UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re: CBRM REALTY INC., et al., Debtors.	Case No.: 25-15343 (MBK) Chapter: 11 Judge: Hon. Michael B. Kaplan

RESPONSE OF MIRIAM MIZRACHI TO OMNIBUS REPLY OF THE CREDITOR RECOVERY TRUSTEE

Miriam Mizrachi ("Ms. Mizrachi"), by and through her undersigned counsel, Okin Hollander LLC ("Okin Hollander"), submits this response (the "Response") to the *Omnibus Reply* dated October 13, 2026 [Dkt. No. 881] (the "Omnibus Reply") *of the Creditor Recovery Trustee (A) In Further Support of Its Motion for Entry of an Order (I) Compelling Miriam Mizrachi to Comply with the Rule 2004 Subpoena Issued to Her, (II) Overruling Her Objections Thereto, and (III) Granting Related Relief et al.* (the "Motion to Compel") [Dkt. No. 857] filed by RLA Consulting LLC, in its capacity as trustee (the "Liquidation Trustee") of the Creditor Recovery Trust established under the confirmed chapter 11 plan of CBRM Realty Inc., et al. ("CBRM") and in support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

The Motion to Compel fails at the threshold. It seeks enforcement of the subpoena transmitted to Ms. Mizrachi's counsel on August 20, 2026 (the "August Subpoena"), but the Liquidation Trustee now concedes, as it must, that it does not rely on that transmission as effective service. Ms. Mizrachi's counsel did not agree to accept service on her behalf, and no communication with counsel constituted acceptance or waiver of service. The Court cannot compel compliance with an unserved subpoena. Nor may the Liquidation Trustee use the Omnibus Reply to enforce a later and otherwise defective subpoena that was not the subject of the Motion to Compel.

The Motion to Quash[1] presents separate and broader issues. It challenges the August Subpoena and third-party subpoenas seeking Ms. Mizrachi's personal and financial records, including the Chase subpoena and other subpoenas the Liquidation Trustee has refused to disclose (collectively, the "Undisclosed Subpoenas"). The Liquidation Trustee filed no timely opposition to that relief.

The Undisclosed Subpoenas raise serious concerns under Rules 2004 and 45. Ms. Mizrachi has a direct personal interest in her financial, tax, trust, privileged, and other sensitive records. Before obtaining or using those records, the Liquidation Trustee should be required to disclose the Undisclosed Subpoenas seeking her information, identify what has already been produced, and afford her a meaningful opportunity to raise privilege, confidentiality, relevance, duplication, and burden objections.

[1] Capitalized terms not defined herein shall have the meaning ascribed to such terms in Ms. Mizrachi's Opposition to the Motion to Compel (the "Opposition") [Dkt. No. 879 in the CBRM proceeding], which is incorporated herein by reference.

Any subsequent subpoena directed to Ms. Mizrachi must also be substantially narrowed. The August Subpoena demands more than eight (8) years of highly sensitive records and extends far beyond the discrete transactions identified in the Liquidation Trustee's August 20 Letter.[2] If any production pursuant to a revised, properly served subpoena is ultimately to be required, it should proceed only after Ms. Mizrachi has had an opportunity to object, the Liquidation Trustee and the Chapter 7 Trustee (as used together, the "Trustees") have disclosed and deduplicated their overlapping discovery, appropriate ESI and confidentiality protocols and a Rule 502(d) order are in place, and the Court has determined the cost protections required by Rule 45(d)(2)(B)(ii).

The Motion to Compel should therefore be denied, and the Motion to Quash[3] [Dkt. No. 861 in the CBRM proceeding] should be granted.

RESPONSE

A. The Motion to Compel Should be Denied

1. On their face, it is clear from the captions and the substance of the Liquidation Trustee's Motion to Compel, Omnibus Reply and proposed Orders (the "Proposed Orders") submitted therewith [Dkt. Nos. 857 and 881], that such pleadings sought enforcement only of the August Subpoena issued to Ms. Mizrachi.[4] The Proposed Order attached to the Motion to Compel specifically states that, "**The objections of Ms. Mizrachi to the [August] Subpoena**…are overruled to the extent they seek to quash or limit the Subpoena…." Proposed Order at ¶ 8

[2] The August 20 Letter was attached as Exhibit D to the Hollander Cert. in Support of the Motion to Quash and Exhibit F to the Opposition.

