



ORDERED in the Southern District of Florida on January 20, 2016.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

CLSV III IV, Inc., *et al.*,

Debtor.

Lead Case No.: 12-30081-BKC-EPK
Chapter 7
(Jointly Administered)

**AMENDED¹ ORDER DENYING MOTION TO QUASH SUBPOENA *DUCES TECUM*
DIRECTED TO MUFG UNION BANK, NA DATED DECEMBER 3, 2015 AND
ALTERNATIVELY, MOTION FOR PROTECTIVE ORDER [ECF 1256]**

THIS MATTER came before the Court on the 14th day of January 2016 at 9:30 a.m., in West Palm Beach, Florida upon the *Motion to Quash Subpoena Duces Tecum Directed To MUFG Union Bank, NA dated December 3, 2015 and Alternatively, Motion for Protective Order [ECF No. 1256]* (“the Motion”) filed by Arthur Mark Feuerborn and the Law Offices of Arthur Mark Feuerborn and Associates. The Court, having considered the Motion and the *Trustee’s Response in Opposition to Motion to Quash Subpoena Duces Tecum Directed to MUFG Union*

¹ This order amends the *Order Denying Motion to Quash Subpoena Duces Tecum Directed to MUFG Union Bank, NA Dated December 3, 2015 and, Alternatively, Motion for Protective Order [ECF 1256]* [ECF No. 1281].

Bank, N.A. Dated December 3, 2015 and, Alternatively, Motion for Protective Order [ECF No. 1268] (“the Response”), having considered the record in this cause, and the argument of counsel, it is

ORDERED and ADJUDGED that:

1. The Motion is **DENIED**.
2. MUFG Union Bank, N.A. is directed to immediately produce the documents to Deborah C. Menotte, Chapter 7 Trustee (the “Trustee”) as directed by the *Subpoena for Rule 2004 Examination Duces Tecum* dated December 2, 2015, which was served upon MUFG Union Bank, N.A. on December 3, 2015, and which is attached hereto as **Exhibit “A.”**
3. Any production received by the Trustee from MUFG Union Bank, N.A. as a result of the subpoena dated December 2, 2015² that relates to third parties who are unrelated to this bankruptcy action directly or indirectly shall be used by the Trustee only for purposes related to this bankruptcy case, including any adversary proceedings or related proceedings, and shall not be used by the Trustee for any other purpose.
4. Counsel for Arthur Mark Feuerborn and the Law Offices of Arthur Mark Feuerborn, Daniel R. Brinley, Esq., is sanctioned personally in the amount of \$625.00, for failing to provide the Trustee’s counsel with language necessary to resolve the Motion by the deadline of January 9, 2016, as ordered by the Court on January 6, 2016. Daniel R. Brinley, Esq. is directed to pay the sum of \$625.00 to the Trustee, so as to be received by the Trustee within seven days from the entry of this Order, and shall mail such payment to the Trustee at the following address: Deborah C. Menotte, Trustee, P.O. Box 211087, West Palm Beach, FL 33421.

² Although the Motion refers to a subpoena dated December 3, 2015, the date on the subpoena is actually December 2, 2015.

5. The Court reserves jurisdiction to enforce additional sanctions for the filing of the Motion and related matters, to be considered at the continued hearing on the *Order to Show Cause Directed to the Law Offices of Arthur Mark Feuerborn & Associates and Arthur Mark Feuerborn* [ECF No. 1250], scheduled for January 21, 2016 at 9:30 a.m.

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Submitted by:

Leslie Gern Cloyd, Esq.
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Counsel for Trustee
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Fax (561) 998-0028
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Copy to:

Leslie Gern Cloyd, Esq.
(Attorney Cloyd is directed to serve a copy of this Order upon all interested parties, and file a Certificate of Service.)

EXHIBIT "A"

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF FLORIDA
 WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re: Case No. 12-30081-EPK

CLSF III IV, Inc., Chapter 7

Debtor.

***SUBPOENA FOR RULE 2004
 EXAMINATION DUCES TECUM
 (Production of Documents Only)***

To: **MUFG Union Bank, N.A.**
Attn.: Stephen E. Cumming, President and Chief Executive Officer
400 California Street
San Francisco, CA 94104

[] YOU ARE COMMANDED to appear and testify at an examination under Bankruptcy Rule 2004, and Local Rule 2004-1, at the place, date, and time specified below.

