

CAUSE NO. CC-17-06253-C

UNITED DEVELOPMENT FUNDING, L.P.,	§	IN THE COUNTY COURT
A DELAWARE LIMITED PARTNERSHIP;	§	
UNITED DEVELOPMENT FUNDING II,	§	
L.P., A DELAWARE LIMITED	§	
PARTNERSHIP; UNITED DEVELOPMENT	§	
FUNDING III, L.P., A DELAWARE	§	
LIMITED PARTNERSHIP; UNITED	§	
DEVELOPMENT FUNDING IV, A	§	
MARYLAND REAL ESTATE	§	
INVESTMENT TRUST; UNITED	§	
DEVELOPMENT FUNDING INCOME	§	
FUND V, A MARYLAND REAL ESTATE	§	
INVESTMENT TRUST; UNITED	§	
MORTGAGE TRUST, A MARYLAND	§	
REAL STATE INVESTMENT TRUST;	§	
UNITED DEVELOPMENT FUNDING	§	AT LAW NO. 3
LAND OPPORTUNITY FUND, L.P., A	§	
DELAWARE LIMITED PARTNERSHIP;	§	
UNITED DEVELOPMENT FUNDING	§	
LAND OPPORTUNITY FUND	§	
INVESTORS, L.L.C., A DELAWARE	§	
LIMITED LIABILITY COMPANY	§	

Plaintiffs,

v.

J. KYLE BASS; HAYMAN CAPITAL
MANAGEMENT, L.P.; HAYMAN
OFFSHORE MANAGEMENT, INC.;
HAYMAN CAPITAL MASTER FUND, L.P.;
HAYMAN CAPITAL PARTNERS, L.P.;
HAYMAN CAPITAL OFFSHORE
PARTNERS, L.P.; HAYMAN
INVESTMENTS, LLC

Defendants.

DALLAS COUNTY, TEXAS

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ENTRY
OF ORDER ON DEFENDANTS' SECOND MOTION TO COMPEL
(SEC DOCUMENTS)

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Plaintiffs United Development Funding, L.P., et al. (“Plaintiffs” or “UDF”) file this opposition to the Motion for Entry of Order on Defendants’ Second Motion to Compel (SEC Documents) (“Motion”) filed by defendants J. Kyle Bass, et al. (“Hayman” or “Defendants”).

I. INTRODUCTION

At the conclusion of the July 13 hearing on Hayman’s Second Motion to Compel (regarding SEC documents), the Court stated that it was “*inclined to grant [Hayman’s] motion, but somewhat limited[,]*” and directed the parties to jointly “*come up with an order that is reasonable.*” Ex. A (Hearing Transcript) at 100 (emphasis added).¹ Despite the parties’ efforts to reach a reasonable agreed order, there are two issues regarding UDF’s upcoming production of documents previously produced to the SEC (“SEC Production”) that the Court must resolve. As set forth below, Hayman’s positions on these issues are distinctly unreasonable; a such, the Court should adopt the reasonable order proposed by UDF.

First, Hayman objects to UDF’s plan to redact or remove irrelevant and sensitive personal financial and/or tax-related information from the SEC Production. Hayman’s core argument—that the parties’ Rule 11 Agreement

¹ Unless stated otherwise, all exhibits referenced herein are exhibits to the Declaration of Ian E. Browning in Support of Opposition to Defendants’ Motion for Entry of Order (“Browning “Declaration”), filed contemporaneously herewith. The factual statements contained herein are supported by the Browning Declaration.

permitting precisely these types of removals and redactions does not apply—is a red herring. Specifically, Hayman ignores that *the information UDF plans to withhold is not relevant in the first place, and Hayman cannot demonstrate any legitimate need for it*. Moreover, Hayman never even moved to obtain UDF’s tax records, and Hayman disregards the fact that—unlike general discovery requests—*Texas law places the burden on Hayman to demonstrate the relevance and materiality of UDF’s tax returns in order to obtain discovery of those records*. See *In re Brewer Leasing, Inc.*, 255 S.W.3d 708, 714 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (“[T]ax returns are considered private and the protection of that privacy is determined to be of constitutional importance.”). Hayman made no attempt to carry its burden on this issue; as such, Hayman has no right to obtain UDF’s tax filings.

As for the Rule 11 Agreement, it was necessary to provide *third parties* with assurance that certain types of information could properly be withheld from production. No such agreement was necessary for *the parties’ own* document productions, which the parties themselves control. Reflecting this reality, both UDF and Hayman have redacted numerous documents from their respective document productions on various “non-privilege” grounds.

In sum, the Court should allow UDF to withhold or redact from the SEC Production the limited categories of irrelevant information set forth in the Rule 11

Agreement.

