SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – COMMERCIAL DIVISION

JEFFREY SIMPSON, individually and derivatively, as managing member of JJ ARCH LLC, suing derivatively as managing member of ARCH REAL ESTATE HOLDINGS LLC, and JJ ARCH LLC,

Plaintiff,

-against-

JARED CHASSEN and FIRST REPUBLIC BANK,

Defendants.

Index No.: 158055/2023

Mot. Seq. No.: 28

JARED CHASSEN, individually and derivatively

on behalf of JJ ARCH LLC, as member, and derivatively on behalf of ARCH REAL ESTATE HOLDINGS LLC, as member of JJ ARCH,

Counterclaim Plaintiff,

-against-

JEFFREY SIMPSON and YJ SIMCO LLC,

Counterclaim Defendants,

-and-

JJ ARCH LLC and
ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendants.

608941 NJ INC.,

Plaintiff,

-against-

JEFFREY SIMPSON, JJ ARCH LLC and ARCH REAL ESTATE HOLDINGS LLC,

Defendants,

-and-
ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendant.

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT JEFFREY SIMPSON'S MOTION TO COMPEL

MEISTER SEELIG & FEIN PLLC
125 Park Avenue, 7th Floor
New York, New York 10017
Tel: (212) 655-3500

Attorneys for Plaintiff 608941 NJ INC.

Plaintiff 608941 NJ Inc. ("Oak") respectfully submits this memorandum of law in opposition to motion to compel by Defendant Jeffrey Simpson ("Simpson") for production of a joint defense agreement between Oak and Jared Chassen ("Chassen") entered into on or about August 6, 2023 (the "Joint Defense Agreement").

PRELIMINARY STATEMENT

Simpson's rehashed motion to compel production of the Joint Defense Agreement serves no legitimate purpose. It distracts from the pending motions for contempt (which should be granted), vexatiously multiplies the proceeding, and is intended to harass Chassen and Oak. Lacking any merit, Simpson's motion should be denied in its entirety.

Simpson's motion hinges on his assertion that production of the Joint Defense Agreement is material and necessary to an evidentiary hearing, which took place six months ago, and to a motion to appoint a receiver, which this Court decided approximately five months ago. In other words, Simpson's motion seeks to roll back the clock, wasting time and court resources, seemingly relitigating issues that have long since passed. Tellingly, Simpson's motion identifies no other reason or justification demonstrating that the Joint Defense Agreement is in any way material or necessary to any of the remaining claims or defenses in this case. Simpson's anticipated conclusory and speculative assertions of impropriety and collusion fall far short of addressing this fatal defect.

Likewise, the Court should lend no weight to Simpson's feigned outrage and false claims of victimhood in light of Simpson's repeated and continued failure to comply with any of his own discovery obligations. To date, with the exception of a handful of documents produced in advance of the evidentiary hearing on the motion to appoint a receiver, Simpson has failed to

produce any documents in this case or to respond to any discovery request. Rather than reward Simpson's improper conduct, the Court should deny his motion in its entirety.

ARGUMENT

I. SIMPSON'S MOTION TO COMPEL IS MOOT

Simpson's motion says nothing new. Relying entirely on stale papers filed in connection with a request for targeted discovery related to an evidentiary hearing (which this Court already held), on an application to appoint a receiver (which this Court already decided), Simpson's motion to compel raises no new arguments or grounds for production of the Joint Defense Agreement. In the absence of anything new, the Court's Decision and Order, dated June 12, 2025 (NYSCEF Doc. No. 1562) continues to apply here, requiring Simpson's application be: "DENIED AS MOOT."

Simpson's recycled motion states the Joint Defense Agreement "is critically important evidence for the evidentiary hearing scheduled for February 25, 2025 …" because it allegedly established some form of "unlawful and premediated coordinated strategy" between Oak and Chassen. *See* NYSCEF Doc. No. 1687 at 1.[1] *Simpson's motion articulates no other reason or justification to compel production of the Joint Defense Agreement*.

