



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

**ROBERT B. SANSOME and GAIL
SANSOME,**)

Plaintiffs,)

v.)

**HOAR CONSTRUCTION, LLC;
LAKESHORE DATA CENTER, LLC;
NEBIUS, INC.; THE CITY OF
BIRMINGHAM, ALABAMA,**)

Defendants.)

**CIVIL ACTION NUMBER:
CV-2026-902889**

**PLAINTIFFS' CONSOLIDATED RESPONSE TO OBJECTIONS TO NON-PARTY
SUBPOENAS [DOCS. 186, 189, 192, 203, 205] AND MOTION UNDER RULES 45(a)(3)(B)
AND 37(a) TO COMPEL ISSUANCE OF THE SUBPOENAS TO REGIONS BANK,
IRON CITY PREMIER REALTY, UNITED STATES STEEL CORPORATION, AND
MAYNARD NEXSEN PC**

Plaintiffs Robert B. Sansome and Gail Sansome respond in one filing to the five objections served against their non-party subpoenas: (1) Defendants' joint objection to the subpoena to Regions Bank [Doc. 186]; (2) non-party Regions Bank's objection [Doc. 189]; (3) the City of Birmingham's objection to the subpoena to Iron City Premier Realty [Doc. 192]; (4) Defendants' joint objection to the subpoena to United States Steel Corporation [Doc. 205]; and (5) Defendants' joint objection to the subpoena to Maynard Nexsen PC [Doc. 203]. Under Ala. R. Civ. P. 45(a)(3)(B) and 37(a), Plaintiffs move for an order overruling the objections and directing the Clerk to issue all four subpoenas as noticed [Doc. 162, Ex. A; Doc. 174, Ex. A; Doc. 176, Ex. A; Doc. 180, Ex. A].

INTRODUCTION

The Scheduling Order limits the remaining discovery to non-party and expert discovery. [Doc. 143 ¶ 2.] Plaintiffs served party discovery on the equitable issues on September 14, 2026 [Doc. 152], and withdrew it two days later because the Scheduling Order forecloses it. Non-party discovery is therefore the only discovery Plaintiffs have. Defendants now object to that as well. They say the documents should come from “the parties to those conveyances” [Doc. 192 at 3], while reserving objections to every other non-party subpoena Plaintiffs have noticed [*id.* at 2 n.1, 3 n.2]. They have since objected to the subpoenas to the other seller of the Site and to the law firm that prepared the deeds, and they state that they have objected to the subpoenas to the remaining transaction participants as well. [Docs. 203, 205; Doc. 203 at 6.] Under Defendants’ position, Plaintiffs could obtain no discovery from anyone. The Scheduling Order does not say that. The Consolidation Order confirms that the Scheduling Order “remains in effect.” [Doc. 166 ¶ 2.]

Plaintiffs do not seek this discovery to reopen their case. They seek it to prepare for cross-examination and rebuttal, which the Court has expressly preserved. [Doc. 166 ¶ 4.] Defendants have not yet put on their evidence. Their counsel has told the Court what is coming: “the question of shutting down a billion-dollar project,” with damages “in the tens of millions, to a hundred million dollars,” as to which Plaintiffs “can cross the witness.” (Aug. 12, 2026 Tr. 100:1–17.) Plaintiffs cannot cross-examine on, or rebut, evidence they have not been allowed to investigate.

The subpoenas go to two subjects that Defendants themselves put before the Court. The first is the former Regions facility. The City’s witness testified on direct examination that the Regions building “contained a data center within it” and was in the “same category” as the Project. The second is the acquisition of the Site, which changed hands three times in one morning at stated prices of \$17.2 million, \$27 million, and \$83.5 million. That acquisition bears on the hardship

Defendants claim and on the good faith of the reliance they assert. Regions is the only source for the first subject and the first link in the chain for the second. The Iron City subpoena asks a non-party whether it holds records of the same transactions. The U.S. Steel subpoena goes to the other seller into the same assemblage, and the Maynard Nexsen subpoena goes to the firm that prepared the deeds. None of this is a “fishing expedition.” Each subpoena starts from recorded instruments and is confined to the transactions those instruments reflect.

I. BACKGROUND

A. The trial set for March 8, 2027.

On August 12, 2026, the Court granted Plaintiffs’ motion to advance the trial on the merits of the equitable claims and set the case “for NON-JURY TRIAL on the limited equitable issues articulated in Plaintiff’s Motion (Doc. 118) on March 8, 2027.” [Doc. 129.] Those issues are Counts I through V. Count V seeks a permanent injunction, which requires the Court to find, among other things, that the threatened injury to Plaintiffs outweighs the harm an injunction would cause Defendants. *TFT, Inc. v. Warning Sys., Inc.*, 751 So. 2d 1238, 1242 (Ala. 1999).