[3] The arguments set forth on behalf of Ms. Mizrachi in the Motion to Quash are incorporated herein by reference.

[4] The caption of the Motion to Compel seeks "Entry of an Order (I) **Compelling Miriam Mizrachi to Comply With the Rule 2004 Subpoena Issued to Her, (II) Overruling Her Objections Thereto**, and (III) Granting Related Relief." (emphasis added). The captions of the Omnibus Reply and the Proposed Order submitted therewith limit the relief requested to Ms. Mizrachi in this same manner.

(emphasis added). Nothing the Liquidation Trustee said during the October 15, 2026 hearing (the "October 15 Hearing") in response to the Motion to Quash or in support of his Motion to Compel could have remediated the limited basis on which the Motion to Compel was predicated.[5]

2. Rule 45(b)(1) provides that "[s]erving a subpoena requires delivering a copy to the named person." Fed. R. Civ. P. 45(b)(1). The Liquidation Trustee filed the Motion to Compel seeking to enforce the August Subpoena, but belatedly has conceded in the Omnibus Reply that he can no longer rely on that subpoena, which was never served, as the basis for his Motion to Compel. *See* Omnibus Reply at ¶ 8 ("The Trustee does not rely on the August 20 transmission to her counsel as service…."). The Court cannot compel Ms. Mizrachi to comply with a subpoena that was never served. *See* Rule 45(b)(1). Since the Motion to Compel was directed to the unserved August Subpoena, there is no basis to compel compliance with the August Subpoena. Nor is there a motion pending before the Court seeking enforcement of the later September Subpoena. The Liquidation Trustee cannot obtain such relief for the first time through argument in a reply or at a hearing. The Motion to Compel should therefore be denied in its entirety, without prejudice to Ms. Mizrachi's right to seek fees, costs, or other appropriate relief based on the time and expense incurred in responding to efforts to enforce a subpoena that the Liquidation Trustee now concedes, as it must, was never properly served.

[5] The Liquidation Trustee's purported reliance, at the October 15 Hearing, on the caption of the Motion to Compel and the content of the first paragraph thereof to suggest that the Motion to Compel also opposed the Motion to Quash and the relief sought therein, is completely misplaced and unsupported by the plain language of that pleading. Neither the caption nor the first paragraph of the Motion to Compel addresses anything except the August Subpoena.

B. The Unopposed Motion to Quash Should be Granted

(i) The Liquidation Trustee Failed to File Opposition to the Motion to Quash

3. The Motion to Quash addressed the August Subpoena, the Chase Subpoena and the Undisclosed Subpoenas. The Chase Subpoena, and likely a material part of the Undisclosed Subpoenas, sought Ms. Mizrahi's personal and financial records. The Liquidation Trustee was served with the Motion to Quash and chose not to file any opposition.[6] By his own admissions, the Liquidation Trustee understood that the scope of Ms. Mizrachi's Motion to Quash was materially broader than the significantly narrower scope of his Motion to Compel that dealt with and sought relief only as to the August Subpoena, on which he has now abandoned his reliance. The Omnibus Reply states that, "Although the Motion [to Compel] concerns the Subpoena to Ms. Mizrachi, her Motion to Quash and Opposition seek relief as to other third-party subpoenas of the Trustee as well." (emphasis added) *See* Omnibus Reply at ¶ 1; *see also* Omnibus Reply, at ftnt. 3 ("The relief Ms. Mizrachi seeks is not confined to the subpoena issued to her."). Accordingly, there is no motion before the Court in which the Liquidation Trustee seeks enforcement of any Subpoena (as herein defined) other than the unserved and unenforceable August Subpoena. Now that the Liquidation Trustee has withdrawn his reliance on the August Subpoena, there is nothing before the Court that opposes the Motion to Quash, whether as to the August Subpoena, the Chase Subpoena or the Undisclosed Subpoenas (collectively, the "Subpoenas").

