Docket #0898 Date Filed: 10/28/2026

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| **UNITED STATES BANKRUPTCY COURT**<br>**DISTRICT OF NEW JERSEY**<br>Caption in Compliance with D.N.J. LBR 9004-1 | |
| **HINMAN, HOWARD & KATTELL, LLP**<br>Puya J. Nili, Esq<br>05062009<br>Ronald L. Greene, Esq., of counsel<br>Park 80 West – Plaza II<br>250 Pehle Avenue, Suite 200<br>Saddle Brook, NJ 07663-5834<br>(201- 254-3280) | Case No.: 25-15343<br><br>Hon. Michael B. Kaplan<br><br>Chapter 11 |
| In re:<br><br>CBRM REALTY, INC., *et al*.,<br><br>Debtors[1] | Hearing Date: On or before October 28, 2026<br>Objection Date: TBD |

**STATEMENT WAIVING OBJECTIONS TO JURISDICTION, OPPOSING THE REQUESTED RELIEF TO THE EXTENT IT MAY IMPOSE UNDUE BURDEN OR EXPENSE, AND RESERVING RIGHTS**

To: HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY JUDGE

Hinman, Howard & Kattell, LLP (HH&K), by and through its undersigned member, respectfully submits this Statement Waiving Objections to Jurisdiction, Opposing the Requested Relief to the Extent it may Impose Undue Burden or Expense, and Reserving Rights

[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 (9071), 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), RH New Orleans Holdings MM LLC (1951), and Laguna Reserve Apts Investor LLC (N/A). 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.



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("Statement") in response to the Motion of the Creditor Recovery Trust Trustee ("Trustee") for an Order compelling HH&K to produce client and matter lists and other records of both Debtor and non-Debtor former clients. (Doc. 885, hereinafter, "Motion").

1. HH&K is not a party in interest in this bankruptcy.

2. HH&K wishes to make clear that it does not object to the jurisdiction of this Court, and that it is takes no position whether the Court should order document(s) to be produced and if so, which documents. HH&K intends to comply fully with any order of this Court. *Part One, below.*

3. HH&K objects to requests that require HH&K to make factual and legal determinations rather than to simply produce designated documents. Given the expansive definitions of "Debtor," "Affiliate" and "Subject Persons," the Subpoena and the Motion ask that HH&K produce not only documents of identified entities but also records of persons that are "controlled," "directly or indirectly owned," "acting for the benefit" of others, "otherwise affiliated" with others, etc.. In order to identify such documents, HH&K would have to make legal and factual determinations that (a) could be detrimental to the interests of its former clients, (b) cannot be made on based on records in its possession, records that are highly likely to be incomplete and untimely, and (c) should be made by the Trustee himself after appropriate discovery and/or order by the Court after hearing from the true parties of interest.

4. Furthermore, as discussed below, such demands are inconsistent with the general requirement that a subpoena designate documents to be produced with appropriate specificity. The Trustee seeks to impose on HH&K the burden of doing his research and analysis for him and then certifying the result. This is not the law.

5. Therefore HH&K respectfully requests that any order to produce documents from its files clearly identify the documents to be produced, whether by name of client, by a list of word-search terms, or via some other mechanism determined by the Court, rather than using the Trustee's definitions, which embed within them the need to make the legal and factual determinations.

6. HH&K further respectfully requests that any order also be tailored to "avoid imposing undue burden or expense" on HH&K as the subject of the Subpoena. *See,* F. R. Civ. Proc. (hereinafter "FRCP") Rule, 45(d)(1), incorporated by F.R. Bankr. Proc. Rule 9016. *Part Two, below.*

## BACKGROUND

### The Subpoena

7. On or about August 24, 2026, HH&K received the Trustee's Subpoena dated August 24, 2026 ("Subpoena") directed to the firm's office in White Plains, New York. *See,* Subpoena and cover letter of the same date attached as Exhibit A to the Motion (Doc. 885-2).

8. The Subpoena demands information regarding the Debtors, which it defines as including "their controlled entities and subsidiaries," and in particular, 99 alleged "Debtor-Subsidiary Entities" on Schedule 1. It also demands information regarding 52 alleged "affiliated non-debtor entities" listed on Schedule 2, and further demands that HH&K identify additional entities that should be on one of the schedules and explain why (Demand 20) – another requirement that HH&K make a legal/factual determination for the Trustee. The Subpoena further demands information of non-debtors Moshe Silber, Miriam Mizrachi and Fredrick Schulman and their "affiliates." (See definition of "Subject Persons" and "Affiliates").

