego Center," including communications with defendants (*id.* at Request Nos. 1-2); (b) communications "involving [d]efendants, on one hand, and Alexander's, on the other hand," as well as communications between Legends and defendants concerning Alexander's (*id.* at Request Nos. 3-4); (c) indemnification, defense, and common interest agreements between Legends and defendants and/or the Gindi Family (*id.* at Request No. 6), and (d) certain bank account statements (*see id.* at Request Nos. 7-8). On February 2, 2024, defendants moved to quash the Legends Subpoena (NYSCEF # 17).

Discussion

I. MS001 – Motion to Dismiss

The first motion before the court is defendants' motion to dismiss pursuant to CPLR 3211(a)(7) (NYSCEF # 7 – MTD MOL; NYSCEF # 16 – MTD Reply). Under CPLR 3211(a)(7) a party may move to dismiss when a pleading "fails to state a cause of action." On such a motion, the court "must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and determine only

Family, (2) neither entity complies with corporate formalities, (3) neither entity maintains officers separate and apartment from the Gindi Family's corporate offices, and (4) both entities' expenses are paid by the Gindi Family or entities controlled by the Gindi Family (*see* compl ¶¶ 77-79). Plaintiffs also claim, without any support, that the Gindi Family caused WF Blue and Gindi IP to be undercapitalized (*id.* ¶ 84).

whether the facts as alleged fit within any cognizable legal theory" (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012] [internal quotation omitted]; *accord Pavich v Pavich*, 189 AD3d 548, 549 [1st Dept 2020]). Whether plaintiffs can ultimately establish their allegations is not taken into consideration when determining a motion to dismiss (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). The court, however, will not accept "conclusory allegations of fact or law not supported by allegations of specific fact" (*Wilson v Tully*, 243 AD2d 229, 234 [1st Dept 1998]).

At the outset, defendants argue that plaintiffs' contract claims (i.e., the First, Second, Third, and Sixth Causes of Action) asserted against R. Gindi must be dismissed because he is not a party to any of the relevant agreements, and nothing in the Complaint supports a plausible basis to hold R. Gindi personally liable (MTD MOL at 6-10; MTD Reply at 3-8). Defendants then turn to plaintiffs' claim for specific performance, arguing that landlords cannot compel specific performance of a lease and are only entitled to money damages in the event of a tenant's breach (MTD MOL at 11-12; MTD Reply at 8-10). As for plaintiffs' claims for unjust enrichment and breach of the implied covenant of good faith and fair dealing, defendants contend that both claims are duplicative of defendants' breach of contract claim and, in any event, the allegations in the complaint are belied by the plain terms of the Operating Agreement and defendants' conduct (MTD MOL at 12-16; MTD Reply at 10-12). Finally, defendants aver that plaintiffs' claim against R. Gindi for tortious interference with contract must be dismissed because R. Gindi, as an officer and/or member of the LLC Defendants, cannot tortiously interfere with the agreements to which the LLC Defendants are parties (MTD MOL at 17-19; MTD Reply at 12-13).

In opposition, plaintiffs first contend that R. Gindi can be held liable for plaintiffs' contract claims because (1) he manifested an intent to be personally bound by the agreements, and in any event (2) the LLC Defendants are alter egos of the Gindi Family (NYSCEF # 15 – MTD Opp at 8-16). Plaintiffs next argue that the complaint sufficiently states a claim for specific performance because it alleges that defendants' breaches disrupted and negatively impacted the tenant mix of Rego Center, reduced traffic to the mall, made it difficult to attract other first-class tenants, and caused reputational harm to Rego II (*id.* at 16-18). Turning to their claims for unjust enrichment, plaintiffs contend that this claim is adequately pleaded in the alternative to their breach of contract claim because defendants dispute the Agreements' enforceability and applicability (*id.* at 18-19). And defendants similarly contend that their implied covenant claim is properly alleged in the alternative to its breach of contract claim because, as alleged, defendants' partnership with Legends was intended to sidestep their obligations under the Operating Agreement and deprive plaintiffs of the benefit of their bargain (*id.* at 19-20). Plaintiffs' final contention is that the Complaint states a claim for tortious interference against R. Gindi because he intentionally procured the LLC

Defendants' breach of their agreements and his conduct was not within the scope of his employment or duties (*id.* at 21-22).

The court addresses the parties' contentions below.