[6] In contrast, and while the Liquidation Trustee describes in significant detail matters that predated the filing of the Chapter 7 Trustee's initial adversary proceeding, including prior attempts to obtain discovery from Ms. Mizrachi, the record before this Court on matters relating to Ms. Mizrachi demonstrates that from the time of the filing of the Chapter 7 Trustee's initial adversary proceeding in April 2026 [Adv. Pro. No. 26-01178 – MBK] (the "April Adversary Proceeding") and discovery demands being made upon her and certain third-party custodians, she and her counsel have worked diligently and timely taken steps to protect her interests, all in accordance with applicable rules and law. Among other things, she responded to the Order to Show Cause dated April 22, 2026 [Dkt. Nos. 9 and 21 in the April Adversary Proceeding]; worked diligently to resolve the Voting Trustee's Cross-Motion [Dkt. No. 17 in the April Adversary Proceeding]; and addressed the substantial abuse and concealment of the discovery process in which the Liquidation Trustee and the Chapter 7 Trustee have engaged, by serving Rule 2004 subpoenas on counsel for the Trustees in July 2026, by filing timely motions to quash the Subpoenas, and by timely moving to oppose the Motion to Compel. Ms. Mizrachi's participation in this case has been nothing but active, professional and timely.

(ii) Ms. Mizrachi is a Party in Interest Entitled to the Protections of Rule 45(a)(4)

4. The Third Circuit has held, in no uncertain terms, that "Bankruptcy Rule 9016 provides that Civil Rule 45 applies to subpoenas issued in bankruptcy cases." *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 268 (3d Cir. 2013). Federal Rule of Civil Procedure 45(a)(4), made applicable to bankruptcy proceedings by Bankruptcy Rule 9016, provides:

> If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, **a notice and a copy of the subpoena must be served on each party**.

Nothing in Bankruptcy Rule 2004, Bankruptcy Rule 9016, or Federal Rule 45 creates any carveout for Rule 2004 subpoenas from Rule 45(a)(4)'s prior notice requirement. Rule 9016's text is absolute: "Rule 45 F.R.Civ.P. applies in cases under the Code." Fed. R. Bankr. P. 9016. *See In re Symington*, 209 B.R. 678, 688-89 (Bankr. D. Md. 1997) (confirming that Rule 45 applies in "Rule 2004 examinations" among all other matters in a bankruptcy case) (citing 10 Collier on Bankruptcy ¶ 9016.01 (15th ed. rev.1996)); *In re McClain Feed Yard, Inc.*, 661 B.R. 136, 139 (Bankr. N.D. Tex. 2024) (Rule 9016 "incorporates [all of] [Rule 45's] subpoena practice . . . to bankruptcy cases"). As the Third Circuit made clear in *Simon*, there is no exemption: a Rule 2004 subpoena must comply with Civil Rule 45's requirements. 732 F.3d at 279. The Liquidation Trustee cannot invoke Rule 9016's subpoena power while disclaiming its procedural protections.

5. As noted in the Motion to Quash, party-in-interest status requires a direct, legally protected interest that may be affected by the proceeding. *See Travelers Ins. Co. v. H.K. Porter Co.*, 45 F.3d 737, 741–42 (3d Cir. 1995); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 214 (3d Cir. 2004). A person whose personal financial records are sought has a personal interest sufficient to be heard. *See Dych v. Vanbrocklin (In re Vanbrocklin),* 2017 Bankr. LEXIS 664 (2017), at *1–*2

(Bankr. N.D. Ga. 2017) (bankruptcy debtor had standing to contest a subpoena to a bank seeking his personal bank records because of his "personal interest" in those records); *ITOCHU Int'l, Inc. v. Devon Robotics, LLC*, 303 F.R.D. 229, 232–33 (E.D. Pa. 2014) (judgment debtor had standing to challenge subpoenas to banks seeking his personal financial information). Courts have generally found that "[p]ersonal rights claimed with respect to bank account records give a party sufficient standing to challenge third-party subpoenas served upon financial institutions holding such information." *Id.* at 232.