Second, Hayman recently demanded that UDF produce the SEC Production with the SEC bates numbers that were included when UDF initially produced the documents to the SEC. Hayman claims it needs the SEC bates numbers “*so they can verify that they received the entire production given to the SEC and in the same manner as the documents were produced.*” (Mot. at 5) (emphasis added). As UDF informed Hayman, however, including the SEC bates numbers on the documents would potentially prejudice UDF if and when the documents are shown to a jury. Accordingly, to satisfy Hayman’s purported need for SEC bates numbers, UDF will include specific metadata with the SEC Production that identifies the corresponding SEC bates numbers for each document in the SEC Production. As the metadata provides the same information requested by Hayman, there is no need to print the SEC bates numbers on the documents themselves. UDF’s reasonable compromise satisfies Hayman’s claimed interest while eliminating any potential prejudice to UDF.

In addition to the two substantive issues above, Hayman complains that UDF has taken too long to review and process the voluminous SEC Production, and argues that UDF should simply “hand [it] over.” (Mot. at 5). As an initial matter, Hayman ignores that the SEC Production, by page-count volume, is roughly *twelve times* the total size of Hayman’s document production in this case

to date. Moreover, Hayman’s argument that UDF can just “hand over” the SEC Production is based on the false premise that UDF has no right to review the SEC Production and withhold or redact personal financial and/or tax-related information. In any event, Hayman’s timing gripes are effectively moot; UDF has been working diligently to prepare the SEC Production since the July 13 hearing and plans to provide the SEC Production to Hayman by September 15, and the other documents identified in the proposed order by August 30.

Accordingly, and as set forth in greater detail below, the Court should deny Hayman’s Motion and enter the form of order proposed by UDF.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Court’s guidance at the July 13 hearing and the parties’ efforts to agree to a reasonable order on Hayman’s Second Motion to Compel.

On July 13, 2021, the Court held a hearing on Hayman’s Second Motion to Compel, which sought documents related to SEC and FBI/DOJ investigations of UDF. At the conclusion of the hearing, the Court stated:

I’m inclined to grant his motion, but somewhat limited. In other words, I don’t want to just do in it a blanket to furnish all this and put you all to all of this additional work without giving – I want him to get the material he’s entitled to and needs to have. I think that has pretty well been determined here. *I would like you to come up with an order that’s reasonable.*

Ex. A (July 13 Hearing Transcript Excerpts) at 100 (emphasis added).

As directed by the Court, counsel for the parties conferred, and between July 16 and August 16, the parties exchanged drafts and edits on proposed orders. On August 16, UDF's counsel sent Hayman's counsel a revised draft that adopted some, but not all, of Hayman's requested edits. Apparently unwilling to confer further, Hayman offered no further revisions, and instead filed the instant Motion on August 20.

B. UDF has worked diligently to prepare the SEC Production and other documents identified in the proposed order for production since the July 13 hearing.

Immediately following the July 13 hearing, UDF began to collect, review, and prepare the SEC Production and the other documents set forth in the parties' draft proposed order for production to Hayman.

Beginning on July 16 (the Monday following the July 13 hearing), UDF's counsel in this action began working with UDF's regulatory counsel to identify UDF's SEC document productions, ascertain their scope, and identify any potential issues (such as the existence of tax returns and tax information in the productions).² UDF also worked to collect the other materials the Court indicated it would order UDF to produce (the SEC order of investigation, SEC "Wells

² Included among the documents UDF produced to the SEC are personal (individual) W-2 forms, as well as entity tax filings, and communications with federal tax authorities. UDF plans to withhold all of these documents.

Notices” and UDF’s response, transcripts of SEC testimony,³ and copies of grand jury subpoenas received by UDF).

Once identified, UDF worked with its vendor and document review team to have this data loaded for review. The SEC Production alone contains in excess of 111,000 documents (including more than 35,000 emails), which is estimated to be over 900,000 pages. For context, Hayman’s entire production to date includes less than 22,000 documents, totaling 79,321 pages (roughly 1/12 the volume of the SEC Production).

Due to the volume of data and time constraints, UDF recognized it was not feasible to review every document in the SEC Production prior to production to Hayman. Instead, UDF devised targeted searches to identify information that may require redaction or withholding: (1) personal identifying information (*e.g.*, social security numbers, personal email addresses, and personal telephone numbers); (2) personal financial information (*e.g.*, personal financial statements, compensation information, and records of distributions); (3) and tax filings. UDF’s review of the aforementioned searches is nearing completion, and once redactions are implemented (UDF anticipates completing redactions next week), UDF will begin processing the SEC Production for production to Hayman. Due to the volume of

³ After investigation, UDF’s counsel learned that neither UDF nor its regulatory counsel received copies of exhibits to any transcripts of testimony that were received; UDF cannot produce materials that it does not have.

the SEC Production, UDF's vendor estimates it will take approximately 1.5 weeks simply to process the production and perform necessary quality control.