A. Plaintiffs' Contract Claims against R. Gindi

Defendants seek dismissal of plaintiffs' First, Second, Third, and Sixth Causes of Action against R. Gindi on the grounds that R. Gindi is not a signatory to either the Operating Agreement or MIPA in his personal capacity and cannot be held liable for contractual claims arising thereunder (MTD MOL at 6-10). For their part, plaintiffs argue that the Complaint sufficiently alleges that R. Gindi intended to be personally bound by the Operating Agreement and MIPA (the Agreements) based on (1) his conduct in negotiating the agreements, breaching the Agreements, and controlling the LLC Defendants for his own purposes, and (2) the plain terms of the Agreements (MTD Opp at 8-10).

"It is well established that officers or agents of a company are not personally liable on a contract if they do not purport to bind themselves individually" (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 408 [1st Dept 2011]; *Pac. Carlton Dev. Corp. v 752 Pac., LLC*, 62 AD3d 677, 678 [2d Dept 2009]) [explaining that a non-signatory cannot be bound to contract if he was not a party to the contract]. For this reason, officers or agents cannot be sued for a breach of contract unless there is some separate basis for the non-signatories' liability, such as where a non-signatory manifests a "clear and explicit" intent to be bound by the agreement (*see Natl. Union Fire Ins. Co. of Pittsburgh, PA v Chukchansi Economic Dev. Auth.*, 104 AD3d 467, 467 [1st Dept 2013] [explaining that, absent a "clear and explicit evidence" of an intent to be bound by a payment agreement, principal's agent was not bound to the provisions contained therein]). That a person signs a writing solely as a corporate officer is not enough to manifest an intent to be bound (*see Herman v Ness Apparel Co.*, 305 AD2d 217, 218 [1st Dept 2003] ["A person who signs a writing solely as a corporate officer is not personally obligated on any contract evidenced by the writing even though the text of the writing states that the officer is to be personally obligated"]). Rather, the "general practice when an individual wishes to be personally bound" to an agreement is to sign the contract twice (*Georgia Malone*, 86 AD3d at 408, citing *Salzman Sign Co. v Beck*, 10 NY2d 63, 67 [1961] ["Ralph only signed the contract once, rather than signing twice, which is the general practice when an individual wishes to be personally bound"]).

Here, the is no dispute that the only parties to the Agreements are, respectively, WF Blue and ALX for the Operating Agreement, and Gindi IP, WF Blue, and ALX for the MIPA (*see* compl ¶¶ 41, 51; OA at 1, Signature Page; MIPA at 1, 7). Although R. Gindi did sign both, his signature was applied in his representative capacity for the LLC Defendants (OA at 1, Signature Page; MIPA at 1, 7). Neither the Operating Agreement nor the MIPA indicate that R. Gindi

separately signed the Agreements in his personal capacity (*see Phoenix Experiential Designs v Lerner*, 51 Misc 3d 1207[A], at *2 [Sup Ct, NY County, 2011] [holding that because defendant "executed the release only on behalf of [his LLC] in his 'supervisory authority,' there is no basis on which to hold him personally liable"]). Nor are there any explicit provisions in either of the Agreements that manifest a clear and explicit intent by R. Gindi to be personally bound.

Plaintiffs offer three contentions to avoid this conclusion. To start, plaintiffs make much of Section 13 of the Operating Agreement authorizing R. Gindi to exercise the "full powers of the Company" (MTD Opp at 9; *see also* OA § 13[a]). Plaintiffs further point out that WF Blue and its members, including R. Gindi, were required to "cause New Operator, or an affiliate," to enter into the new lease for the Rego Store, and that Gindi IP, WF Blue, and Gindi, as Manager of Gindi IP, agreed to negotiate in good faith with ALX regarding financing for the ownership or operation of the Rego Store (MTD Opp at 9; OA § 17). Neither contention is persuasive. The Operating Agreement is clear that R. Gindi was appointed Manager solely "on behalf of WF Blue" (OA § 13[a]), and the Complaint offers no basis to infer that R. Gindi was negotiating or acting in any other capacity.

Plaintiffs next argue that R. Gindi intended to be bound because Section 19(f) of the Operating Agreement states that its terms shall be "binding upon and inure to the benefit of the Members and their respective successors" (MTD Opp at 10; OA § 19[f]). The "Members" of Gindi IP are, however, WF Blue and ALX, not R. Gindi himself, and, as noted above, R. Gindi signed the agreement on behalf of WF Blue, not as a "Member" of Gindi IP" (OA at Signature Page). Insofar as the MIPA reiterates the obligations set forth in Section 17 and was signed by R. Gindi on behalf of Gindi IP, those facts do not, as plaintiffs contend, demonstrate a clear intent to be personally bound to either of the Agreements' terms.