6. The Liquidation Trustee's August 20 Letter identifies Ms. Mizrachi as a person from whom it intends to recover, contending that the Vecta Partners stock interests "or their value, are recoverable from Ms. Mizrachi as a subsequent transferee under 11 U.S.C. § 550(a)(2)." She therefore has more than a generalized interest in the Liquidation Trustee's investigation. She faces contemplated claims and has a direct interest in preventing disclosure and use of privileged, confidential, private, irrelevant, or overbroad material. On this case law, Ms. Mizrachi qualifies as a "party" under Rule 45(a)(4) entitled to prior notice of every subpoena seeking her personal and financial records. Moreover, that personal interest gives Ms. Mizrachi standing to seek protection from the Undisclosed Subpoenas. It also supports an order requiring notice of any future subpoena seeking her protected records, regardless of whether the Court ultimately construes the term "party" as used in Rule 45(a)(4) to include an identified prospective defendant in a pre-adversary Rule 2004 investigation.

7. In an effort to avoid the mandates of Rule 45, the Liquidation Trustee contends that Rule 45(a)(4) requires prior notice to "each party," but not to every person whose records are sought from a third-party custodian (which is the case here with respect to the Undisclosed Subpoenas). *See* Omnibus Reply at ¶ 11. He argues that Ms. Mizrachi has identified no basis for

being treated as a "party" under the Rule "merely because the Trustee is investigating transactions involving her or seeking [from third parties] records of accounts held in her name." *Id*.

8. If the Court were to construe Rule 45(a)(4) to be applicable only to named parties in a pending action, then a Rule 2004 subpoena could be used to surreptitiously seek from third-party custodians, unlimited records of persons (here, Ms. Mizrachi) who are not yet named as defendants in a pending action, have no knowledge that their records have been subpoenaed from third-party custodians, and who are thereby deprived of any opportunity to protect, as applicable, materials that are privileged, confidential, personal, otherwise private, and/or unrelated and beyond the scope of any asserted claims (collectively, "Protected Records"), which for purposes hereof include the Mizrachi Financial Records.[7] This scenario would leave the person impacted with no right to object to the third-party subpoenas and no other recourse to which they could avail themselves under Rule 45. As applied to Ms. Mizrachi, the Liquidation Trustee's interpretation of Rule 45 would allow him to secretly invade her privacy and obtain an unlimited amount of her Protected Records from third parties of virtually every aspect of her personal and financial affairs, including her accounts, entity interests, property, transfers, tax returns, devices, privileged communications, vehicles, valuables, and financial custodians, subjecting her to undue burden and unreasonable expense.

9. Rule 2004 subpoenas are governed by Rule 9016, which incorporates Rule 45, whose statutory requirements are widely recognized. The Liquidation Trustee's misinterpretation of the term "party" creates a scenario where Rule 45(a)(4)'s due process protections are completely written out of the Rule as they relate to a Rule 2004 subpoena, because so long as no adversary

[7] "Mizrachi Financial Records" are defined in the Motion to Quash as Ms. Mizrachi's personal banking and financial records, along with banking and financial records of entities under Ms. Mizrachi's control or in which she holds an interest. *See* Motion to Quash at pg. 2.

proceeding or other litigation is pending, there will never be a "party" who has knowledge of, much less the standing, to move to quash a subpoena served on third-party custodians seeking Protected Records. An environment in which no "parties" to an as-yet-to-be filed action exist, creates an unlimited due process void and a path to legitimize a total abuse of this Court's subpoena power. It also creates an unobstructed path to subjecting the person whose records are sought from third parties, to undue burden and expense in contravention of Rule 45(d)(1).

10. Under the Liquidation Trustee's construction of Rule 45(a)(4), Ms. Mizrachi is being deprived of any advance opportunity to review the Undisclosed Subpoenas and assert, with respect to any of her personal or financial records being sought, privilege, confidentiality, overbreadth, or other objections, before production occurs. This is precisely the harm Rule 45(a)(4) is designed to prevent. *See Spencer v. Steinman*, 179 F.R.D. 484, 489 (E.D. Pa. 1998) ("By failing to receive prior notice…, a party is deprived of its greatest safeguard under the Rule, i.e., the ability to object to the release of the information *prior to* its disclosure") (emphasis in original). The Liquidation Trustee has and is continuing to deprive Ms. Mizrachi of the protections of Rule 45(a)(4), and he should not be granted any relief for his disregard of those rights. Accordingly, the Motion to Quash and the Order submitted therewith should be entered. **At minimum, the Court should exercise its authority over Rule 2004 discovery to require advance notice to Ms. Mizrachi of any existing (the Undisclosed Subpoenas) or future subpoena seeking her protected records, permit a reasonable opportunity to object, and prohibit the Liquidation Trustee from obtaining or using such records until those objections are resolved.**