Simpson's motion makes no argument that the Joint Defense Agreement has anything to do with (a) any of material allegations or claims in this Action; (b) any of the defenses in this action; and/or (c) the pending motion for contempt. Simpson cites no allegations or claims from any of the pleadings, nor does he cite any of the contentions or charges filed in connection with the motion for contempt. Simpson's entire argument to compel production rests solely on his

[1] The Court scheduled the evidentiary hearing on February 25, 2025 in connection with application to appoint a receiver. *See* NYSCEF Doc. No. 1067. The Court held the evidentiary hearing on February 25, 2025 (NYSCEF Doc. No. 1434) and granted the motion to appoint a receiver (NYSCEF Doc. No. 1481).

assertion that the Joint Defense Agreement is critical to an evidentiary hearing that already took place, concerning an issue already fully decided by the Court. In short, Simpson's application is moot. And the time has long passed for Simpson to reargue the motion to appoint a receiver.

Moreover, Simpson cannot on reply advance new grounds or reasons why the Joint Defense Agreement should be produced. *See Dannasch v. Bifulco*, 184 A.D.2d 415, 417 (1st Dep't 1992) ("The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds for the motion."); *see also H.B. Fuller Co. v. Optmed, Inc.*, No. 654617/2022, 2023 WL 4745081, at *2 (Sup. Ct. N.Y. Co. July 25, 2023) (Cohen, J.) (rejecting arguments raised for the first time on reply). Simpson had the affirmative obligation to set forth all the grounds supporting his application in his opening brief. Simpson cannot pivot, add, or amplify his motion to compel in his reply. To the extent he does, the Court should reject Simpson's arguments and assertions.

II. LAW OF THE CASE BARS SIMPSON'S RECYCLED MOTION TO COMPEL

Where, as here, a court has already issued a decision on an issue, a party cannot continue to relitigate, relying on the same papers again and again. On the contrary, it is well established, once a court decides an issue within a case, the law of the case precludes re-litigation of that point in the absence of new information, evidence, or change of law. *See, Rad v. IAC/Interactivecorp*, No. 654038/2018, 2021 WL 4494823, at *3 (Sup. Ct. N.Y. Co. Oct. 01, 2021) (Cohen, J.) ("Once a point is decided within a case . . . law of the case makes it binding not only on the parties, but on all other judges of coordinate jurisdiction.") (*quoting Gee Tai Chong Realty Corp. v GA Ins. Co. of New York*, 283 AD2d 295, 296 (1st Dept 2001)); *Park Royal I LLC v. Wells Fargo Bank, N.A.*, No. 655404/2021, 2025 WL 1810217, at *3 (Sup. Ct.

N.Y. Co. July 01, 2025) (Cohen, J.) ("The doctrine of [law of the case] is a rule of practice premised upon sound policy that once an issue is judicially determined, further litigation of that issue should be precluded in a particular case") (*quoting In re Part 60 RMBS Put - Back Litig.*, 195 AD3d 40, 47 (1st Dept 2021)); *Abe v. New York Univ.*, 139 A.D.3d 416 (1st Dep't 2016) ("The law of the case doctrine is a rule of comity and convenience which states that ordinarily a court of coordinate jurisdiction should not disregard an earlier decision on the same question in the same case.") (internal quotations omitted).

On June 12, 2025, following its review of the same exact motion papers Simpson refiled here, the Court denied Simpson's motion to compel as moot. *See* NYSCEF Doc. No. 1562. Where, like here, a party has already had an opportunity to litigate an issue, it cannot rinse and repeat by reusing and refiling the same failed discovery motion papers, praying for a different result. On the contrary, the law of the case doctrine "precludes parties from relitigating issues that have already been judicially determined in the course of litigation." *Shah v. 20 East 64th Street*, No. 156305/15, 2018 WL 1596292, at *2 (Sup. Ct. N.Y. Co. Mar. 28, 2018).

Simpson's subjective belief that the Court erred in deciding the motion to appoint a receiver is not a basis to continue to relitigate. Simpson filed no appeal or any motion to reargue the Court's decision, and the time to do so has passed. Simpson cannot use his subjective disagreement with the Court's decision as a pretext to endlessly relitigate this issue.