9. HH&K's former clients include Debtor CBRM Realty, Inc. ("CBRM"), various CBRM affiliates, Moshe (Mark) Silber ("Silber"), numerous Silber affiliates, and others falling within the scope of the Supboena. Silber is a debtor in a separate case, *In Re: Moshe Silber* Chapter 7, Case No.: 25-21650 (MBK) Bankr. D.N.J.

10. The Subpoena's 30 demands are extremely broad and burdensome. For instance, in addition to the above, the Trustee demands records of three other non-debtor individuals, Laura Rosenberg, Jonathan Weiss and Nicholas Frungillo, Jr. The Subpoena further demands documents regarding several transactions,[2] a merger, a subscription agreement, capitalization and financing, and two aircraft. (p. 13).

11. The "Documents" sought are defined as having the broadest meaning allowed by FRCP Rule 34, including Electronically Stored Information, all "in native format with metadata intact." *See* Subpoena, pp. 3-13.

**HH&K's Analysis and Response**

12. Upon receiving the Subpoena, HH&K contacted the Trustee and remained in communication (see Motion, Exh. B, Doc. 885-3), while at the same time searching records and contacting former special counsel Nir Gozal, Esq., who was closely involved with the representation (and who, on information and belief, has also received a Subpoena from the Trustee).

13. Upon information and belief, the Subpoena potentially calls for 9,954 files, comprising more than 11 million pages. This estimate includes drafts, Word documents, PDFs, and Excel spreadsheets. Given the Subpoena's complex demands, discussed above, simply identifying responsive material is a long and time-consuming process.

[2] "The Vecta Matters," "The Merger Agreement," "The Subscription Agreement," and "The Subscription Agreement" per the Subpoenas definitions section.

14. HH&K also faces the issue of what could and could not be produced given the duties to former clients set forth in the New York Rules of Professional Conduct, 22 NYCRR Part 1200.

15. The Subpoena asserts that the Trustee "succeeds to the Debtors' attorney-client privilege." (Subpoena, p. 4).

16. The Creditor Recovery Trust Agreement gives the Trustee "all attorney-client privileges, work product protections and other privileges, immunities or protections from disclosure ("the "Privileges") held by any one or more of the Debtors or the Contributing Claimants . . . related in any way to the Creditor Recovery Trust Assets and the purpose of the Creditor Recovery Trust." §2.3(a), emphasis added. The definition of "Debtor" in the Subpoena, however, goes beyond the actual Debtors in this case to also include their "controlled entities and subsidiaries." The Trust Agreement does not say that the Trustee holds the privileges of the Debtors' subsidiaries or controlled entities. The Motion however, states that the "Transferred Subsidiaries" are assets of the Trust under the confirmed Chapter 11 plans in this case and then concludes that "[t]he Trustee therefore holds, directly or through the Debtors, the equity of the Debtors' subsidiaries, and controls them." (Motion, p. 5). We attempted to follow the citations. The Motion did not provide a list of "Transferred Subsidiaires" or a citation to a list. HH&K is not involved with this complex Chapter 11 case, but to the best of our understanding and research, it appears that the "Transferred Subsidiaries" are listed on Schedules annexed to the Chapter 11 Plan Supplements (CBRM – Doc. 411; Crown Capital – Doc 587) and that the most recent "Schedules of Transferred Subsidiaries" are Doc. 411-8 (CBRM Plan) and Doc. 587-5 (Crown **Capital Plan).** (*See,* (Docs. 411, 587).

17. Therefore, it was not clear what attorney-client privileges the Trustee holds.

18. In addition to the attorney-client privilege, and the New York Rules of Professional Conduct protect the "confidential information" of a client or former client. This is defined to include information that could be "detrimental" to the current or former client if disclosed. Rule 1.6.[3] Even the identity of a client can be confidential if it "reflects the existence of a client-attorney relationship which the client requested not be disclosed or which, based on particular facts and circumstances, would be likely to be embarrassing or detrimental to the client if disclosed." New York State Bar Association Committee on Professional Ethics Opinion 1240 (4/8/2022).