Finally, plaintiffs point to certain allegations in the Complaint that they aver support an inference of R. Gindi's intent to be bound (*see* MTD Opp at 9, citing compl ¶¶ 43, 49, 70-79, 80-85). None of these allegations plausibly demonstrate the requisite level of control or involvement by R. Gindi to support a reasonable inference that he should be bound in his individual capacity. For example, plaintiffs allege that R. Gindi was "personally involved" in negotiating the Operating Agreement (compl ¶ 43). But they fail to allege the extent of that involvement or that R. Gindi was exercising his control over the LLC Defendants for his own purposes (*cf. Horsehead Indus. v Metallgesellschaft AG*, 239 AD2d 171, 172 [1st Dept 1997] [finding intent to be bound where parent company had "extensive participation in negotiations" and that subsidiary "was wholly owned by [parent company] itself and allegedly had no purpose other than to hold [] shares"]). Meanwhile other allegations cited by plaintiffs explicitly reference "the Gindi Family" as controlling the LLC Defendants and causing the purported breaches, rather than R. Gindi himself (*see, e.g.*, compl ¶¶ 70-79, 80-85). Although R. Gindi may be a member of the Gindi Family, nothing in plaintiffs' cursorily-asserted

allegations shows a manifestation of intent attributable to R. Gindi's own conduct or control (*cf. Impulse Mktg. Group, Inc. v Natl. Small Bus. Alliance, Inc.*, 2007 WL 1701813, at *5 [SD NY, June 12, 2007, No. 05-CV-7776 (KMK)] [concluding that plaintiff sufficiently alleged fact that supported an inference that non-signatory intended to be bound based on non-signatory's "micro-management of Plaintiff's performance under the Contract," the non-signatory's "demand that Plaintiff direct Non-Completes to [non-signatory], the non-signatory's "direct payments to Plaintiff for the Non-Completes," and a "number of statements made by [non-signatory's] principals [that] . . . suggest that [it] was the actual party in interest"]).

The remainder of plaintiffs' opposition relies on cases such as *Mencher v Weiss* (306 NY 1 [1953]) in support of their position that R. Gindi manifested an intent to be bound. Such reliance is plainly misplaced. For instance, in *Mencher*, the parties had agreed that the terms of the corporation's contract "shall apply to and bind the parties thereto, their respective members and, if an employer member is a corporation, the individual members thereof" (*id.* at 3-4). Defendant then signed the agreement (*id.* at 3-5). Based on these facts, the Court of Appeals concluded that "the body of the agreement state[d], in clear language, the intention of the parties that [defendant] be bound in a dual capacity," and there was no reason offered by defendant "why that intention should not be given full effect" (*id.* at 4-5). The Court of Appeals further credited the fact that defendant, in addition to signing in his representative capacity, "affixed his signature to the agreement on a line to the immediate left of which is the printed word 'Member,'" which meant that defendant had "acquiesced in and accepted the designation of 'Member' of the contracting employer" (*id.* at 5). Here, by contrast, there is no similar "clear language" in either the Operating Agreement or MIPA that indicates that R. Gindi entered into either of these Agreements in the type of dual capacity at issue in *Mencher*.

Having failed to sufficiently allege that R. Gindi manifested an intent to be bound by the terms of the Agreements, plaintiffs attempt to hold R. Gindi personally liable for breach of contract on the basis that the LLC Defendants are alter egos of the Gindi Family (MTD Opp at 12-16). Defendants counter that plaintiffs' veil piercing allegations are insufficiently pleaded (MTD MOL at 8-10; MTD Reply at 6-8). Defendants further aver that plaintiffs failed to establish that the Gindi Family dominated and controlled the LLC Defendants or used that domination and control to perpetrate a wrong on plaintiffs (MTD MOL at 9-10). The court agrees.

An alter ego theory of liability to pierce the corporate veil "requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*Shisgal v Brown*, 21 AD3d 845, 848 [1st Dept 2005] [rejecting motion to dismiss claim based on veil-piercing and listing various "indicia of a situation warranting veil-piercing" such as absence of corporate formalities, inadequate capitalization, use of funds for personal

purposes, and more]). Generally, such a claim is "unsuited for resolution on a pre-answer, pre-discovery motion to dismiss" (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). Nevertheless, it is still incumbent on a plaintiff to plead facts substantiating its claims, rather than relying on a mere recital of the elements of veil-piercing (*Albstein v Elany Contr. Corp.*, 30 AD3d 210, 210 [1st Dept 2006] [dismissing veil piercing claim where plaintiff "failed to plead any facts to substantiate such conclusory claims"]).