C. Ms. Mizrachi's Concerns Regarding the Undisclosed Subpoenas and Any Attempted Reissuance of the August Subpoena[8]

11. The Liquidation Trustee invokes Bankruptcy Rule 2004, but that Rule does not displace Rule 45's protections. Any compelled production under Rule 2004 proceeds through Bankruptcy Rule 9016 and Federal Rule 45. Fed. R. Bankr. P. 2004(c), 9016. Rule 45 requires the party or attorney responsible for issuing and serving a subpoena to "take reasonable steps to avoid imposing undue burden or expense." On timely motion, the Court must quash or modify a subpoena that subjects the subpoenaed person to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(iv).

(i) The August Subpoena

12. As presently drafted, the August Subpoena fails the standards set forth above for multiple reasons, including but not limited to the following:

a. **Its subject matter, definitions and scope are overbroad**. The Liquidation Trustee's August 20 Letter identifies a limited set of matters, including the Vecta and Sunnyside interests, the August 2022 deposit, Rapid Services, specified credit card accounts, and 14 Enclave Boulevard. *See* August 20 Letter at pgs. 2-3. The August Subpoena is not confined to those matters; it reaches virtually every aspect of Ms. Mizrachi's personal and financial affairs, including her accounts, entity interests, property, transfers, tax returns, devices, communications, vehicles, valuables, and financial custodians.

b. **The eight (8) year period is unsupported**. The January 1, 2018-through-present period is equally untethered to the stated inquiry. The principal transactions identified in the August 20 Letter appear to concern 2022 and 2023. Unless the Liquidation Trustee identifies a particular earlier transaction and explains its relevance, any permissible period should begin no earlier than January 1, 2022 and end on a fixed date.

[8] While Ms. Mizrachi outlines herein certain issues that are evident with respect to the Subpoenas, her preliminary objections, to a material extent, are being presented in a vacuum, as she cannot anticipate all of the issues that may arise with respect to the 74 Undisclosed Subpoenas currently being withheld, until she has an opportunity to review them and understand their impact on her rights. Only by granting the Motion to Quash and denying the Motion to Compel will Ms. Mizrachi be in a position to fully address her objections to the Subpoenas.

c. **The requests are not tied to identified estate issues or evidentiary gaps**. The August Subpoena is not a focused inquiry into identified estate matters. It is an open-ended search through Ms. Mizrachi's private affairs in the hope that further claims may emerge. Even accepting Rule 2004's broad investigative purpose, the Liquidation Trustee cannot rely on a handful of discrete transactions to justify an examination of virtually every aspect of Ms. Mizrachi's personal and financial life over an eight-year period. The requests must remain tied to the subjects permitted by Rule 2004(b), and the burden and expense of compliance remain subject to Rule 45. *See, e.g., In re SunEdison, Inc.,* 562 B.R. 243, 249–55 (Bankr. S.D.N.Y. 2017) (holding that relevance alone does not establish good cause under Rule 2004 and largely denying broad document requests after balancing the necessity and likely benefit of the requested discovery against the burden, cost, and information already produced).

In any reissued version of the August Subpoena to Ms. Mizrachi that the Court may allow, the Liquidation Trustee should be required to identify the estate purpose served by each request, what responsive information has already been obtained, what remains missing, and why Ms. Mizrachi is the proper source. Without that showing, any reissued version of the August Subpoena imposes an unjustified burden. Compliance would require collection from multiple custodians, accounts, devices, cloud systems, financial institutions, attorneys, accountants, trustees, and advisors. It also would require forensic processing, hosting, review of years of sensitive information, privilege analysis, redaction, and production. Rule 45 does not permit the Liquidation Trustee to shift the burden and expense of an overbroad, potentially duplicative and uncoordinated investigation to Ms. Mizrachi.