PLACE OF TESTIMONY	DATE AND TIME
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[~~XXX~~] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attached Exhibit "1"

PLACE : Berger Singerman LLP Attn.: Zachary P. Hyman, Esq. 350 E. Las Olas Boulevard, Suite 1000 Fort Lauderdale, FL 33301	DATE AND TIME December 17, 2015 no later than 5:00 p.m.
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ISSUING OFFICER SIGNATURE 	TITLE: Counsel for the Chapter 7 Trustee, Deborah C. Menotte
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ISSUING OFFICER'S NAME (PRINT) Zachary P. Hyman, Esq.	PHONE : (561) 241-9500
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ADDRESS : Berger Singerman LLP, 350 E. Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301	DATE: December 2, 2015
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PROOF OF SERVICE

DATE

PLACE

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure; See also Local Rule 2004-1.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT "1"

DEFINITIONS AND INSTRUCTIONS

A. "You" and "Your" shall mean MUFG Union Bank, N.A. and any other agents, employees, attorneys or other persons authorized to act on your behalf, or working under your direction or supervision.

B. As used herein, the conjunctions "and" and "or" shall be interpreted in each instance as meaning "and/or" so as to encompass the broader of the two possible constructions, and shall not be interpreted disjunctively so as to exclude any information or documents otherwise within the scope of any Request.

C. The term "documents" also includes, without limitation, attachments, enclosures or other documents that are, or ever were, attached to, or relate or refer to, responsive documents. All such attachments, enclosures or other documents that are, or ever were, attached to, or relate or refer to, such responsive document(s) shall be produced stapled, clipped or otherwise appended to the document to which they were attached or with which they were enclosed.

D. The term "all documents" means every and any document as above defined known to exist and every such document which can be located or discovered by reasonably diligent efforts and which is in your possession, custody or control or in the possession or custody of the your agents, representatives or attorneys.

E. The term "communications" includes, without limitation, all communications by document and oral, telephonic, electronic and other recorded means.

F. The term "relating to" means: consisting of, referring to, describing, discussing, constituting, evidencing, containing, reflecting, mentioning, concerning, respecting, relevant to, pertaining to, citing, summarizing, digesting, documenting, recording, noting, embodying, identifying, establishing, tending to establish, tending not to establish, conflicting with, contradicting, supporting, compromising, connected with, commonly known as, responding to, agreeing or disagreeing with, showing, representing, constituting, including, commenting on, analyzing, or bearing any logical or factual connection with the referenced matter.

G. Any reference herein to any public or private company, partnership, association, or other entity includes such entity's subsidiaries and affiliates, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of the entity, its subsidiaries or its affiliates.

H. Any pronouns used herein shall include and be read and applied as to encompass the alternative forms of the pronoun, whether masculine, feminine, neuter, singular or plural, and shall not be interpreted so as to exclude any information or documents otherwise within the scope of the Request.

I. If you contend that you are entitled to withhold any responsive document(s) on the basis of privilege or other grounds, for each and every such document specify:

- (i) The type or nature of the document;

- (ii) The general subject matter of the document;
- (iii) The date of the document;
- (iv) The author, addressee, and any other recipient(s) of the document; and
- (v) The basis on which you contend you are entitled to withhold the document.

J. You must produce all documents within your care, custody or control that are responsive to any of this Request. A document is deemed within your care, custody or control if you have the right or ability to secure the document or a copy thereof from any other person having physical possession thereof.

K. All Documents produced pursuant hereto are to be produced as they are kept in the usual course of business and shall be organized and labeled (without permanently marking the item produced) so as to correspond with the categories of each numbered request hereof.

L. Production of Electronically Stored Information (“ESI”) or any electronically stored data shall be in native format unless otherwise agreed. In producing Documents consisting of electronically stored data in machine-readable form in response to any Request, provide such data in a form that does not require specialized or proprietary hardware or software.

M. It is requested that all ESI be produced as native files and single-page TIFF images with corresponding load files. Each image and native file shall be produced along with its corresponding metadata and extracted text.

N. Each hard copy Document is to be produced, with all non-identical copies and drafts thereof, in its entirety, without alteration, abbreviation or reduction and shall be produced either in the manner they are kept in the usual course of business or organized to correspond with the Request to which they are responsive. If any Document is produced in redacted form, state with particularity the reason(s) it was not produced in full and describe generally those portions of the Document that are not being produced

O. All Documents that respond, in whole or in part, to any part or clause of any paragraph of these Requests shall be produced in their entirety, including all attachments and enclosures. Only one copy need be produced of Documents that are responsive to more than one paragraph or are identical except for the person to whom it is addressed if You indicate the Persons or group of Persons to whom such Documents were distributed. Documents that in their original condition were stapled, clipped, or otherwise fastened together shall be produced in such form. Please place the Documents called for by each paragraph in a separate file folder or other enclosure marked with Respondents’ name and the paragraph to which such Documents respond, and if any Document is responsive to more than one Request, indicate each Request to which it responds.