The Order included discovery. The City’s counsel described it to the Court: “a bench trial in six months on the equitable issue,” with the parties “spending time in a very condensed way on the discovery on this narrow issue,” and a “six-month discovery period.” (Aug. 12, 2026 Tr. 114:4–115:10.) The City’s counsel had earlier told the Court that “irreparable harm in and of itself ... is a question of fact.” (*Id.* at 53:15–17.) Hoar’s counsel described the balance Defendants will ask the Court to strike: “that’s just what we have to weigh as to the cost and the benefit of ... injunctive relief.” (*Id.* at 101:2–6.)

B. Defendants' evidence about the former Regions facility.

The Director of Planning, Engineering and Permits testified for the City that her determination rested on “the consistency of our previous determinations” allowing data centers. (PI Tr. 183:6–17.) On direct examination by the City’s counsel, she placed the former Regions building among them:

THE WITNESS: ... And then the Regions building that was previously on this site had an entire gross floor area of around 300,000 square feet.

THE COURT: But the Regions building, was that used as a data center?

THE WITNESS: A portion of it was.

THE COURT: How much -- how large was that portion in square feet?

THE WITNESS: I’m not sure how large that portion was.

Q. (By Ms. Huntley) So the site that Nebius is building on, there had been the Regions building that contained a data center within it, correct?

A. There were servers that were housed on the bottom floor of that building.

(PI Tr. 178:9–179:5.) She testified that the Project was classified in the “same category ... under Regions.” (*Id.* at 182:4–19.) She compared the two facilities’ size, testifying that there is no “threshold on size” and that the Regions building and the Project are “almost in similar size.” (*Id.* at 270:16–23.) The Court returned to the subject and asked about “the nine other data centers that had been previously allowed, one of them to include, I think you said, the Regions building because they had something on the first floor.” (*Id.* at 271:1–7.)

On cross-examination, the witness could not supply the facts behind the comparison. She has never been inside the building. (*Id.* at 366:5–10.) She agreed that Regions was not a standalone

data center (*id.* at 345:18–346:1), that it was an office with data processing in it (*id.* at 366:16–23), and that, unlike the Project, it “wasn’t full of data center processors” (*id.* at 374:20–375:1). She did not know how large the data portion was (*id.* at 178:17–20), how many generators Regions had (*id.* at 367:9–11), or what cooling system it used (*id.* at 367:12–14). The Court asked those questions, and nobody in the courtroom could answer them. Regions can.

C. The Acquisition Cascade.

Three recorded deeds are in evidence. (PI Tr. 19:17–21:5; *see* Doc. 192 at 2.) Each reflects a closing on September 30, 2025, of the same parcel, Lot 1-A at 201 Milan Parkway:

Exhibit	Conveyance	Stated price	Recorded
PX4	Regions Bank → Lakeshore Data Center, LLC	\$17,200,000	Oct. 1, 2025, 10:06 a.m.
PX5	Lakeshore Data Center, LLC → 201 Milan Birmingham, LLC	\$27,000,000	Oct. 1, 2025, 10:22 a.m.
PX6	201 Milan Birmingham, LLC → Alabama ADC Holdings, LLC	\$83,500,000	Oct. 1, 2025, 11:17 a.m.

The developer Defendants (Lakeshore, Hoar, and Nebius), directly or through affiliates, are the participants in that sequence. Plaintiffs’ party discovery was directed to them on this subject. [Doc. 152, Part Two.] The record does not show who negotiated the transactions, who was paid, what the property was appraised at, what the buyers knew about the zoning when they closed, or why one parcel was conveyed three times in seventy-one minutes at prices that rose by \$66.3 million.

The Site is an assemblage. Regions sold Lot 1-A. United States Steel Corporation sold Lots 5-A and 6 to 201 Milan Birmingham, LLC for \$2,800,000. [*See* Doc. 205 at 1–2 (describing “U.S. Steel’s sale of property to 201 Milan Birmingham, LLC,” “Lots 5-A and 6,” and the “\$2,800,000 purchase price”).] 201 Milan Birmingham is the same entity that took title to Lot 1-A from Lakeshore in PX5 and conveyed it to Alabama ADC Holdings in PX6. Maynard Nexsen PC was,

in Defendants’ words, “counsel involved in preparing deeds and, potentially, closing or settlement work” for these transactions. [Doc. 203 at 6.]

