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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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LAWRENCE LEVINN and MAXX COVERAGE  
CORP.,

**NOTICE OF ENTRY**

Plaintiffs,

Index No. 608725/2016

- against -

J&M CONTRACTORS BROKERAGE CORP.,  
MARK FELLOWS, VALERIE FELLOWS, and  
THE FELLOWS AGENCY, INC.,

Defendants.

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**C O U N S E L:**

**PLEASE TAKE NOTICE**, that the within is a true copy of a Decision and  
Order dated April 8, 2019 and duly entered in the Office of the Clerk of the within named  
Court on the 17<sup>th</sup> day of April, 2019.

Dated: Garden City, New York  
April 22, 2019

Yours, etc.

**REISMAN PEIREZ REISMAN & CAPOBIANCO LLP**

By: 

Joseph Capobianco

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Brokerage Corp., Mark Fellows, Valerie  
Fellows, and The Fellows Agency*  
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**TO: LAW OFFICES OF ROBERT G. LITT**  
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**SUPREME COURT - STATE OF NEW YORK**

Present:

**HON. VITO M. DESTEFANO,**

Justice

TRIAL/IAS, PART 9  
NASSAU COUNTY

**LAWRENCE LEVINN and MAXX COVERAGE  
CORP.,**

**Decision and Order**

**Plaintiff,**

**MOTION SEQUENCE: 03  
INDEX NO.: 608725/2016**

**-against-**

**J & M CONTRACTORS BROKERAGE CORP.,  
MARK FELLOWS, VALERIE FELLOWS, and  
THE FELLOWS AGENCY, INC.,**

**Defendant.**

**The following papers and the attachments and exhibits thereto have been read on this motion:**

Notice of Motion	1
Affirmation in Opposition	2
Reply Affirmation	3

On December 13, 2018, Plaintiff's counsel served 11 non-party subpoenas on various insurance companies and insurance-related entities. The subpoenas are, for the most part, identical and seek periodic commission statements containing account details or other statements issued by the subpoenaed entity and relating to Defendants The Fellows Agency, Inc. ("Fellows") or J & M Contractors Brokerage Corp. ("J&M") setting forth the insured's name, policy numbers, premium, rate and other standard information contained in the statement setting forth commissions paid to Fellows or J & M.

Initially, the court notes that seven of the subpoenas were served upon entities outside the State of New York and, as such, are procedurally defective inasmuch as a New York subpoena may not reach beyond New York borders whatever the bases or justifications of the particular case.

Moreover, none of the subpoenas meet the requirements of *Matter of Kapon v Koch* (23 NY3d 32, 38-39 [2014])<sup>1</sup> in that they fail to set forth the circumstances or reasons such disclosure is sought or required and, thus, are facially defective on this ground as well (see *Needleman v Tornheim*, 88 AD3d 773 [2d Dept 2011]).

Based on the foregoing, it is hereby

Ordered that branch “a” of Defendants’ motion seeking to quash the subpoenas, each dated December 13, 2018 and served upon Allstate Insurance, National General Insurance, The Progressive Corporation, Allrisks Insurance, Risk Placement Services, Inc., Mercury General Corporation, UPC Insurance, The Treiber Group, Kingstone Insurance Company, Morstan Insurance, and Jimcor Agencies, is granted and the subpoenas are quashed; and it is further

Ordered that branch “b” of the Defendant’s motion seeking a protective order is denied as academic.

This constitutes the decision and order of the court.

Dated: April 8, 2019

  
Hon. Vito M. DeStefano, J.S.C.

**ENTERED**

APR 17 2019

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

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<sup>1</sup> In *Matter of Kapon v Koch* (23 NY3d at 39, *supra*) the Court of Appeals held that, although the “nonparty bears the initial burden of proof on a motion to quash”, CPLR 3101(a)(4) “nonetheless obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, ‘the circumstances or reasons such disclosure is sought or required.’ The subpoenaing party must include that information in the notice in the first instance.”