As set forth in UDF's draft of the proposed order (Ex. B), UDF will produce the materials identified in paragraphs 2-5 of the proposed order by August 30 (on Monday), and will produce the SEC Production—absent unexpected technical delays or new requirements ordered by the Court—by September 15 (roughly two weeks after the hearing on this Motion).

III. ARGUMENT

A. Irrespective of the Rule 11 Agreement, both parties have the right to remove or redact tax information, personal identifying information, and personal financial information from their respective document productions.

UDF's draft of the proposed order (Ex. B) expressly permits UDF—“consistent with the parties' Rule 11 Agreement”—to “remove tax returns or tax information related to any person or entity, and personal financial information or other private records of any individual person that were part of Plaintiffs' production to the SEC.” Ex. B at 2. Hayman concedes that UDF should be permitted to withhold *individual* tax returns from the SEC Production (Mot. at 3), but objects to the removal or redaction of: (1) entity tax returns (or any other tax information), (2) personal identifying information, or (3) any personal financial

information that was included in the documents produced to the SEC.⁴ Hayman’s primary argument—that the Rule 11 Agreement applies only to *third-party* productions—is designed to distract the Court; none of the information UDF plans to withhold is relevant in the first instance, and Hayman cannot show otherwise.

First, while the Rule 11 Agreement technically applies only to productions made by third parties, that is beside the point. The purpose of the Rule 11 Agreement was to provide third parties with assurance that the categories of information set forth therein could safely be withheld from production. As for the parties’ own document productions, the parties themselves have the ability to control the content; as such, no Rule 11 Agreement between the parties is necessary to allow the either party to withhold irrelevant information from production (including the categories of information set forth in the Rule 11 Agreement relating to third-party productions).

Reflecting this reality, both UDF and Hayman have redacted information from their productions that they deemed sensitive and irrelevant. Hayman, for example, has redacted numerous documents based on its unilateral determination that the redacted information is “irrelevant to this lawsuit,” “unrelated to this

⁴ Specifically, UDF plans to withhold or redact the following information from the SEC Production: (1) tax returns (and other tax filings), and communications with tax authorities; (2) personal identifying information (*e.g.*, social security numbers, personal email addresses, and personal phone numbers), and (3) personal financial information (*e.g.*, personal financial statements, compensation information, and records of distributions).

lawsuit,” or contains “specific trade information.” *See* Ex. C (Apr. 6, 2021 email from Hayman’s counsel identifying basis for various redactions). Just like the information Hayman has withheld from its document productions, the information UDF plans to redact or withhold from the SEC Production is not relevant to this lawsuit.⁵

Second, Hayman never even moved to obtain UDF’s tax records, and Hayman ignores that Texas law with respect to the discovery of tax records places the burden squarely on Hayman to show that the tax returns are “relevant and material to the issues in the case,” and “not duplicative” of information already provided in discovery, such as financial statements. *In re Brewer Leasing, Inc.*, 255 S.W.3d 708, 714 (Tex. App.—Houston [1st Dist.] 2008, no pet.). “The burden is thus unlike general discovery requests, which place the burden on the party resisting the discovery.” *Id.* “The reason tax returns are treated differently from other discovery requests of financial matters is because *federal income tax returns*

⁵ Hayman seeks to distract the Court by claiming that UDF has “improperly redacted” material from prior document productions. (*See* Mot. at 8-9). Because Hayman has refused to remotely tailor its discovery, forcing UDF to produce entire sets of files and emails, UDF has necessarily had to make redactions according to a proper protocol for information unrelated to this case, privileged information, and private financial information that is swept up by these vast, overbroad productions. UDF understands that in the course of this massive project, there can be questions or issues that come up regarding redactions. The parties set up a specific protocol to address those questions. Hayman has utilized that protocol, sending voluminous lists of documents with redactions it had questions on, and UDF has responded to all such inquiries in a timely manner.

are considered private and the protection of that privacy is determined to be of constitutional importance.” *Id.* (emphasis added). Here, Hayman has not even attempted to carry its burden to show that UDF’s tax filings are relevant to this case in the first place. And even if Hayman tried, it could not show a compelling need for UDF’s tax filings because UDF has already produced its financials.

Thus, while Hayman broadly asserts that the documents produced to the SEC contain “the exact documents Defendants need for the defense of this case” (Mot. at 4), Hayman has not shown (and cannot show) any need for the tax information, personal identifying information, or personal financial information that UDF plans to redact or withhold, as that information has no bearing on whether UDF is actually a Ponzi scheme as Hayman claimed.

In light of the above, and consistent with the parties’ document productions to date (and the Rule 11 Agreement), the Court should allow UDF to redact or withhold the limited categories of information set forth above from the SEC Production.