(ii) The Undisclosed Subpoenas

13. The Court and counsel for Ms. Mizrachi cannot fully assess the extent of the duplication, undue burden, or expense without knowing what the Liquidation Trustee and the Chapter 7 Trustee have already sought, received and shared with one another, particularly because the Liqudition Trustee and the Chapter 7 Trustee were originally represented by the same law firm in connection with their respective investigations and the issuance of subpoenas. Counsel for the Liquidation Trustee has confirmed that at least 74 Undisclosed Subpoenas have been issued, yet

the Liquidation Trustee has refused to provide copies or even identify the third-party custodians that have been served. Without that basic information, neither the Court nor Ms. Mizrachi can determine what responsive material has already been obtained, what relevant information remains missing, or whether the demands directed to Ms. Mizrachi duplicate records already collected from third-party custodians.

14. Ms. Mizrachi obtained two (2) of the Undisclosed Subpoenas, including the Chase Subpoena and the CNBF Subpoena. Those subpoenas seek many of the same general categories of information demanded from Ms. Mizrachi, including financial-account and transaction records, tax documents, ownership and organizational records, and information concerning related entities and transfers. *Compare* August Subpoena, Requests 6-18 and 20 *with* Chase Subpoena, Requests 1-16, and CNBF Subpoena, Requests 9-20, 29-35, and 48-57. That concrete overlap supports a targeted inquiry into whether the same or similar information to that sought from Ms. Mizrachi has been sought or obtained from other banks, accountants, tax preparers, trustees, business entities, or other third-party custodians. The Liquidation Trustee's discovery also appears to overlap with discovery pursued by the Chapter 7 Trustee. Because the Liquidation Trustee has refused to identify the remaining Undisclosed Subpoenas or describe the productions received in response, Ms. Mizrachi cannot determine the extent of that overlap or isolate any genuine gaps that remain.

15. Before any subpoena is reissued to Ms. Mizrachi, the Liquidation Trustee and the Chapter 7 Trustee should be required to coordinate their potentially overlapping discovery. The Liquidation Trustee should be required to fully disclose the Subpoenas and related requests already issued, identify the productions already received, identify unnecessary duplication, and explain

what relevant information remains missing.[9] Ms. Mizrachi should not be required to conduct parallel collections, make duplicative productions, comply with inconsistent production instructions, or bear costs caused by a lack of coordination between the Liquidation Trustee and Chapter 7 Trustee. Any production by Ms. Mizrachi should be limited to nonduplicative materials uniquely within her possession, custody, or control, including materials concerning specifically identified transactions that cannot be obtained from a third-party custodian.

16. Ms. Mizrachi does not seek unrestricted access to either the Liquidation Trustee's or Chapter 7 Trustee's discovery results. Instead, before she undertakes any collection, the Liquidation Trustee should simply be required to: (i) provide the Undisclosed Subpoenas and related responses and documents produced or to be produced seeking information concerning Mizrachi, her associated entities, and/or the transactions identified in the August 20 Letter; (ii) identify the Undisclosed Subpoenas that overlap with the demands directed to Ms. Mizrachi, including the recipient, general subject matter, relevant period, and response status; (iii) provide existing transmittal letters, responses and documents produced or to be produced, production indices or comparable records sufficient to identify the categories of responsive material already produced, the production dates, and corresponding Bates ranges; and (iv) identify what relevant information remains missing and the specific evidentiary gap addressed by each remaining request.

17. This limited relief requires no newly created document-by-document log and no disclosure of unrelated investigative material other than the responses and documents produced in reference to the Subpoenas. Existing Subpoenas, transmittal letters, production indices, responses and documents, correspondence, and Bates records should suffice. If those records reveal

[9] *See Stipulated Order* dated August 21, 2026 [Dkt. No. 192 in the Silber proceeding], pursuant to which the Chapter 7 Trustee agreed to produce copies of all Rule 2004 subpoenas issued by or on behalf of the Chapter 7 Trustee, including all responses and documents produced thereunder. *Stipulated Order* at ¶ 3(a).

duplication, the Liquidation Trustee should withdraw the duplicative requests, or provide the overlapping material in a form that allows deduplication before requiring Ms. Mizrachi to collect and review the same records. This process is warranted so the Court can determine whether the Liquidation Trustee satisfied Rule 45(d)(1), whether modification is required under Rule 45(d)(3)(A)(iv), and what protection from significant expense is required under Rule 45(d)(2)(B)(ii).