D. The party discovery Plaintiffs served and withdrew.

On September 14, 2026, Plaintiffs served interrogatories and requests for production on all four Defendants. [Doc. 152.] Both instruments opened with a scope statement:

These interrogatories are directed to the limited equitable issues to be tried at the Trial, as articulated in Plaintiffs’ Motion to Advance the Trial on the Merits of the Equitable Claims (Doc. 118) and as set for trial by this Court’s Order of August 12, 2026 (Doc. 129), namely: ... the entry of permanent injunctive relief on Count V, including the balance of the equities, any hardship Defendants assert, the good faith of any reliance asserted in support of a claimed vested right, the persons who must be bound by any injunction under Rule 65(d)(2), Ala. R. Civ. P., any equitable defense Defendants assert, and the public interest.

[Doc. 152, Interrogatories at 2.] Part Two was directed to Nebius, Hoar, and Lakeshore and addressed the acquisition. It explained that those requests “concern the acquisition of the Site and bear upon the balance of the equities, the hardship Defendants assert, the good faith of any reliance asserted in support of a claimed vested right, and the persons who must be bound by any injunction.” [*Id.* at 8.] It asked for the basic facts: a description of each transaction and the consideration “actually paid” (Interrog. 15); the persons who negotiated, structured, approved, financed, or closed them (16); each appraisal (17); what “accounts for the difference between the stated consideration of \$17,200,000 and the stated consideration of \$83,500,000” (18); the business purpose of the sequence (19); “each person who received any commission, brokerage fee, finder’s fee, referral fee, consulting fee, success fee, or other compensation” (20); the relationships among the entities (21); and what Defendants knew about the zoning “before each of the Transactions closed” (22). The requests for production sought the closing records, “including all communications with Regions Bank ... concerning the zoning or entitlement of the Site.” [*Id.*,

Requests for Production 10–17.] The City was asked for “[a]ll documents concerning the data-center use of the former Regions Lakeshore Operations Center, including its gross floor area, the portion of it devoted to data-center use, and its generating equipment.” [*Id.*, Request 54.]

That discovery would have obtained the basic information directly from Defendants. At the September 16 hearing, Plaintiffs withdrew it because the Scheduling Order limits the remaining discovery to “non-party discovery and expert discovery relating to claims and defenses being tried on March 8, 2027.” [Doc. 143 ¶ 2.] The next day the Court ordered:

2. The Scheduling Order (Doc. 143) remains in effect. The dates and deadlines are NOT enlarged due to the consolidation.

4. Sansome Plaintiffs’ have already closed their evidentiary presentation and shall stand on their completed record. They will, however, be allowed to call witnesses and present evidence for rebuttal, if necessary.

[Doc. 166 ¶¶ 2, 4.] The same Order consolidated the three actions for “non-jury trial, discovery, and case management,” and allowed GBHS to reopen the evidentiary record on March 8. [*Id.* ¶¶ 1, 3.]

E. The notices and the objections.

Plaintiffs noticed the subpoena to Regions on September 16 [Doc. 162] and the subpoena to Iron City on September 18 [Doc. 180]. Defendants jointly objected to the Regions subpoena on September 30 [Doc. 186]. Regions objected the same day [Doc. 189]. The City alone objected to the Iron City subpoena on October 1 [Doc. 192]. Iron City has not objected. Plaintiffs noticed the subpoenas to United States Steel Corporation [Doc. 174] and Maynard Nexsen PC [Doc. 176] on September 18. Defendants jointly objected to both on October 2 [Docs. 205, 203]. Once an objection is served, “the subpoena shall not issue,” and “[t]he party serving the notice may move for an order under Rule 37(a) with respect to such objection.” Ala. R. Civ. P. 45(a)(3)(B).

II. GOVERNING STANDARD

Discovery extends to any non-privileged matter that is “relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party,” and that is proportional to the needs of the case. Ala. R. Civ. P. 26(b)(1). “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* The rule expressly reaches the “claim or defense of any other party.” Here, those are Defendants’ hardship, their claimed reliance, and their contention that the Project falls in the same category as earlier data centers. Rule 45 does not require the issuing party to prove in advance that a non-party holds responsive documents, or to disclose why it chose that non-party.