Here, plaintiffs failed to adequately plead either prong of the veil-piercing analysis. As an initial matter, many of plaintiffs' allegations concerning domination and control largely parrot the elements of a veil-piercing claim.[5] To wit, plaintiffs baldly assert that (1) the Gindi Family (and not specifically R. Gindi) exercises pervasive and complete dominion over the LLC Defendants, (2) the Gindi Family (and not specifically R. Gindi) controls the LLC Defendants, (3) the LLC Defendants do not comply with corporate formalities, maintain offices separate from the Gindi Family's offices, and have their expenses paid for by the Gindi Family (and not specifically R. Gindi), and (4) the Gindi Family (and not specifically R. Gindi) caused the LLC Defendants to be undercapitalized (*see* compl ¶¶ 71-79, 84). Markedly, the only specific allegations in Complaint concerning potential domination and control over the LLC Defendants relate to certain quotes by members of the Gindi Family through which they represented that they were closely involved with the opening and operation of the Flagship Store and Century 21 (*see* compl ¶¶ 61-65, 81, 83). Yet these allegations fall well short of establishing that R. Gindi (or for that matter, the Gindi Family) "dominated or controlled the [LLC Defendants] by undercapitalizing [them], intermingling funds, disregarding the corporate form, or otherwise" (*see Chiomenti Studio Legale, LLC v Prodos Capital Mgt. LLC*, 140 AD3d 635, 636 [1st Dept 2016]).

At any rate, even if plaintiffs had plausibly alleged domination and control, their veil-piercing claim would still fail. At its core, the crux of the "wrong" that plaintiffs claim warrant piercing the corporate veil is that the Gindi Family (and, again, not specifically R. Gindi) caused the LLC Defendants to breach the obligations and representations set forth in the Agreements by failing to re-open the Rego Store (*see* compl ¶¶ 80-82). However, allegations of "a simple breach of contract, without more," plainly do not rise to the level of a fraud or wrong warranting the piercing of the corporate veil (*see Skanska USA Bldg., Inc. v Atl. Yards B2 Owner LLC*, 146 AD3d 1, 12 [1st Dept 2016]).

In sum, plaintiffs fail to plausibly allege any basis to infer that R. Gindi intended to be personally bound by the Agreements or that the court should pierce the corporate veil of the LLC Defendants to hold R. Gindi liable for their breaches.

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[5] That plaintiffs asserted these allegations upon information and belief does not alter this conclusion (*see Gateway Intl., 360, LLC v Richmond Capital Group, LLC*, 201 AD3d 406, 408 [1st Dept 2022] [holding that conclusory alter ego allegations are insufficient to support piercing the corporate veil]).

Accordingly, plaintiffs' contract claims premised on the Operating Agreement and/or MIPA (i.e., the First, Second, Third, and Sixth causes of action) are dismissed as against R. Gindi.

B. Plaintiffs' Tortious Interference with Contract Claim against R. Gindi

In addition to seeking dismissal of plaintiffs' contract claims against R. Gindi, defendants also seek dismissal of plaintiffs' tortious interference with contract claim against him (MTD MOL at 17-19). As defendants put it, R. Gindi is an officer and member of WF Blue, a contracting party to the Agreements and is incapable of tortiously interfering with either agreement (*id.* at 18). Plaintiffs retort that they have sufficiently alleged that R. Gindi procured the LLC Defendants' breach of the Agreements and that it is "self-evident" that R. Gindi acted outside the scope of his employment when doing so (MTD Opp at 21-22).

To state a cause of action for tortious interference with contract, a plaintiff must allege "a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom" (*330 Acquisition Co., LLC v Regency Sav. Bank, F.S.B.*, 293 AD2d 314, 315 [1st Dept 2002]). When a plaintiff seeks to hold a corporate officer liable for inducing a breach, such claims are subject to an enhanced pleading standard (*see Petkanas v Kooyman*, 303 AD2d 303, 305 [1st Dept 2003]). This requires allegations that the officer acted outside the scope of its employment or authority, or that it personally profited from its acts (*see Shear Enters., LLC v Cohen*, 189 AD3d 423, 424 [1st Dept 2020]; *Joan Hansen & Co. v Everlast World's Boxing Headquarters Corp.*, 296 AD2d 103, 110 [1st Dept 2002]).