19. Given the Trustee's "authority to commence, prosecute and settle the Causes of Action vested in the Trust(Motion, p. 5, fn. 3) and his position that "the Creditor Recovery Trust holds the CBRM Estates' claims against Mr. Silber and his affiliates" (Case 25-15343, Doc. 872, p. 2), it appeared that production of information regarding at least some of the former clients could be "detrimental to the client if disclosed."

20. To be clear, HH&K takes no substantive position regarding whether what the Trustee seeks is immune from production on these or any other grounds. This discussion

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[3] Under Rule 1.6: "'[c]onfidential information' consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested be kept confidential. "Confidential information" does not ordinarily include (i) a lawyer's legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates." 22 NYCRR § 1200.0, emphasis added.

Rule 1.9 (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: . . .(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client. 22 NYCRR § 1200.0

is only included to show the burdensome and difficult issues that led HH&K to conclude that judicial direction was needed.

21. This is all information that has been previously conveyed of the Trustee prior to the instant Motion.

**This Motion**

22. On October 16, 2026, we wrote to the Trustee's attorney stating that "[i]n the circumstances, our current intention is to move by Order to Show Cause in the District where compliance is required (S.D.N.Y.) for relief under F. R. Civ. P. Rules 45(d)(1)." (Copy attached as Exhibit C to the Motion (Doc. 885-4). The letter did not say that the motion would be made on Monday, October 16, 2026, nor did the undersigned advise the attorney that the application would be filed "early" on that date. (*Cf.* statement to the contrary, Motion, p. 3).

23. HH&K proposed to move in the Southern District of New York based on FRCP Rule 45(d)(1), which sets forth the duty to avoid imposing undue burden or expense on a person subject to a subpoena, and proves that "The Court for the District where compliance is required must enforce this duty. . . . ."

24. Although HH&K has an office in Saddle Brook, NJ, in this district, the Trustee chose to direct the Subpoena to HH&K's office in White Plains, New York. Therefore, the "District where compliance is required" is the Southern District of New York.

25. On Sunday, October 18, 2026, the Trustee brought this Motion, seeking a narrowed subset of the demands sought of in the Subpoena, but still requiring that HH&K make judgments regarding ownership, control, etc. *See below, Point II.*

26. The Trustee served the Motion on counsel for Debtors; Spano Investor LLC; Crown Capital note holders group; Silber; the Silber bankruptcy Chapter 7 trustee; Silber's wife, Miriam Mizrachi; the Office of the US Trustee; and HHK. (Affidavit of Service, Doc. 889).

27. On information and belief, based on the Affidavit of Service, the Trustee did not serve the Motion on Fredrick Schulman, Laura Rosenberg, Jonathan Weiss, or Nicholas Frungillo, Jr., even though they fall within the Subpoena's definition of "Subject Persons." The Affidavit of Service shows no service on Sunnyside Bancorp Inc., Sunnyside Federal Savings and Loan Association of Irvington, Rhodium BA Holdings, LLC, Vecta Partners LLC, Vecta, Inc. or Vecta Capital LLC, or Rhodium Bank Holdings LLC even though their files are specifically requested. (See below).

## POINT ONE

## HH&K WAIVES ANY OBJECTIONS TO JURISDICTION

28. As a preliminary matter, HH&K hereby waives any objection it might make to the jurisdiction of this Court.

29. Although the Subpoena was directed to our White Plains office in the Southern District of New York, we also have an office in New Jersey.

30. We appreciate the expertise of this Court in this on-going and complex bankruptcy.

## POINT TWO

**ANY ORDER TO PRODUCE DOCUMENTS SHOULD DESIGNATE THE DOCUMENTS AND SHOULD BE TAILORED TO MINIMIZE BURDEN AND EXPENSE TO HH&K**

31. Should the Court determine to order any production from HH&K, we respectfully request that the Court fashion an order that minimizes the burden and expense to HH&K, as provided by FRCP Rule 45(d). For clarity, we address the specifics of each element of the "Relief Requested" in the Motion, p. 14-15, as follows:

**Trustee's Request (a)**

32. **Trustee's Request:** *"Within seven (7) days of the entry of the Proposed Order, HH&K [will] produce the client and matter list called for by Requests 1 and 2 of the Subpoena, identifying for each matter the client of record and whether HH&K contends that client is or is not a Debtor or an entity listed on Schedule 1 to the Subpoena, and the basis for any contention that it is not."*

33. **HH&K Response:** HH&K does not object to any production of documents as such. The scope of production is a matter for the parties in interest to litigate and for the Court to determine. However, HH&K does object to the judgement calls that the Request, as written, would impose on the firm.