Equally unavailing, Simpson's anticipated argument that the Court granted leave to refile the motion falls flat. While the Decision and Order did provide leave to refile, it expressly warned that motions "may be refiled *if still relevant*" and "*with updated briefing*." *See* NYSCEF Doc. No. 1562 (emphasis added). Simpson updated none of his briefing, changing nothing.

Further, Simpson cannot reasonably dispute that a request for discovery concerning an evidentiary hearing that already took place nearly six months ago is no longer relevant.

III. SIMPSON FAILS TO DEMONSTRATE THE RELEVANCE OF THE JOINT DEFENSE AGREEMENT

Even if the Court concluded the law of the case does not apply here (which it does), Simpson's application still fails in absence of any cogent argument demonstrating the relevance of the Joint Defense Agreement to this Action.

"While discovery should be liberal, the information sought must be material and necessary, and meet a test of usefulness and reason." *Leventhal v. Bayside Cemetery*, 188 A.D.3d 604 (1st Dep't 2020) (*quoting AQ Asset Mgt. LLC v Levine*, 138 A.D.3d 635, 636 (1st Dept 2016)). Specifically, "[a] movant seeking relief under CPLR 3124 must show that the discovery sought is 'material and necessary' to their claim or defense." *O'Connor v. Soc. Pass Inc.*, No. 656938/2019, 2023 WL 6805947, at *2 (Sup. Ct. N.Y. Co. Oct. 14, 2023) (Cohen, J.) (*quoting Pacelli v Peter L. Cedeno & Assoc, P.C.*, 192 A.D.3d 560 (1st Dept 2021). "A motion to compel should be denied where it is 'entirely speculative.'" *Town and Country Adult Living, Inc. v. The Hearth at Mount Kisco, LLC*, No. 657551/2017, 2023 WL 8438854, at *1 (Sup. Ct. N.Y. Co. Nov. 30, 2023) (*quoting Leventhal,* 188 A.D.3d at 604).

Not surprisingly, courts routinely deny requests to produce joint defense agreements, since they have nothing to do with claims or defense in any case. *See, e.g.*, *Steuben Foods, Inc. v. GEA Process Eng'g, Inc.*, No. 12-CV-00904(S)(M), 2016 WL 1238785, at *2 (W.D.N.Y. Mar. 30, 2016) ("A joint defense agreement that merely contains language that parties typically include in joint defense agreements to protect from discovery privileged information revealed to a third party is *not relevant* to any parties' claims or defenses.") (emphasis added) (internal quotations omitted); *Biovail Lab'ys Int'l SRL v. Watson Pharms., Inc.*, No. 10-20526-CIV, 2010

WL 3447187, at *1 (S.D. Fla. Aug. 30, 2010) (boilerplate joint defense agreement was not relevant beyond the fact of its existence, the identities of the parties to it, and its date). The same should take place here.

Simpson makes no argument demonstrating the relevance and/or necessity for the production of the Joint Defense Agreement. Simpson identifies no claim, cause of action, or affirmative defense that relates to, much less requires the production of the Joint Defense Agreement. Tellingly, Simpson includes no cite to any of the pleadings in the case. The motion focuses exclusively on evidentiary hearing and Simpson's opposition to the motion for receiver. As discussed above, both of these issues are moot.

Simpson cannot recover from this shortfall by relying on conclusory strawmen assertions of impropriety, conflict of interest, and/or collusion. *See Leventhal*, 188 A.D.3d at 604 ("'[H]ypothetical speculation calculated to justify a fishing expedition' is improper.") (*quoting AQ Asset Mgt.*, 138 A.D.3d at 636). Notably, Simpson's motion provides no explanation or argument demonstrating how or in what way his speculative assertions are in any way relevant in this Action.