P. If you at any time had possession, custody or control of a Document called for under these Requests and if such Document has been lost, destroyed, purged, or is not presently in your possession, custody or control, you shall describe the Document, the date of its loss, destruction, purge, or separation from possession, custody or control and the circumstances surrounding its loss, destruction, purge, or separation from possession, custody or control.

DOCUMENT REQUEST

1. All bank account records, including, but not limited to, account statements, checks, cancelled checks, deposit slips, outgoing wire receipts, incoming wire receipts, and credit and debit receipts, relating to any account(s) in the name of (i) Law Offices of Arthur Mark Feuerborn; (ii) Law Offices of Arthur Mark Feuerborn & Associates; (iii) Reed Collingwood; (iv) Sunstar Financial, LLC; (v) Collingwood and Associates; and/or (vi) Arthur Mark Feuerborn for the period of January 1, 2013 through the present.

SCHEDULE "B"**Production of Electronically Stored Information (ESI)
FORM OF PRODUCTION**

The Trustee, Deborah C. Menotte, requests that all ESI (electronically stored information) be produced as follows:

ESI will be produced (printed and loaded) in 300DPI resolution or greater, Group IV Monochrome Tagged Image File Format (.TIF) files in single-page format, with **ALL** native files provided and word searchable OCR/extracted text (Optical Character Recognized – i.e. searchable text) in UTF-8 format. Color photographs should be produced as color JPEG images. Email natives will be delivered in MSG or EML format. Load files will be provided in Opticon (.OPT) format and an IPRO LFP (.lfp) format. Metadata will be provided in a DAT file with standard Concordance delimiters. The text files containing the OCR/Extracted Text shall be produced in multi-page format with the name corresponding to its associated document. **All small and oversized images should be resized to fit on 8.5x11 canvas.**

The files should be delivered with the following folder structure:

IMAGES – contains the TIF and JPG files, up to 10,000 items.
DATA – contains the OPT and LFP files and the metadata text file (DAT)
NATIVES – contains all the original native files named as the BEGDOC
TEXT – contains the document-level OCR/Extracted text files named as the BEGDOC

<u>Eclipse Metadata Field</u>	<u>Field Description</u>
BegDoc	BegDoc
EndDoc	EndDoc
BegAttach	BegAttach
EndAttach	EndAttach
Application	Application/Application Name
AttachmentIDs	Bates numbers of attachment(s)
Attachments	Names of attachment files
AttachRange	Attachment Range
Authors	Document author
BCC	BCC (Name + email)
CC	CC (Name + email)

Companies	Company name
Custodian	Custodian (Last, First)
DateCreated	Date created (MM/DD/YYYY)
DateReceived	Date email received (MM/DD/YYYY)
DateSaved	Date last saved (MM/DD/YYYY)
DateSent	Date email sent (MM/DD/YYYY)
Doctitle	Title
FileType	Document Type Description
FileExtension	File extension
Doclink	Link to native files produced
ExtractedText	Link to text files produced
Filename	Original filename
FileSize	File size in bytes
Folder	Relative Path (Inbox, Sent, etc.)
From	Sender (Name + email)
Hash_Code	MD5 hash
Header	Email header
InternetMSGID	IntMsgID
MessageID	MsgID
NumAttachments	Attachment count
NumPages	Page count
ParentID	Parent bates number
Password_Protect	Y/N field
Read	Y/N
SHA1	SHA1 hash
Sources	CD, DVD, hard drive; brief desc. of data
StoreID	Name of PST/NSF file (if relevant)
Subject	Email/Document subject
TimeReceived	Time email received (12-hour HH:MM)
TimeSent	Time email sent (12-hour HH:MM)
To	To (Name + email)

For .xls (Excel), .ppt (PowerPoint), and .doc (Word) files the following additional metadata fields should be included:

Excel_Comments	Comments
Excel_HiddenColumns	Hidden Columns
Excel_HiddenRows	Hidden Rows
Excel_HiddenWorksheets	Hidden Worksheets
Num_Lines	Number of lines
Num_Paragraphs	Number of paragraphs
Num_slides	Number of slides
Num_Notes	Number of notes
Num_HiddenSlides	Number of hidden slides

Num_Multimedia	Number of multimedia clips
Security	Security