34. Request 1 in the Subpoena (Subpoena, p. 11) asks for "A list of every MATTER opened by You for, on behalf of, or in connection with any DEBTOR, any AFFILIATE, or any SUBJECT PERSON." (emphasis added). HH&K can provide a list of matters opened "for" identified clients, but whether a matter was opened "on behalf or in connection with" a party who is not the named client requires judgment and potentially

analysis of information beyond that available to HH&K's files. The Trustee could seek that information elsewhere, e.g., via Rule 2004 examination of a former client representative.

35. The defined terms used in the Subpoena – and incorporated in the Motion's requests for relief –also contain within them requirements to exercise judgement.

36. For instance, "**Debtor**" is defined in the Subpoena as "CBRM Realty Inc., CBRM Holdings LLC and Crown Capital Holdings LLC, together with any of their affiliated Debtors in the above-captioned chapter 11 cases and their controlled entities and subsidiaries." (emphasis added).

37. If ordered by the Court, HH&K is ready, able and willing to search its record for the debtors or any other designated names, identify if any are former clients and provide a client/matter list. If directed, HH&K could also provide any organizational charts of debtors' subsidiaries in our files, determine if any of the identified subsidiaries are former clients and provide a client/matter list. However, as discussed above, HH&K is not in the position to determine who controls whom – nor is it the correct party to make the determination involving former client(s). That information should be sought elsewhere.

38. In addition, as noted above, it appears somewhat unclear whether the Trustee holds an interest in the Debtors' "controlled entities and subsidiaries."

39. Therefore, if the Court directs production of documents concerning the "Debtors," HH&K respectfully requests that the Order limit the definition to the named Debtors and that if disclosure of information regarding "subsidiaries" or other entities is ordered, these should be identified by name.

40. The term "**Affiliate**" is similarly defined in the Subpoena as – "any individual or entity directly or indirectly owned, controlled by, under common control with, acting for

the benefit of, or otherwise affiliated with the DEBTORS, [Silber], his wife [Mizrachi] or [Schulman], whether or not any such person or entity is identified as a client of record." (emphasis added). Once again, HH&K can search its records for names and identify whether any appear as former clients. However, the firm cannot determine whether a person is "directly or indirectly owned, controlled by, under common control with, acting for the benefit of, or otherwise affiliated with" another person.

41. The term **"Subject Person,"** is defined in the Subpoena as "Moshe (a/k/a Mark Silber); Miriam Mizrachi (a/k/a Miriam Silber a/k/a Miriam Mizrahi), Fredrick (Frederick) Schulman; Lauren Rosenberg; Jonathan Weiss; Nicholas Frungillo, Jr; any DEBTOR; any AFFILIATE." Even assuming the Trustee has authority to require documents in connection with the named individuals, the definition is problematic because it incorporates the defined terms "Debtor" and "Affiliate," terms necessitating judgment calls.

42. FRCP Rule 45(a)(1) contains general requirements for the "Form and Content" of a subpoena. Theyinclude specificity regarding what is demanded. As relevant here, a subpoena must:

> …command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.

Rule 45(a)(1)(A)(iii).[4] (emphasis added)

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[4] FRCP Rule 45(a)(1)(A)(iv) further requires every subpoena to: "set out the text of Rule 45(d) and (e)." The Subpoena violates this requirement.

It appears to contain placeholder language from a form: "*[PAGES 2 AND 3 OF THE OFFICIAL FORM – proof of Service, and the reprint of Fed. R. Civ. Pr. 45(c ), (d), (e) and (g) (effective 12/1/13) – are inserted unchanged from Official Form B2540 (12/15) at finalization.]" Subpoena, p. 2* The required text itself does appear in the Subpoena.

