UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

PORZIO, BROMBERG & NEWMAN, P.C.
5 Sylvan Way, Suite 110
P.O. Box 218
Parsippany, New Jersey 07054
Telephone: (973) 538-4006
Warren J. Martin Jr., Esq. (wjmartin@pbnlaw.com)
Rachel A. Parisi, Esq. (raparisi@pbnlaw.com)

Counsel to Moshe Silber

In re: CBRM REALTY INC., *et al.*,[1] Debtors.	Case No.: 25-15343 (MBK) Chapter: 11 Judge: Hon. Michael B. Kaplan **Hearing Date and Time**: October 15, 2026 at 10:00 a.m. (ET) (FinPro Motion) October 22, 2026 at 10:00 a.m. (ET) (Levon Motion)

OMNIBUS REPLY OF MOSHE SILBER IN FURTHER SUPPORT OF MOTIONS TO QUASH THIRD-PARTY SUBPOENAS ADDRESSED TO FINPRO CAPITAL ADVISORS, INC. AND LEVON CAPITAL LLC, AND IN RESPONSE TO THE OBJECTIONS OF THE CREDITOR RECOVERY TRUSTEE [ECF NOS. 873 AND 874]

Moshe Silber a/k/a Mark Silber ("Mr. Silber" or the "Movant"), by and through his undersigned counsel, hereby submits this omnibus reply (the "Reply") in further support of (i) *Moshe Silber's Motion to Quash Third-Party Subpoena to FinPro Capital Advisors, Inc.* [ECF No. 856] (the "FinPro Motion") and (ii) *Moshe Silber's Motion to Quash Third-Party Subpoena to*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (1115), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), and RH New Orleans Holdings MM LLC (1951). The location of the Debtors' service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

Levon Capital LLC [ECF No. 869] (the "Levon Motion," and together with the FinPro Motion, the "Motions")[2], and in response to the *Objection of the Creditor Recovery Trustee to Moshe Silber's Motion to Quash Third-Party Subpoena to FinPro Capital Advisors, Inc.* [ECF No. 874] (the "FinPro Objection") and the *Objection of the Creditor Recovery Trustee to Moshe Silber's Motion to Quash Third-Party Subpoena to Levon Capital LLC* [ECF No. 873] (the "Levon Objection," and together with the FinPro Objection, the "Objections") filed by RLA Consulting LLC, as trustee of the Creditor Recovery Trust (the "CBRM Trustee"). In support of the Reply, the Movant respectfully asserts as follows:

PRELIMINARY STATEMENT

The CBRM Trustee's stated focus in issuing these two Rule 2004 subpoenas is to challenge Chapter 7 Trustee Bezner's ownership interest in Sunnyside Bank /Vecta. But Trustee Bezner's very recent filing of Adversary Proceeding No. 26-01446 (MBK) (the "Adversary Proceeding"), directly addressing the ownership in Vecta, puts this controversy squarely before the Court, in the forum of an adversary proceeding, where the Federal Rules discovery must be the methodology employed. *See* ECF No. 1 of Adv. Proc. No. 26-01446 (MBK) at 54-74. But not only with respect to Vecta, Trustee Bezner's Adversary Proceeding also challenges many of the Transactions and Properties which are the subject of the CBRM Liquidating Trust's subpoena to Levon Capital which - according to the CBRM Trustee - are also supposedly related to the Vecta transaction (*see* ECF No. 873 at ¶ 13). *Id.* at 107-272.

As a matter of judicial economy, if not black letter law, the CBRM Trustee should not be permitted to end run around the Chapter 7 Trustee's Adversary Proceeding addressing precisely the same assets. If the CBRM Liquidating Trust wishes to vindicate rights alleged as to

[2] Capitalized terms not defined herein have the meanings given to them in the Motions.

Sunnyside/Vecta, it should intervene in Trustee Bezner's Adversary Proceeding and pursue discovery there, or risk losing such claims.

ARGUMENT

A. Mr. Silber Unquestionably has Standing to Challenge the Subpoenas

1. Before diving into the crux of the matter, we must first refute the CBRM Trustee's assertion that Mr. Silber did not have standing to file the Motions. While, typically, those served with third-party subpoenas "may move to have them quashed under Federal Rule of Civil Procedure 45(c)(3)(A)", courts have made clear that parties who "claim[ ] 'some personal right or privilege' in respect to the subject matter of a subpoena" have standing to challenge the same. *See* Davis v. General Accident Ins. Co. of America, 1999 WL 228944, at *2 (E.D. Pa. Apr. 15, 1999) (*quoting* Dart Indus., Inc. v. Liquid Nitrogen Proc. Corp. of Cal., 50 F.R.D. 286, 291 (D. Del. 1970)); United States v. Idema, 118 F. App'x 740, 744 (4th Cir. 2005) ("Ordinarily, a party does not have standing to challenge a subpoena issued to a nonparty **unless the party claims some personal right or privilege in the information sought by the subpoena**.") (Emphasis added).