D. Any Compelled Production Pursuant to the Subpoenas (Other Than the August Subpoena) Must Be Protected As Confidential and Subject to Cost Protection

18. If the Liquidation Trustee validly serves a compliant subpoena in the future, Ms. Mizrachi must receive the objection period provided by Rule 45(d)(2)(B) or as reasonably extended by the Court (given the volume of materials that would need to be reviewed), without waiver of any right under Rules 2004 or 45. If she timely objects, the Liquidation Trustee may seek an order compelling production, but production may be required only as directed by the Court. Fed. R. Civ. P. 45(d)(2)(B)(i).

19. Before compelling any production, the Court should determine whether the disputed requests fall within Rule 2004's permissible scope and whether compliance would impose an undue burden. Rule 45 requires the party or attorney responsible for issuing and serving a subpoena to take reasonable steps to avoid imposing undue burden or expense. Fed. R. Civ. P. 45(d)(1). On timely motion, the Court must quash or modify a subpoena that subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(iv).

20. That determination cannot be made without knowing what information the two Trustees have already sought and received. Before Ms. Mizrachi begins any collection, the Liquidation Trustee and the Chapter 7 Trustee should disclose their overlapping discovery, the

responses received,[10] eliminate duplicative requests, and identify the specific information that remains missing. The Court can then weigh the need for each disputed request against the volume and sensitivity of the requested records, the number and accessibility of the third-party custodians and data sources, the availability of the information elsewhere, and the expense of collection, processing, review, and production. Any production should be limited to identified transactions, reasonable third-party custodians and data sources, a defined period, and information not already available from another source. Ms. Mizrachi should not bear the burden and expense caused by the failure or refusal of the Liquidation Trustee and Chapter 7 Trustee to coordinate their discovery.

21. Any compelled production should proceed under a single, coordinated ESI protocol applicable to both estates. The protocol should identify the custodians and data sources to be searched, reasonable date ranges and search methods, deduplication procedures, production formats, limited metadata fields, preservation obligations, and treatment of data that is not reasonably accessible. *See* Fed. R. Civ. P. 45(e)(1)(C)–(D). To the extent the Liquidation Trustee and Chapter 7 Trustee seek the same information, one production should satisfy both estates. Ms. Mizrachi should not be required to conduct parallel collections, make duplicate productions, or comply with inconsistent instructions.

22. Further, no production should occur without adequate confidentiality and privilege protections. The Court should enter a confidentiality and protective order governing Ms. Mizrachi's sensitive and potentially privileged financial, tax, trust, legal, joint-account, and third-party information, including the Mizrachi Financial Records. The Court should also enter an order under Federal Rule of Evidence 502(d), with appropriate clawback procedures, providing that

[10] Pursuant to the *Stipulated Order* referenced in footnote 7 hereof, the Chapter 7 Trustee previously agreed to this arrangement.

disclosure does not waive attorney-client privilege or work-product protection in this or any other proceeding.

23. Moreover, the Court must also address cost protection before Ms. Mizrachi undertakes any compelled collection or production. If the Liquidation Trustee moves to compel after Ms. Mizrachi serves timely objections, any order requiring production "must protect" her from significant expense resulting from compliance. Fed. R. Civ. P. 45(d)(2)(B)(ii). That protection is mandatory once the anticipated compliance expense is found to be significant. *See, e.g., Mesabi Metallics Co. LLC v. Cleveland-Cliffs Inc.* (*In re Essar Steel Minn. LLC*), Adv. Proc. No. 17-51210, at 1–4 (Bankr. D. Del. May 23, 2022) (Goldblatt, J.) (holding that Rule 45 cost shifting was mandatory where the compliance costs were significant); *Legal Voice v. Stormans Inc.,* 738 F.3d 1178, 1184-85 (9th Cir. 2013) (Rule 45 "provides no exceptions" to the requirement that a court protect against significant compliance expense); *New Prods. Corp. v. Dickinson Wright PLLC (In re Modern Plastics Corp.)*, 890 F.3d 244, 252 (6th Cir. 2018) (affirming allocation of reasonable attorneys' fees and vendor costs incurred by the producing party in responding to subpoenas issued in a bankruptcy adversary proceeding).