Moreover, Simpson knows of the existence of the agreement after he surreptitiously gained access to Chassen's email without authorization and took a screenshot of the agreement. *See* NYSCEF Doc. No. 889. The lack of production has not prevented Simpson or his counsel from continuing to make baseless arguments and conspiracy theories of collusion. In other words, Simpson's motion fails to demonstrate how or why Simpson requires access to the entire agreement. Simpson articulates no specific reason or justification explaining why the specific terms of the Joint Defense Agreement are material and/or necessary in this Action. Beyond conjecture and speculation, Simpson says nothing.

IV. THE JOINT DEFENSE AGREEMENT IS PRIVILEGED

Additionally, the Joint Defense Agreement falls within the scope of common interest and/or attorney work product privilege. Contrary to Simpson's assertions, courts have exercised caution before granting access to joint defense agreements and in a number of instances denied access on the grounds of privilege. *See, e.g.*, *A.I. Credit Corp. v. Providence Washington Ins. Co., Inc.*, 1997 WL 231127, at *4 (S.D.N.Y. May 7, 1997) ("Moreover, it is unlikely that AICCO will be provided any discovery of or about the joint defense agreement, since joint defense agreements are generally considered privileged"); *United States v. Bicoastal Corp.*, 1992 WL 693384, at *6 (N.D.N.Y. Sept. 28, 1992) ("…disclosure of the existence of such an agreement would be an improper intrusion into the preparation of the defendants' case. Thus, this court will deny any motion by the Government to be provided with any joint defense agreement should one exist.").[2]

Here, Simpson does not dispute the existence of a common interest privilege between Oak and Chassen, but rather whether this privilege extends to the Joint Defense Agreement. The parties have agreed to submit the Joint Defense Agreement for *in camera* review so the Court can conduct its own assessment of the terms and conditions.[3] Regardless, since there is no question

[2] Similar to New York courts, other courts have also restricted access to joint defense agreements on the grounds of privilege. *See, e.g., Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 217 (Tenn. Ct. App. 2002) ("joint defense agreements are themselves privileged....Thus, while the courts may review joint defense agreements in chambers, the agreements are not discoverable by other parties"); *In re Takata Airbag Prods. Liab. Litig.*, No. 15-02599-MD, 2020 WL 13310564, at *5 (S.D. Fla. Mar. 7, 2020), *report and recommendation adopted*, No. 15-02599-MD, 2020 WL 13310527 (S.D. Fla. May 17, 2020) (holding joint defense agreement not relevant to any claim or defense in those actions and protected as attorney work product)

[3] Counsel for Chassen and Oak repeatedly offered to agree to submit the Joint Defense Agreement to the Court for *in camera* inspection to avoid the need for motion practice. Simpson, however, refused these offers.

that the common interest privilege exists, it follows that any work product, including the Joint Defense Agreement should be shielded from disclosure.[4]

CONCLUSION

For the foregoing reasons, it is respectfully requested that Defendant Jeffrey Simpson's motion to compel be denied in its entirety, together with such other and further relief as this Court deems just, proper, and equitable.

Dated: New York, New York
August 20, 2025

MEISTER SEELIG & FEIN PLLC

By: _____
Stephen B. Meister
David A. Gold

125 Park Avenue, 7th Floor
New York, New York 10017
Tel: (212) 655-3500
Attorneys for Plaintiff
608941 NJ Inc.

[4] Simpson's reliance on *Fewer v GFI Group Inc.*, 78 AD3d 412, 413 (1st Dept 2010) is misplaced and easily distinguishable. In contrast to the joint defense agreement at issue, in *Fewer* there was "no indication that the agreement was prepared by counsel acting as such." In stark contrast, here the Joint Defense Agreement was prepared and signed by counsel. Moreover, the parties entered into the agreement in response to Simpson's threats of litigation, which he commenced shortly thereafter. There can be no question the document qualifies as attorney work product prepared in anticipation of litigation.

Certificate of Compliance

I hereby certify that the number of words in the foregoing document, according to the word count on the word processing program utilized, inclusive of point headings and footnotes, and exclusive of the caption, tables of contents and tables of authorities (if any), signature block and this certificate of compliance is **2,400**.

Dated: New York, New York
August 20, 2025