2. This is exactly the situation at bar. Mr. Silber's personal information is the target of the Subpoenas, which means that he has a personal right or stake in the information sought therein, and, as a result, he possesses standing to challenge them. Specifically:

i. The FinPro Subpoena defines "THE BUYER" to include Mr. Silber individually (Exhibit A of the FinPro Motion at pdf p. 8, #14) and "SUBJECT PERSONS" as including Mr. Silber in his personal capacity. *Id.* at pdf p. 9, #19. Thus, by requesting all documents concerning "THE BUYER's" and/or the "SUBJECT PERSONS'" financial capacity, net worth, sources of funds, and beneficial ownership, the CBRM Trustee is

ultimately seeking access to Mr. Silber's personal financial information, whose disclosure may cause direct, personal harm to his rights and interests.

ii. The Levon Capital Subpoena suffers from the same infirmities. It defines the "SILBER PARTIES" to include Mr. Silber and any entity directly or indirectly controlled by him (Exhibit A of the Levon Motion at pdf p. 9, #5), it defines the "SUBJECT PROPERTIES" any other real property in which Mr. Silber held, or had held, any interest (*Id.* at #6), it defines "SUBJECT TRANSFERS" to include any conveyance or transfer in any real property that Mr. Silber had any interest in (which also includes any transfer where Mr. Silber was a party in said transaction), (*Id.* at pdf p. 10, #7), and it defines "LOAN" to include any loan or credit to or for the benefit of, among others, Mr. Silber. *Id.* at #8. By requesting any all documents concerning the "SUBJECT TRANSFERS", the "SUBJECT PROPERTIES", and/or the "LOAN", the CBRM Trustee is – once again- attempting to gain access to Mr. Silber's personal affairs and documents.

3. The above is further compounded by the CBRM Trustee's own position in the Objections. Specifically, he (i) recognizes that Mr. Silber was not served with the Subpoenas; (ii) brushes off this failure in due process as purportedly "causing no harm to Mr. Silber" (*see* the FinPro Objection at ¶24[3] and the Levon Objection at ¶35[4]); and (iii) immediately suggests that the course of action should be to cure this defect and provide Mr. Silber with an opportunity to object to the

[3] Asserting that "[t]hat injury has not occurred and cannot now occur" because FinPro – not the CBRM Trustee – informed Mr. Silber of the FinPro Subpoena.

[4] Asserting that "[t]hat injury has not occurred here and cannot now occur" because Levon Capital did not produce the documentation by the deadline.

Subpoenas. *Id.*; *see also* FinPro Objection at ¶25 and the Levon Objection at ¶37. Both positions cannot stand – how can the CBRM Trustee allege that Mr. Silber does not have standing while, at the same time, proposing to remediate the lack of notice and affording Mr. Silber time to object to the Subpoenas? The answer is simple: the CBRM Trustee knows that Mr. Silber has standing to challenge the Subpoenas because his personal rights are affected by them.

4. Mr. Silber undoubtedly possessed standing to file and be heard on the Motions to Quash.

B. The Subpoenas Should be Set Aside Due to the Filing of the Adversary Proceeding

5. The CBRM Trustee states in his Objections that the purpose of the Subpoenas is to determine who is the rightful owner of Sunnyside Bank/Vecta. The CBRM Trustee posits that it should be the CBRM estate because "[t]he [CBRM debtors] paid $21,196,044.50" towards "the acquisition and capitalization of" the Bank, but that the "buyer of record" ended up being Rhodium – now Vecta. *See* Levon Objection at ¶5. Put bluntly, the CBRM Trustee believes that "[t]he [CBRM debtors] paid…toward a purchase titled in another name." *See* FinPro Objection at ¶31. Part of the CBRM Trustee's theory to that effect is that the "SUBJECT PROPERTIES" and Transactions object of the Levon Capital Subpoena were supposedly related to the Bank/Vecta transaction. *See* Levon Objection at p. 3, and ¶¶13-14.