Here, there is no serious dispute that R. Gindi is a corporate officer and/or member of the LLC Defendants (*see* compl ¶¶ 41, 54). Despite this, plaintiffs fail to offer any non-conclusory allegations establishing, or supporting a reasonable inference, that R. Gindi acted outside the scope of this corporate representation, or that he personally profited from his actions. Rather, plaintiffs merely argue in their opposition—without any support or citation—that it is "self-evident" that R. Gindi did not act within the scope of his employment with the LLC Defendants (MTD Opp at 21), and they assert in conclusory fashion that the Gindi Family (and not specifically R. Gindi) personally profited from their conduct (*see* compl ¶¶ 82-85). These allegations and contentions are insufficient to establish that R. Gindi can be held liable for tortious interference with contract.

Plaintiffs' tortious interference with contract claim is accordingly dismissed.

C. Plaintiffs' Claims for Unjust Enrichment, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Specific Performance

The remaining causes of action of which defendants seek dismissal are plaintiffs' claims for unjust enrichment, breach of the implied covenant of good faith and fair dealing, and specific performance. The court addresses defendants' bases to dismiss each of these claims in turn.

1. Unjust Enrichment Claim

Defendants' primary basis for seeking dismissal of plaintiffs' unjust enrichment claim is that the claim is entirely duplicative of plaintiffs' breach of contract claim (MTD MOL at 12-13; MTD Reply at 10). Defendants maintain that this ground for dismissal applies to any claims asserted against R. Gindi in his personal capacity (MTD MOL at 14; MTD Reply at 10).

To plead a claim for unjust enrichment, a plaintiff "must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal quotation omitted]; *111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 220 AD3d 435, 437 [1st Dept 2023] [same]). Although unjust enrichment can be pleaded in the alternative to a breach of contract claim, where there is no disagreement about the existence or terms of the contract, the unjust enrichment claim can be dismissed as duplicative (*see Aviv Constr. v Antiquarium, Ltd.*, 259 AD2d 445, 446 [1st Dept 1999] [holding that the existence of a valid and enforceable written contract governing plaintiff's claim precludes the application of recovery in quantum meruit]; *Freedom Holding, Inc. v Haart*, 76 Misc3d 746, 764 [Sup Ct, NY County, 2022] ["In New York, where there is both a claim for unjust enrichment and a contract claim, and there is no disagreement about the existence or terms of the contract, the unjust enrichment claim can be dismissed as duplicative of the contract claim"]).

Here, in support of their unjust enrichment claim, plaintiffs contend that defendants obtained and retained numerous benefits flowing from plaintiffs' contribution of $3.6 million to purchase the Century 21 IP (*see* compl ¶¶ 108-113). Despite this, plaintiffs allege, defendants refused to enter into a new lease to reopen the Rego Store and did so to plaintiffs' detriment (*see id.*). These allegations, although formulated to fit within an unjust enrichment theory, mirror the allegations supporting plaintiffs' declaratory judgment and breach of contract claims (*see id.* ¶¶ 88, 90, 93, 105-106).

Plaintiffs do not seriously dispute this point. Instead, they contend that they are permitted to plead unjust enrichment in the alternative to a breach of contract claim in cases where defendants dispute the enforceability of a contract or its

application to the facts (MTD Opp at 18-19). However, nothing in the complaint supports even a reasonable inference that defendants are challenging the validity or applicability of the terms of the Agreements. Rather, as noted in their reply (MTD Reply at 10), defendants simply contest whether there is an actual breach (*see generally* compl ¶¶ 67-68, 88-93). The unjust enrichment claim against the LLC Defendants is dismissed as duplicative.

Dismissal of the unjust enrichment claims is also warranted against R. Gindi. To start, "a claim for unjust enrichment, even against a third party, cannot proceed when there is an express agreement between two parties governing the subject matter of the dispute" (*see Law Debenture v Maverick Tube Corp.*, 2008 WL 4615896, at *13 [SD NY, Oct. 15, 2008, No. 06 Civ. 14320(RJS)]; *accord Bellino Schwartz Padob Adv. v Solaris Mktg. Group, Inc.*, 222 AD2d 313, 314 [1st Dept 1995] ["The existence of an express contract between Solaris and plaintiff governing the subject matter of the plaintiff's claim also bars any quasi-contractual claims against defendant Titan, as a third-party nonsignatory to the valid and enforceable contract between those parties"]). Such is the case here. In any event, the complaint fails to set forth any non-conclusory allegations indicating that R. Gindi received a distinct benefit from the LLC Defendants (*see, e.g.*, *Caro Capital, LLC v Koch*, 653 FSupp3d 108, 122 [SD NY 2023] ["courts applying New York law have suggested that an unjust enrichment claim against the owner of a corporation in her individual capacity will not fail as a matter of law if the plaintiff establishes that the owner received a benefit distinct from that received by the corporate entity"]). Put succinctly, plaintiffs' claim for unjust enrichment is dismissed against all defendants.