III. THE DISCOVERY IS FOR CROSS-EXAMINATION AND REBUTTAL, WHICH THE COURT PRESERVED

Defendants’ principal objection is that Plaintiffs “must stand on their completed evidentiary record” and that the subpoena “seeks extensive new affirmative evidence.” [Doc. 186 at 1, 3; Doc. 205 at 1, 3; Doc. 203 at 1, 3.] That misstates both the Order and the purpose of the discovery.

The Consolidation Order addresses what Plaintiffs may present at trial. It does not address discovery, except to say that the Scheduling Order, which authorizes non-party discovery, “remains in effect.” [Doc. 166 ¶ 2.] As to presentation, the Order preserves what Plaintiffs seek to prepare for - they “will ... be allowed to call witnesses and present evidence for rebuttal.” [*Id.* ¶ 4.] Plaintiffs will also cross-examine whatever witnesses Defendants call.

Plaintiffs do not seek these documents to add to their case-in-chief. They seek them because Defendants have not yet presented their defense. Hoar’s counsel said so on August 12: “We’ve never -- gotten to the part to put on evidence yet.” (Aug. 12, 2026 Tr. 100:2–3.) Plaintiffs do not know what Defendants will offer on March 8. They do know the subjects, because Defendants have named them: the cost of an injunction, the investment at stake, their reliance on the permits, and the Project’s claimed consistency with prior data centers, including the one at Regions. Plaintiffs must be prepared to cross-examine and rebut on each. Under the Scheduling Order, the only way to prepare is non-party discovery.

Defendants add that the Consolidation Order was entered on September 17, the day before Plaintiffs noticed the U.S. Steel and Maynard Nexsen subpoenas. [Doc. 205 at 3; Doc. 203 at 3.] That sequence supports Plaintiffs. The Order entered on September 17 states that the Scheduling Order “remains in effect.” Plaintiffs had withdrawn their party discovery the day before, and they noticed non-party discovery the day after in reliance on that statement. Defendants also say that Plaintiffs represented in Doc. 118 that their evidentiary presentation was complete. [Doc. 205 at 4.] It is, and Plaintiffs are not asking to supplement it. Preparing to cross-examine Defendants’ witnesses and to answer Defendants’ evidence is different from adding to one’s own case. It is what ¶ 4 of the Consolidation Order preserves.

Defendants also concede the point that matters. They acknowledge that “targeted evidence actually bearing on a specific claim or defense to be tried March 8 could be permissible” from U.S. Steel, and that “a particular nonprivileged closing document or third-party communication” could be obtained from Maynard Nexsen. [Doc. 205 at 5; Doc. 203 at 7.] Their objection is therefore to breadth, not to the subject matter. But Defendants identify no request they would accept. Breadth and burden are for the person subject to the subpoena to raise under Rule 45(c), not for Defendants.

Defendants also rely on statements in Plaintiffs’ reply in support of the motion to advance [Doc. 127]. As Defendants quote it, Plaintiffs said that “no subpoena” could alter the permit facts. Plaintiffs also said that discovery into the operational effects of the Project on its neighbors went to “operational effects, causation, and damages” and would “prove nothing” about whether the Project was lawfully permitted. [Doc. 186 at 3–4.] Both statements remain true, and neither applies here. Plaintiffs’ party discovery stated that it did “not seek discovery concerning the noise, emissions, light, heat, water use, or other operational effects of the completed Project.” [Doc. 152, Interrogatories at 2.] The Regions subpoena does not seek that discovery either. It asks about the former Regions facility. That is a different building, and it is in this case because the City’s witness put it there. Defendants argue that the “operational aspects of the former Regions facility logically cannot be at issue.” [Doc. 186 at 4.] But the City put them at issue when its witness testified that the Regions building “contained a data center” in the “same category” and of “similar size.” Doc. 127 also preceded the Scheduling Order. With that reply before it, and after Defendants’ own counsel proposed a “six-month discovery period,” the Court authorized non-party discovery.