6. On October 2, 2026, the Chapter 7 Trustee in Mr. Silber's personal bankruptcy proceeding filed a complaint (the "Complaint") commencing the Adversary Proceeding against the defendants Miriam Mizrachi, 41 Powderhorn LLC, Powder Horn Development LLC, Miles Estates LLC, 1070 Haverstraw Holdings, LLC, 1092 Haverstraw Owner LLC, Hav 1070, Hav 1092, 14 Enclave Owner LLC, Medo International LLC and John Does 1-100. *See* ECF No. 1 of Adv. Proc. No. 26-01446 (MBK). The Complaint consists of eight causes of action for avoidance of

preferential transfers (Count I), avoidance of actual and constructive fraudulent transfers under the Bankruptcy Code and applicable state law (Counts II – V), avoidance of insider transfers for antecedent debt (Count VI), recovery of the avoided transfers (Count VII), and preservation of avoided transfers (Count VIII). *Id.*

7. The Sunnyside Bank/Vecta acquisition, as well as the Transactions and Properties object of the Levon Capital Subpoena, are among the transfers expressly sought to be avoided via the Complaint and which the Chapter 7 Trustee is seeking to recover - or its value - from the defendants under 11 U.S.C. §§ 548, 544 (along with applicable state law), and 550. *Id.* at 54-74, and 107-272.

8. Courts have adopted the "pending proceeding rule" to avoid parties from using Rule 2004 as a vehicle to circumvent the safeguards and protections of the Federal Rules of Civil Procedure. The rule is simple — "once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to the Fed.R.Bankr.P. 7026 et seq., rather than by a [Rule 2004] 2004 examination.." In re Bennett Funding Grp., Inc., 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *see also* In re 2435 Plainfield Ave., Inc., 223 B.R. 440, 455–56 (Bankr. D.N.J.1998) (collecting cases); In re Enron Corp., 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002).

9. One clear guidepost for application of the "pending proceeding rule" is that "[d]iscovery of evidence ***related* to the pending proceeding** must be accomplished in accord with more restrictive provisions" of the Federal Rules of Bankruptcy Procedures, and "[t]hus [the discovering party] must look to Fed.R.Bankr.P. 7026 *et seq.* after an adversary proceeding is commenced for discovery as to…entities affected by the proceeding and issues addressed in the proceeding." Bennett Funding, 203 B.R. at 29 (*referencing* In re Buick, 174 B.R. 299, 306 (Bankr. D. Colo. 1994)) (Emphasis added).

10. The circumstances here support leaving the Subpoenas without effect:

i. The discovery being sought by the CBRM Trustee *is directly related* to the gating controversies that will be heard - and disposed of - in the Adversary Proceeding;

ii. The possibility that the CBRM Trustee will intervene in the Adversary Proceeding is not remote, it is almost a certainty. The CBRM estates have a significant interest in the Vecta/Sunnyside dispute. The CBRM Trustee does not have the luxury of allowing the Complaint to move forward without his participation because, should an unfavorable result occur there, the CBRM estates would face prejudice.

iii. The totality of the circumstances – *see* the balancing test articulated in In re Sunedison, Inc., 572 B.R. 482, 489–90 (Bankr. S.D.N.Y. 2017) (*quoting* In re Drexel Burnham Lambert Grp., Inc., 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991)) weigh against the Subpoenas: (a) the CBRM Trustee will need to participate in the Adversary Proceeding; (b) once he intervenes, the CBRM Trustee will have at his disposal the discovery tools of a party under the Federal Rules of Bankruptcy Procedure; (c) the Complaint will adjudicate – once and for all – the Vecta/Sunnyside transactions (and the other transactions the Trustee has been complaining for the longest time - though, unlike the Chapter 7 Trustee, he has brought no adversary proceeding concerning it); and (d) maintaining the Subpoenas will create a duplication of proceedings (the Rule 2004 and the Adversary Proceeding) even though only one of them - the Adversary Proceeding- can lead to a final resolution.

11. Based on the above, the Subpoenas should be quashed and the CBRM Trustee should be required to conduct discovery in the Adversary Proceeding under the appropriate procedural framework of Fed. R. Bankr. P. 7026–7037.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Motions, Mr. Silber respectfully requests that this Court enter an Order: (a) granting the Motions to quash the FinPro Subpoena and the Levon Subpoena; or, alternatively, (b) modifying the Subpoenas to limit production to materials demonstrably connected to these Debtors, the CBRM Trust's assets, and the CBRM Trustee's responsibilities, without duplicating discovery concerning matters within the Chapter 7 Trustee's statutory duties; and (c) granting such other and further relief as the Court deems just and appropriate.

Dated: October 12, 2026

Respectfully submitted,

PORZIO, BROMBERG & NEWMAN, P.C.

By: */s/ Warren J. Martin Jr.*

Warren J. Martin Jr., Esq.
Rachel A. Parisi, Esq.
5 Sylvan Way, Suite 110
P.O. Box 218
Parsippany, New Jersey 07054
Telephone: (973) 538-4006
Email: wjmartin@pbnlaw.com
raparisi@pbnlaw.com

Counsel to Moshe Silber