2. Implied Covenant Claim

As with plaintiffs' unjust enrichment claim, defendants contend that plaintiffs' implied covenant claim is based on the same facts and is intrinsically tied to the same damages as their breach of contract claim (MTD MOL at 15-16; MTD Reply at 11). In opposition, plaintiffs argue that they are entitled to plead in the alternative that defendants breached the implied covenant of good faith and fair dealing by using Legends to sidestep their contractual obligations (MTD Opp at 20).

"Implicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance" (*Atlas El. Corp. v United El. Group, Inc.*, 77 AD3d 859, 861 [2d Dept 2010]). To establish an implied covenant claim, a plaintiff must allege that "a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement" (see *Jaffe v Paramount Communications*, 222 AD2d 17, 22 [1st Dept 1996]). But where an implied covenant claim is predicated on essentially the same allegations as a breach of contract claim and seeks the same damages, dismissal is warranted (see *Salomon v Citigroup Inc.*, 123 AD3d 517, 518 [1st Dept 2014]).

Here, a comparison of plaintiffs' breach of contract and implied covenant claims underscores that these claims are predicated on essentially the same allegations and damages. On one hand, plaintiffs allege, in support of their implied covenant claim, that "[b]y entering into the Legends Agreement and causing Legends [] to reopen and operate the Flagship Store," defendants "avoid[ed] being the 'new operator' of the Flagship Store" (compl ¶ 124). This conduct, plaintiffs aver, allowed defendants to avoid their obligations to re-open the Rego Store, and, in turn, caused plaintiffs to suffer damages (*see* compl ¶¶ 123, 125-126). On the other hand, plaintiffs contend that defendants breached the Agreements by failing to cause the New Operator to enter into a new lease for the Rego Store and failing to negotiate in good faith with ALX regarding the reopening of the Flagship Store (*id.* ¶¶ 105-106). As plaintiffs put it, this contractual breach was facilitated by structuring their agreement with Legends to mask the fact that the entity operating the Flagship Store was, in fact, the New Operator (*see id.* 59, 65-67, 88-93, 105-106). Given this substantial factual overlap between the two claims, plaintiffs' implied covenant claim should be dismissed as duplicative (*see Rossetti v Ambulatory Surgery Ctr. of Brooklyn, LLC*, 125 AD3d 548, 549 [1st Dept 2015] [dismissing implied covenant claim based on "same allegations as underlie the breach of contract claims"]).

3. Specific Performance Claim

Defendants seek dismissal of plaintiffs' claim for specific performance on two grounds. *First*, defendants contend that this claim is improperly pleaded as a standalone cause of action (MTD MOL at 11). *Second*, defendants aver that specific performance is not warranted here because money damages will be sufficient to compensate plaintiffs for any breach (*id.* at 11-12).

In New York, a "party seeking specific performance must allege that it 'substantially performed its contractual obligations and was willing and able to perform its remaining obligations, that defendant was able to convey the property, and that there was no adequate remedy at law'" (*M & E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 6 [1st Dept 2020]). It is true that specific performance is an equitable remedy for a breach of contract, rather than a separate cause of action. (*Cho v 401-403 57th St. Realty Corp.*, 300 AD2d 174, 175 [1st Dept 2002]). That said, a plaintiff's "plea for specific performance should not be dismissed due to the improper characterization of a type of relief as a cause of action" (*see Warberg Opportunistic Trading Fund, L.P. v GeoResources, Inc.*, 112 AD3d 78, 86 [1st Dept 2013]). Rather, the issue of whether plaintiff may be entitled to specific performance "should be determined by the trial court on a fuller record, not on a motion to dismiss" (*id.* at 87).

Here, although plaintiff has improperly pleaded specific performance as a standalone cause of action, dismissal of this remedy is not warranted at this time. Plaintiffs' breach of contract claim against the LLC Defendants was not subject to

defendants' motion to dismiss and is still pending in this litigation (*see generally* NYSCEF # 6). Thus, it remains possible that plaintiffs "may yet be able to prove their breach of contract claim" (*GeoResources*, 112 AD3d at 87).[6] To be sure, whether plaintiffs will be able to establish that such a remedy is appropriate in this case remains to be seen. Nevertheless, because plaintiffs have alleged various non-monetary harms in addition to monetary harms that, at minimum, raise factual issues regarding the propriety of specific performance (*see* compl ¶¶ 9, 98), it would be premature to dismiss this remedy at this juncture (*see Cho*, 300 AD2d at 175 [holding that, in view of allegations in complaint and nature of dispute, the appropriateness of specific performance should be decided on a fuller record]).