IV. THE REGIONS SUBPOENA SHOULD ISSUE AS NOTICED

A. Requests 1–16 go directly to the City’s evidence that Regions was a pre-existing data center.

Requests 1 through 16 seek the records that show what the former Regions facility was. They cover its buildings and certificates of occupancy, its plans, the allocation of its floor area, the functions it housed, its computer rooms, its electrical service and demand, its generators, its cooling and water use, its hours, its exterior effects, its zoning approvals and communications with the City about permitted use, and the date it closed. Each one answers a question the City’s testimony raised and left open:

The City's testimony	What the Regions records show
"A portion of it was" used as a data center; "I'm not sure how large that portion was." (PI Tr. 178:13–20.)	Floor-area allocation, plans, and computer-room specifications (Reqs. 2, 3, 5).
The Regions building and the Project are "almost in similar size"; there is no "threshold on size." (270:16–23.)	Buildings, floor area, electrical service and demand, the measure of a data center's scale (Reqs. 1, 2, 6).
Regions was an office with data processing, not "full of data center processors." (366:16–23; 374:20–375:1.)	Functions housed, headcount, and Regions' own characterization of the use (Reqs. 4, 5, 12).
The witness did not know how many generators Regions had or what cooling it used. (367:9–14.)	Generators, fuel, cooling, and water (Reqs. 7, 8).
The Project is in the "same category ... under Regions." (182:4–19.)	Zoning and land-use approvals and communications with the City on permitted use (Req. 11).
The City treats the Project as a "legal nonconforming or grandfathered use." (291:5–9.)	Date operations ceased; hours and character of the prior use (Reqs. 9, 10, 13).
The Regions building was "previously on this site" and was demolished for the Project. (178:9–12.)	Photographs, environmental records, and any comparison of the facility to the Project (Reqs. 14, 15, 16).

Defendants call Requests 5 through 10 "operational" discovery. [Doc. 186 at 4.] They are comparison discovery. When the City says the Project is the same kind of use as the building it replaced, the electrical load, generators, cooling, and hours of that building are the facts that show whether the comparison holds. The City offered the comparison without those facts. If Defendants repeat or expand it on March 8, Plaintiffs are entitled to cross-examine with the records of the entity that operated the building, not with a witness's recollection of picking up her sister from work. (PI Tr. 366:5–10.)

B. Requests 17–35 go to the hardship and good-faith reliance Defendants assert.

Regions is not an "unrelated non-party seller." [Doc. 186 at 5.] It is the grantor in PX4, the first conveyance in the Acquisition Cascade. Requests 17 through 35 seek its sale file: the decision to sell, marketing and offers, communications with the buyers, the purchase agreement, the identity of the purchaser, due diligence, appraisals, the closing file, consideration, knowledge of the resale,

fees and commissions, and communications with public officials. They seek from the seller what Part Two of Doc. 152 sought from the buyers. The connections to the March 8 issues are direct:

Hardship. Defendants will ask the Court to weigh “tens of millions, to a hundred million dollars.” (Aug. 12, 2026 Tr. 100:13–17.) The Regions price, appraisals, and competing offers establish what the land was worth at arm’s length. They are what Plaintiffs need to cross-examine any witness who includes land cost in the claimed loss, because \$66.3 million of the final stated price arose after Regions was paid, in conveyances recorded within seventy-one minutes. A markup between affiliates is not a loss an injunction would cause.

Good faith. Any claim of vested rights or good-faith reliance depends on what the buyers knew about the zoning when they bought. The seller’s communications with the buyers about intended use, zoning, and entitlements, and the due diligence exchanged, are the contemporaneous record of that knowledge. So are Regions’ communications with City officials about the sale and the Site’s use.

Self-created hardship. Regions’ knowledge of the same-day resale, and the sequencing of the closings, show whether the structure was planned before the first closing. Hardship that a party arranges for itself carries little weight in equity.

Persons bound. An injunction binds the parties and “those persons in active concert or participation with them.” Ala. R. Civ. P. 65(d)(2). The purchase agreement, its assignments, and the identity of the real purchaser show who must be bound. Whether a successor is bound turns on an appraisal of his relations and behavior.

Other participants. The closing file and fee records identify who else took part: closing agents, brokers, lenders, and payees. The transactions cannot be understood, and the remaining non-party discovery cannot be directed, without them.

C. Regions’ objections do not justify refusing issuance.

All thirty-five requests should issue. Regions objects generally to all of them as overbroad, burdensome, vague, and irrelevant. [Doc. 189 & Ex. A.] A general objection to an entire subpoena is not a showing of undue burden. Regions is a sophisticated institution. It owned and operated one facility and sold it in one transaction. The records sought are of two kinds, facility records and a sale file, and both are kept in the ordinary course. Regions does not say what the search would cost, how many custodians are involved, or which sources are not reasonably accessible. Rule 26(b)(2)(A), which Regions cites, requires the responding person to identify those sources. Volume alone does not make information inaccessible.

