

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK WHEEL OWNER LLC, et al.	:	
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Plaintiffs,	:	
	:	17-CV-4026 (JMF)
-v-	:	
	:	<u>ORDER</u>
MAMMOET-STARNETH LLC, et al.,	:	
	:	
Defendants.	:	
	:	
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JESSE M. FURMAN, United States District Judge:


The Court has reviewed the parties’ papers with respect to Defendants’ motion to compel New York Wheel Owner LLC (“NY Wheel”) to produce certain sanctions-related discovery. See ECF Nos. 312-15. The parties are hereby ORDERED to appear for a conference on **January 6, 2021, at 2:00 p.m.** to discuss the motion. Among other things, the parties should be prepared to discuss:

- 1) Whether NY Wheel has actually placed its communications with its prior counsel “at issue” so as to constitute a waiver of the attorney-client privilege or whether NY Wheel’s statements thus far “[m]erely announce[] . . . an *intent* to” disclose privileged information. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 286 F.R.D. 661, 665 (S.D. Fla. 2012); see also *Shared Med. Res., LLC V. Histologics, LLC*, No. 12-CV-0612 (DOC), 2012 WL 5570213, at *4 (C.D. Cal. Nov. 14, 2012).
- 2) If NY Wheel has not yet placed its communications with counsel “at issue,” whether the Court should consider either of the following approaches moving forward:
 - a. Setting a deadline by which NY Wheel would have to elect to either assert a reliance-on-counsel defense to any sanctions motion — in which case Defendants would be entitled to obtain otherwise privileged materials — or forego that defense. See, e.g., *In re Buspirone Antitrust Litig.*, 208 F.R.D. 516, 521-26 (S.D.N.Y. 2002).

- b. Allowing NY Wheel to proceed at its own peril, with the understanding that if it continues to withhold discovery of privileged materials regarding its reliance on counsel's advice, it will be deemed to have waived any reliance-on-counsel defense to any future sanctions motion. *See, e.g., Arista Records LLC v. Lime Grp. LLC*, No. 06-CV-5936 (KMW), 2011 WL 1642434, at *2 (S.D.N.Y. Apr. 20, 2011).

SO ORDERED.

Dated: December 22, 2020
New York, New York



JESSE M. FURMAN
United States District Judge