In conclusion, MS001 is granted in part and denied in part. Defendants' motion is granted insofar as dismissing all claims as against R. Gindi and dismissing the Fourth and Sixth Causes of Action as against the LLC Defendants. Meanwhile, defendants' motion is denied as to plaintiffs' request for specific performance.

II. MS002 – Motion to Quash the Legends Subpoena

The second motion before the court is defendants' motion for a protective order and to quash the Legends Subpoena.

Under CPLR 3101(a), there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" by "a party," as well as "any other person" (CPLR 3101[a][1] & [4]; *see also Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 108 [1st Dept 2006] [holding that "[i]t is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding"]). To be considered "material and necessary," the information sought must "bear[] on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Kapon v. Koch*, 23 NY3d 32, 38 [2014], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; *see also Forman v Henkin*, 30 NY3d 656, 661 [2018] ["material and necessary—i.e., relevant"])). When it comes to subpoenas, courts

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[6] Defendants highlight case law that generally cautions against compelling specific performance of a lease (see MTD MOL at 11-12). But many were decided at a procedural posture that provided the court with a fuller record to decide the issue (*see, e.g., Van Wagner Adv. Corp. v S & M Enters.*, 67 NY2d 186, 190-191 [1986] [court rejected awarding specific performance after nonjury trial]; *Golden Eye, Ltc. v Fame Co.*, 2008 WL 293068, at *2, 5, 13 [Sup Ct, NY County, Jan. 16, 2008] [court denied plaintiffs' motion, by order to show cause, for specific performance]). *Underground Group LLC v Hali Power, Inc.*, which is cited in defendants' reply, was decided after a motion to dismiss pursuant to CPLR 3211(a)(1) and (7) (*see* 2012 WL 10007556, at *1 [Sup Ct, NY County, Mar. 22, 2012]). That said, the contract at issue in that case required "myriad actions" to "carry on a joint business enterprise" (*see id.* at *7). The contractual dispute at issue here, by contrast, relates to defendants' alleged failure to enter into a lease at the Rego Center and reopen the Rego Store, rather than the carrying out of a business enterprise.

should only grant an application to quash "where the futility of the process to uncover anything legitimate is inevitable or obvious" or "where the information sought is utterly irrelevant to any proper inquiry" (*Kapon*, 23 NY3d at 38).

Meanwhile, CPLR 3103 "permits a court to issue a protective order 'denying, limiting, conditioning or regulating the use of any disclosure device' where necessary 'to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts'" (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 403 [1st Dept 2018]). Such a protective order can be issued "at any time on [the court's] own initiative, or on motion of any party . . . from whom or about whom discovery is sought" (CPLR 3103[a]). "Trial courts are vested with broad discretion to issue appropriate protective orders to limit discovery. . . . [T]his discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind" (*Nunez v Peikarian*, 208 AD3d 670, 671 [2d Dept 2022]).

In moving to quash, defendants contend that the Legends Subpoena's requests are overbroad and seeking irrelevant information (NYSCEF # 18 at 8-11; NYSCEF # 34 at 4-9). Plaintiffs oppose defendants' motion, primarily contending that defendants lack standing to challenge the Legends Subpoena because they neither have a proprietary nor privilege interest in the materials sought (NYSCEF # 24 at 8-10).

The First Department has made it clear that a person other than one to whom a subpoena is directed has standing to move to quash the subpoena where he or she has a proprietary or privilege interest in the subject documents or communications (*see Matter of Radio Drama Network, Inc.*, 214 AD3d 461, 463 [1st Dept 2023] quoting *Matter of Hyatt v State of Cal. Franchise Tax Bd.*, 105 AD3d 186, 194-95 [2d Dept 2013]). That said, as defendants note, CPLR 3103(a) provides that a court may "make a protective order denying [or] limiting . . . the use of any disclosure device" on a motion of "any party or of any person from whom *or about whom* discovery is sought" (CPLR 3103[a] [emphasis added]).