The specific objections fare no better. *Relevance* is shown above. *Vagueness*: the “Facility Period” runs from when Regions planned and built the facility to when it closed, and Regions knows those dates. *Confidentiality* is addressed by a protective order, which the subpoena’s instructions already contemplate, and Plaintiffs will join in submitting one. *Privilege* is addressed by a log under Rule 45(d)(2). Privilege is not a ground to refuse issuance. “*Available from the parties*”: party discovery is foreclosed by the Scheduling Order, and Regions’ own appraisals, approvals, and internal records are held by Regions alone. *Other litigation*: the pendency of *Anderson v. Stivender*, No. 01-CV-2026-903990.00, which Regions says “concerns the sale of the property” [Doc. 189, Ex. A at 3], is not a ground to refuse discovery here. It suggests the sale file has been or will be collected in any event. *Time for compliance*: the noticed date has passed because of the objections, and the Court can set a new one.

Rule 45 gives Regions procedures for any request-specific concern after the subpoena issues. Ala. R. Civ. P. 45(c)(2)(B), (c)(3). It does not allow a non-party to prevent issuance

altogether with a general objection, and it does not give Defendants a veto over discovery into their own evidence.

V. THE IRON CITY SUBPOENA SHOULD ISSUE AS NOTICED

The non-party subpoenas Plaintiffs have noticed share one purpose, which is to understand the Acquisition Cascade. The developer Defendants are its participants, and Plaintiffs cannot ask them. The only route is through the non-parties who may hold the records. The Iron City subpoena is one of those. Every request in it is confined to the Site and the transactions, the engagement and role, the persons involved, compensation, closing and settlement documents, communications concerning the Site and the transactions, and the transaction file. Those are the same categories Plaintiffs sought from Defendants as “Closing Records” and in the request to identify “each person who received any commission, brokerage fee, finder’s fee, referral fee, consulting fee, success fee, or other compensation in connection with any of the Transactions.” [Doc. 152, Interrogatories at 3, Def. (j), and Interrog. 20.]

The City objects that nothing in the record connects Iron City to the conveyances and that the Notice does not state its role. [Doc. 192 at 1–2.] Neither point is a ground for objection.

First, Rule 45 requires a notice, a subpoena, and requests described “with reasonable particularity.” Ala. R. Civ. P. 45(a)(3)(A), (C). It does not require the issuing party to prove a non-party’s involvement before asking whether it was involved. Relevance under Rule 26(b)(1) attaches to the information sought, and records of who took part in the Acquisition Cascade and who was paid are relevant to hardship and good faith for the reasons given in Part IV.B. Brokers and other intermediaries do not appear on recorded deeds. Their participation is shown by the records this subpoena requests.

Second, Plaintiffs are not required to explain why they directed a subpoena to a particular non-party. Information developed in counsel's investigation indicates that Iron City may have been involved in the transactions. That information is work product. The Court "shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney." Ala. R. Civ. P. 26(b)(3). A party does not forfeit a subpoena by declining to disclose its investigation to its adversaries.

Third, Iron City either has the records or it does not. If it had no part in the transactions, as the City asserts, its response is a statement that it has no responsive documents, and the burden is nil. If it took part, its records are relevant. The City's objection asks the Court to assume the answer to a question that only Iron City can answer.

Fourth, the burden objection is not the City's to make. Rule 45(c)(1) protects "a person subject to that subpoena." Iron City has not objected. The subpoena seeks none of the City's records, and the City identifies no privilege or interest of its own in a private brokerage's files.

This discovery is necessarily sequential. The Regions closing file, the Iron City response, and the other non-party productions may identify further participants, and Plaintiffs will direct further non-party discovery to them. That is not a "fishing expedition." It is how a party follows a transaction when it is barred from asking the parties. (See Part VIII.)

VI. THE U.S. STEEL SUBPOENA SHOULD ISSUE AS NOTICED

U.S. Steel is the second seller into the assemblage. As Defendants describe the subpoena, it seeks the contracts for U.S. Steel's sale of Lots 5-A and 6, the persons who negotiated the sale and their communications with the transaction participants, the closing statement and the source and disbursement of the \$2,800,000 purchase price, appraisals and competing offers, the internal approval file, U.S. Steel's knowledge of any resale and its price, the Alabama Power agreements

affecting the lots, recording instructions, zoning materials, and other Oxmoor land that U.S. Steel sold or offered. [Doc. 205 at 2–3.] Those are the same categories sought from Regions in Requests 17 through 35. They are relevant for the reasons given in Part IV.B. Three further points are specific to U.S. Steel.