24. The Court should determine these protections before Ms. Mizrachi incurs the substantial costs of a compelled production. Rule 45(d)(2)(B)(ii) applies when, after an objection, the requesting party obtains an order compelling production; courts have therefore denied cost shifting where a subpoena recipient voluntarily completed production without first obtaining or preserving protection under the Rule. *See, e.g., UnitedHealthcare of Fla., Inc. v. Am. Renal Assocs. Holdings, Inc. (In re Subpoenas Served on the Am. Kidney Fund, Inc.)*, Civil Action No. TDC-17-1787, 2019 U.S. Dist. LEXIS 72090, at *11 (D. Md. Apr. 29, 2019) (finding that the protections of Rule 45(d)(2)(B)(ii) are only applicable if a respondent timely enters objections to the subpoena

and a court subsequently issues an order compelling a response to the requests); *Lee v. Va. State Bd. of Elections*, Civil Action No. 3:15CV357 (HEH-RCY), 2016 U.S. Dist. LEXIS 195747, at *9 (E.D. Va. Sep. 2, 2016) (same). That distinction makes advance consideration necessary here. Ms. Mizrachi should not be required to incur the very expenses from which Rule 45 protects her and then seek reimbursement after the production has been completed. Before directing compliance, the Court should require a reasonable estimate of the anticipated costs of identification, collection, processing, hosting, responsiveness review, privilege and confidentiality review, redaction, privilege-log preparation, and production. Based on that estimate, the Court should establish appropriate protection against significant expense, which may include advancement, reimbursement, or allocation of costs; an initial budget and cost cap; and prior approval for work exceeding that cap. *See Mesabi Metallics*, Adv. Proc. No. 17-51210, at 3–6 (directing cost shifting and recognizing reasonable attorney review as part of compliance expense); *In re Modern Plastics Corp.*, 890 F.3d at 252–53 (affirming an award that included reasonable attorney and third-party vendor expenses).

25. None of these protections can save the August Subpoena, which the Liquidation Trustee concedes he no longer relies upon. Ms. Mizrachi's counsel did not accept service or waive the defect. The August Subpoena should therefore be quashed. Any future subpoena must stand on its own: it must be compliant and validly served; Ms. Mizrachi must receive the opportunity provided by Rule 45 to object; and, if the Liquidation Trustee moves to compel over those objections, the Court must determine scope, undue burden, appropriate ESI and protective protocols, and protection from significant compliance expense before compelling collection.

CONCLUSION

For the foregoing reasons, Ms. Mizrachi respectfully requests that the Court enter an Order (i) granting the Motion to Quash as to the August Subpoena, the Chase Subpoena and any Undisclosed Subpoena (now known to include the CNBF Subpoena) seeking Ms. Mizrachi's Protected Records without prior notice and an opportunity to object; (ii) denying the Motion to Compel in its entirety; (iii) directing the Liquidation Trustee, within seven (7) days, to identify and provide copies of subpoenas and document requests seeking information concerning Ms. Mizrachi, associated entities, or the transactions identified in the August 20 Letter, subject to any confidentiality protections the Court deems appropriate; (iv) requiring the Liquidation Trustee to provide existing records sufficient to identify responsive materials received under those subpoenas and to identify any remaining evidentiary gaps; (v) providing that no collection or production by Ms. Mizrachi shall begin unless and until she is effectively served, receives a reasonable objection period not limited by Rule 45(d)(2)(B),[11] and the Court or the parties resolve her objections, if any; (vi) providing that any compelled production shall be governed by a coordinated ESI protocol, confidentiality and protective order, Rule 502(d) order, and prior determination of the cost

[11] If this process contemplates Ms. Mizrachi being given access to up to 74 Undisclosed Subpoenas, she will require more time beyond the fourteen (14) day period provided for in Rule 45(d)(2)(B) to review them and prepare her objections.

protections required by Rule 45(d)(2)(B)(ii); and granting such other and further relief as this Court deems just and proper.

Dated: October 20, 2026

Respectfully submitted,

OKIN HOLLANDER LLC

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