Given this language in CPLR 3103, which was added in 2013, there appears to be some disagreement among the Appellate Divisions as to whether a party other than the subpoena target is still required to establish a proprietary or privileged interest (*compare M&T Bank Corp. v Moody's Inv, Servs., Inc.*, 191 AD3d 1288, 1290-1292 [4th Dept 2021] [holding that party to pending litigation has standing to quash nonparty subpoena served by another party and distinguishing situation from cases where governmental agency serves an investigative subpoena on an entity and a third party moves to quash], *with Matter of Radio Drama*, 214 AD3d at 463 [reversing trial court order quashing subpoena because party challenging subpoena failed to establish that information sought was proprietary or

privileged]).[7] On this issue, it appears that the recent trend among courts within the First Department is to confer standing in those cases where movant is the person or entity about whom discovery is sought, regardless of the existence of proprietary or privilege interest (*see, e.g. Jobar Holding Corp. v Halio*, 2022 WL 2902155, at *1 [Sup Ct, NY County, July 18, 2022] [Cohen, J.] [observing that defendant had standing to quash a non-party subpoena because she was a person "about whom discovery is sought"]; *Rubin v Sabharwal*, 2020 WL 532520, at *2 [Sup Ct, NY County, Feb. 3, 2020] [Lebovits, J.] [holding that "although defendants' document demands are directed to [a nonparty]," plaintiff had standing to seek a protective order "because as to them she is a person 'about whom discovery is sought'"]).

All told, defendants' contention that CPLR 3103 permits them to pursue their application appears to have some merit. The court, however, need not resolve this issue at this time. Even assuming defendants do have standing to challenge the Legends Subpoena, they have failed to establish that the documents sought by the Legends Subpoena are "utterly irrelevant to any proper inquiry" or that it is "inevitable or obvious" that the process to uncover anything will be futile (*see Kapon*, 23 NY3d at 38).

The crux of the parties' dispute is whether the LLC Defendants breached their contractual obligations to plaintiffs by re-opening the Flagship Store through an agreement providing that Legends that would "open and operate" the Flagship Store (*see* compl ¶¶ 55-66). Plaintiffs have, in turn, alleged that the structure of the alleged Legends Agreement masked that the entity now operating the Flagship Store is, in fact, the New Operator, and consequently, under the terms of the Agreements, the LLC Defendants should have caused it to enter into a new lease for the Rego Store (*see id.* ¶¶ 57-59, 65-66, 76, 82-83, 89, 105). The requests in the Legends Subpoena plainly bear on these allegations and "will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Kapon*, 23 NY3d at 38). Indeed, the requests all appear to be generally targeted at fleshing out the relationship (economic and otherwise) between defendants and Legends and Legend's awareness of, among other things, the terms of Operating Agreement, the MIPA, and the LLC Defendants' relationship with Alexander's—all of which are factual issues at the heart of plaintiffs' contention that the LLC Defendants' conduct breached the Agreements. As defendants otherwise fail to make any requisite showing needed to warrant a protective order, there is no basis to grant their current discovery motion. MS002 is denied.

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[7] As one court has observed, the cases upon which the First Department has generally relied when requiring a movant to establish a proprietary or privilege interest were generally decided prior to the 2013 amendment of CPLR 3103, or they otherwise involved subpoenas that were issued in the distinct context of a government investigations (*see Tsunis Gasparis LLP v Ring*, 74 Misc3d 1206[A], at *1 [Sup Ct, Suffolk County, 2022]).

Conclusion

For the foregoing reasons, it is hereby

ORDERED that defendants' motion to dismiss (MS001) is granted insofar as dismissing all claims against defendant Raymond Gindi and dismissing the Fourth and Sixth Causes of Action against defendants WF Blue LLC and Gindi C21 IP LLC, and it is otherwise denied; and it is further

ORDERED that defendants' motion to quash and for a protective order (MS002) is denied; and it is further

ORDERED that within 30 days of the e-filing of this order, defendants WF Blue LLC and Gindi C21 IP LLC shall file an answer to plaintiffs' Complaint; and it is further

ORDERED that a preliminary conference shall be held via Microsoft Teams on August 7, 2024, at 2:30 p.m. or at such other time that the parties shall set with the court's law clerk. Prior to the conference, the parties shall first meet and confer to determine if there is agreement to stipulate to a preliminary conference order, available at https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part49-PC-Order-fillable.pdf, in lieu of a conference; and it is further

ORDERED that counsel for plaintiffs shall serve a copy of this decision, along with notice of entry, on the remaining defendants within ten days of this filing.

This constitutes the Decision and Order of the court.

06/21/2024
DATE

MARGARET A. CHAN, J.S.C.

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