First, the buyer was 201 Milan Birmingham, LLC. Defendants stress that 201 Milan “is not a party in this case.” [Doc. 205 at 1.] That is the reason the discovery is needed. 201 Milan took title to the Regions parcel from Lakeshore and conveyed it to Alabama ADC Holdings the same morning. Who controls 201 Milan, who funded its purchase from U.S. Steel, and what it knew determine whether it is a person “in active concert or participation” with Defendants who must be bound by an injunction. Ala. R. Civ. P. 65(d)(2). Plaintiffs cannot ask Defendants. Defendants do not explain what interest they have in preventing discovery of a sale between two entities they describe as non-parties.

Second, the U.S. Steel price and valuations complete the hardship baseline. The investment Defendants claim covers the whole Site, not Lot 1-A alone. What U.S. Steel was paid, what the lots were appraised at, and what others offered show the arm’s-length value of the rest of the assemblage. Whether U.S. Steel knew of a resale, and at what price, shows whether the sequence of conveyances was arranged in advance.

Third, Defendants single out the request for the Alabama Power agreements and the request concerning 2500 Venice Road and other Oxmoor land. [Doc. 205 at 5.] The Alabama Power agreements are instruments affecting the lots that were conveyed. To the extent they concern electric-utility facilities or rights on those lots, they bear on Count III, which concerns the substation and switching station for which the Zoning Board of Adjustment denied special

exceptions. 2500 Venice Road is part of the Site. [Doc. 152, Interrogatories at 3, Def. (f).] A request about the rest of the same assemblage is not a request about unrelated property.

Defendants' remaining objections to this subpoena repeat their objections to the Regions subpoena and fail for the reasons given in Part III. Any burden is U.S. Steel's to assert under Rule 45(c).

VII. THE MAYNARD NEXSEN SUBPOENA SHOULD ISSUE AS NOTICED

Maynard Nexsen is not opposing counsel in this case. It has not appeared for any party. Defendants describe it as "counsel involved in preparing deeds and, potentially, closing or settlement work." [Doc. 203 at 6.] A closing attorney's file is where the complete record of a real-estate closing is kept. The executed agreements, the settlement statements, the disbursements, the recording instructions, and the communications among the parties to the closing. The subpoena asks for that record.

Defendants' privilege objection does not support refusing issuance. The subpoena states that it "does not seek legal advice rendered to a client." [Doc. 176, Ex. A at 11 (quoted in Doc. 203 at 5).] The categories it seeks are not confidential attorney-client communications. They are the identity of the client and the dates of engagement, settlement statements, disbursement and wire records, recording instructions, and communications with persons who were not the firm's clients. Defendants themselves acknowledge that a law firm's "purely financial records" do not implicate privilege. [Doc. 203 at 4 n.1.] A communication between a lawyer and a non-client on the other side of a transaction is not a confidential communication with a client.

Defendants argue that whether a document is protected "depends on its substance, context, participants, and purpose." [Doc. 203 at 5.] Plaintiffs agree. That is why Rule 45(d)(2) requires a privilege claim to be made document by document, with a description sufficient to test it. It is a

reason for a privilege log, not a reason to keep the subpoena from issuing. No Defendant states that it was Maynard Nexsen’s client. Defendants reserve privilege only “as may be applicable.” [*Id.* at 7.] The privilege belongs to the client. A party that does not claim to be the client cannot assert it wholesale against an entire file.

The authorities Defendants cite concern discovery from an adversary’s litigation counsel. As Defendants describe them, the federal decisions address subpoenas “directed to opposing counsel” and “opposing trial counsel,” and *Ex parte Industrial Board of the City of Montgomery*, 42 So. 3d 699 (Ala. 2010), concerned the deposition of a party’s lawyer who was “not the only source of information.” [Doc. 203 at 4.] Maynard Nexsen is transactional counsel, not trial counsel, and the subpoena is for documents, not testimony. Nor is there another source available here. The parties cannot be asked, and Defendants have objected to every subpoena directed to the other participants.

Defendants also call the subpoena cumulative of the subpoenas to 201 Milan Birmingham, Raeden RE, Alabama ADC Holdings, Regions, and U.S. Steel. [Doc. 203 at 6.] In the same paragraph they state that they have objected to those subpoenas as well. A subpoena is not cumulative of discovery that the objecting party is trying to prevent. If the Court directs the other subpoenas to issue and the same document is produced twice, the cost is a duplicate copy.