See also, *Casun Invest., A.G. v. Ponder,* 2019 US Dist LEXIS 93971 *13-14 (D. Nev. 2019) (*"*A request for production of documents under Rule 34(b)(1)(A) "must describe with reasonable particularity each item or category of items to be inspected." This requirement has also been applied to subpoenas duces tecum. *Travelers Indem. Co.*, 228 F.R.D. at 113; *see also United States v. Intern. Bus. Mach. Corp.*, 83 F.R.D. 97, 107 (S.D.N.Y. 1979) ("'another element of the reasonableness requirement is that a subpoena must specify the documents sought with reasonable particularity, because vague and duplicative demands may cause confusion and disarray in responding to the subpoena.'); *Bailey Industries, Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 666 (N.D.Fla. 2010) ('The subpoena should "designate with reasonable particularity the documents, things, and [ESI] that are to be produced by the party upon whom it is served." 9A Wright & Miller, Federal Practice & Procedure: Civil 3d § 2457 (2008) (noting that cases discussing Fed.R.Civ.P. 34—which sets forth procedures for requesting documents from a party—provide helpful analogies regarding how specific the designation of documents must be)')."

43. For the above reasons, HH&K requests that any Order for production of documents identify the documents in a manner (e.g., by name) allowing for efficient search of HH&K's records without any need for substantive analysis of the underlying relationships among former clients or other factual or legal issues.

**Trustee's Request (b)**

44. **Trustee's Request:** *"Within twenty-one (21) days of entry, [HH&K] turn over to the Trustee the complete file of each matter whose client of record is a Debtor or an*

*entity listed on Schedule 1, including matters 085196-0000001 and 085196-0000012, together with the invoices and time records for those matters.*

45. **HH&K Response:** Providing that the meaning of the term "Debtor" is clearly spelled out, HH&K has no objection to the substance of this request, but requests that production be due within 30 days rather than 21 days.

**Trustee's Request (c)**

46. **Trustee's Request: –***"No privilege or duty of confidentially owed to a Debtor or a Debtor subsidiary may be asserted against the Trustee as a ground for withholding those files."*

47. **HH&K Response:** HH&K does not object to this request.

48. We note that under the New York Rules of Professional Conduct Rule 1.6(b)(6), privileged or confidential information regarding any current or former client may be disclosed "when permitted or required under these Rules or to comply with other law or court order." (emphases added).

**Trustee's Request (d)**

49. **Trustee's Request:** "*The files of non-Debtor clients shall be addressed by written demand of the Trustee, with objections reserved and disputes to be presented to this Court."*

50. **HH&K Response:** HH&K respectfully objects. The Trustee appears to propose that the Court address only production of "Debtor" information on this Motion, and that the Trustee continue to serve written demands on HH&K for other information, with HH&K then having to raise objections anew each time, and the Court potentially having to resolve the objections anew each time.

51. HH&K respectfully objects to this piecemeal approach, and submits that with the proper parties before the Court, any issues regarding other material that the Trustee intends to seek should be resolved on this motion.to the extent possible.

**Trustee's Request (e)**

52. **Trustee's Request:** *"Productions are subject to the Protective Order."*

53. **HH&K Response:** No objection, with the understanding that any material that HH&K provides will be deemed to fit the definition of "Confidential Information" in paragraph 2 of the Protective Order (Doc. 791).

54. HH&K will use best efforts to mark all information it provides as "Confidential." HH&K submits that if any marking is inadvertently omitted on any information provided, the information should nevertheless be deemed "Confidential" and Subject to the Protective Order.

**Trustee's Request (f)**

55. **Trustee's Request:** *"Provid[e] that compliance is not conditioned on the payment of any costs, without prejudice to HH&K's right to apply to this Court for costs after compliance."*

56. **HH&K Response:** HH&K respectfully objects. HH&K asks the Court to provide that the Trustee will reimburse HH&K's reasonable costs of compliance, including but not limited to any vendor services and reasonable attorney and paralegal time, within thirty (30) days of the submission of invoices and any backup information to the Trustee, and that the Trustee may apply to the Court for reduction of any fees and costs it contends are unreasonable.

**Trustee's Request (g)**

57. **Trustee's Request:** *"Direct HH&K to file a certification of compliance."*

58. **HH&K Response:** HH&K assumes this refers to a certificate that HH&K has complied to the best of its ability with any order that the Court enters; HH&K does not object to such a requirement.

59. HH&K respectfully requests that it be permitted to submit additional papers in response to arguments/demands/suggestions of other parties, inasmuch as they may involve additional or different burdens and expense on HH&K.

60. In the alternative, HH&K suggests that insofar as all parties in interest are on notice of the Trustee's Subpoena demands that all documents in our possession and control simply be served on both Trustee's together with any non-debtor parties in interest and that HH&K be relived from any other obligations in this respect.

Respectfully submitted,

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