VIII. THE SUBPOENAS ARE NOT A “FISHING EXPEDITION”

The City calls the Iron City subpoena “a fishing expedition.” [Doc. 192 at 1, 2.] Defendants’ objections to the other subpoenas make the same charge in other words, describing them as a “new affirmative evidentiary investigation.” [Doc. 203 at 6.] The label does not fit. A fishing expedition is discovery with no defined subject, undertaken in the hope that something will turn up. These subpoenas have a defined subject, and it is already in the record.

The subject is a specific set of transactions: the conveyances of the Site that closed on September 30, 2025 and were recorded on October 1, 2025, shown in PX4, PX5, and PX6, together with U.S. Steel's sale of the adjoining lots to the same intermediate buyer. The parcels, the dates, the parties, and the stated prices are of record. Every request in every subpoena is tied to those transactions or, in the case of Regions, to the facility that the City's own witness described. Each recipient was selected for a reason that the recorded instruments supply or that counsel's investigation developed. Regions and U.S. Steel sold the land. Maynard Nexsen prepared deeds. Iron City is asked whether it took part.

The purpose is equally defined. Defendants have told the Court that they will offer evidence of hardship in the tens of millions of dollars and that they relied on the permits. Plaintiffs seek the records that test that evidence. Rule 26(b)(1) allows discovery of information that "appears reasonably calculated to lead to the discovery of admissible evidence." Following a recorded transaction to the persons who negotiated it, closed it, and were paid in it meets that standard.

It makes no difference that a non-party, or someone speaking for it, may state outside of court that it had no involvement in the transactions. An unsworn statement is not a response to a subpoena, and it cannot be tested by cross-examination. If the statement is accurate, the non-party's response will say so in a sentence, and the matter ends at no cost to anyone. A subpoena that can be answered in full with the word "none" is not an abuse of the discovery process, and there is no need for a Defendant to object on the non-party's behalf.

The discovery is sequential because Plaintiffs are barred from asking the parties who know the answers. Each production may identify the next participant. That is the ordinary investigation of a known transaction.

IX. DEFENDANTS' POSITION WOULD LEAVE PLAINTIFFS WITH NO DISCOVERY

Party discovery is foreclosed, and Plaintiffs withdrew theirs. Defendants now object to non-party discovery on the ground that the information is “available elsewhere,” from “the parties to those conveyances” [Doc. 192 at 3], while reserving objections to the subpoenas directed to those same persons [*id.* at 2 n.1, 3 n.2]. They have now objected to the subpoenas to U.S. Steel and Maynard Nexsen, and they state that they have objected to the subpoenas to 201 Milan Birmingham, Raeden RE, and Alabama ADC Holdings as well. [Docs. 203, 205; Doc. 203 at 6.] Defendants meanwhile intend to call witnesses on hardship, reliance, and prior use. A consolidation under Rule 65(a)(2) presupposes that both sides receive “a full opportunity to present their respective cases.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). The right to cross-examine and to present rebuttal, which the Court preserved in Doc. 166 ¶ 4, cannot be exercised without the discovery needed to prepare for it.

X. RELIEF REQUESTED

Plaintiffs respectfully request that the Court enter an order:

- (1) overruling Defendants’ objection [Doc. 186] and Regions Bank’s objection [Doc. 189] to the subpoena to Regions Bank;
- (2) overruling the City’s objection [Doc. 192] to the subpoena to Iron City Premier Realty;
- (3) overruling Defendants’ objections [Docs. 203, 205] to the subpoenas to Maynard Nexsen PC and United States Steel Corporation; and
- (4) directing the Clerk to issue all four subpoenas as noticed [Doc. 162, Ex. A; Doc. 174, Ex. A; Doc. 176, Ex. A; Doc. 180, Ex. A], with compliance due thirty (30) days after service.

RULE 37(a)(2) STATEMENT

This motion arises under Rule 45(a)(3)(B). Under that rule, a served objection bars issuance of the subpoena, and the rule's stated remedy is a motion under Rule 37(a). The objecting parties set out their positions in writing [Docs. 186, 189, 192, 203, 205], and counsel for Regions Bank set out its position in correspondence to the undersigned dated September 30, 2026 [Doc. 189, Ex. A]. Defendants object to issuance absent an order of the Court [Doc. 186 at 5; Doc. 192 at 4; Doc. 203 at 7; Doc. 205 at 5]. The subject of this motion therefore cannot be resolved without a ruling.¹

Respectfully submitted this 3rd day of October, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2026, I filed the foregoing using the AlaFile system, which will serve all counsel of record as follows:

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