B. Producing the SEC Production with SEC bates stamps would potentially prejudice UDF and serves no legitimate purpose because UDF has agreed to provide the same information to Hayman in electronic metadata that will accompany the SEC Production.

Separate from the substance of the SEC Production, Hayman also demands that UDF include the SEC bates numbers on the documents that were present when

UDF initially produced the documents to the SEC.⁶ Hayman’s sole basis for this demand is their purported need to “*verify that they received the entire production given to the SEC and in the same manner as the documents were produced.*” (Mot. at 5) (emphasis added). Because including physical SEC bates stamps on the documents would potentially prejudice UDF and UDF will provide Hayman with the requested SEC bates number information in metadata accompanying the SEC Production, physical SEC bates numbers are entirely unnecessary.

As UDF informed Hayman in response to its demand to have the SEC bates numbers printed on the SEC Production, UDF believes that the presence of physical SEC bates stamps on documents in the SEC Production would potentially cause prejudice to UDF, if and when they are shown to a jury. *See, e.g., Ott v. City of Milwaukee*, 09-C-870, 2015 WL 1219587, at *8 (E.D. Wis. Mar. 17, 2015) (recognizing that irrelevant bates stamp prefixes have “ha[ve] no evidentiary relevance and could confuse or mislead the jury.”).

Here, the potential for prejudice is particularly significant. For example, given the SEC’s regulatory role, a jury might be misled that simply because UDF produced documents to the SEC, they necessarily reveal some form of misconduct. To aid the Court’s consideration of this issue, UDF has provided a sample of what

⁶ Hayman’s proposed order would also require UDF to include the FOIA confidentiality stamps included on the SEC documents. Moreover, if the Court orders UDF to include physical SEC bates numbers on the SEC Production, UDF cannot efficiently remove the FOIA confidentiality stamps.

a document produced according to Hayman’s specifications would look like; it includes an SEC bates stamp and SEC FOIA confidentiality language, plus a UDF_HAY bates stamp and the confidentiality language required by the Protective Order in this case. *See* Ex. D. The morass of labels at the bottom of the document is unnecessary, confusing, and likely to confuse or mislead a jury, and even more so given that Hayman’s apparent trial strategy is to distract the jury with the SEC’s long-resolved investigation of UDF.

In light of the prejudice to UDF that would arise from including physical SEC bates stamps on the SEC Production, and to satisfy Hayman’s claimed need for this information, UDF plans to provide the exact information requested by Hayman in the metadata that will accompany the SEC Production. Specifically, UDF will include metadata fields—for each document in the SEC Production—that identify the SEC bates range of the documents.⁷ Below is an example showing that the SEC bates number metadata is easy to reference when loaded to an electronic document review database:

Control Number	Production HAY BegB...	Production HAY EndB...	Production HAY BegA...	Production HAY EndA...	Production SEC Beg...	Production SEC End...	Production SEC Beg...	Production SEC EndA...
Filter	Filter	Filter	Filter	Filter	Filter	Filter	Filter	Filter
NX_UDF_ACCT_0001863	UDF_HAY0898136	UDF_HAY0898137	UDF_HAY0898136	UDF_HAY0898169	UDF_SEC_154753	UDF_SEC_154756	UDF_SEC_154753	UDF_SEC_154787
NX_UDF_ACCT_0001864	UDF_HAY0898138	UDF_HAY0898144	UDF_HAY0898136	UDF_HAY0898169	UDF_SEC_154756	UDF_SEC_154762	UDF_SEC_154753	UDF_SEC_154787
NX_UDF_ACCT_0001865	UDF_HAY0898145	UDF_HAY0898152	UDF_HAY0898136	UDF_HAY0898169	UDF_SEC_154763	UDF_SEC_154770	UDF_SEC_154753	UDF_SEC_154787
NX_UDF_ACCT_0001866	UDF_HAY0898153	UDF_HAY0898158	UDF_HAY0898136	UDF_HAY0898169	UDF_SEC_154771	UDF_SEC_154776	UDF_SEC_154753	UDF_SEC_154787

⁷ In addition, for documents produced to the SEC that UDF withholds in their entirety (such as tax returns), UDF is willing to provide Hayman with a list of the SEC bates numbers that have been removed from the SEC Production.

As the Court can see, the SEC bates number metadata (contained in the 4 columns on the right) will provide Hayman with all it needs to easily “verify” the contents of the SEC production, the only reason Hayman claims to need this information. (*See* Mot. at 5).

Finally, to the extent that Hayman argues that producing the SEC Production with SEC bates numbering will expedite the production (*see id.*), Hayman is incorrect. UDF has begun preparing the production without SEC bates numbering and changing course at this late stage will actually cause additional delay. Specifically, UDF will have to transfer redactions and document coding onto new production images that include SEC bates numbering and SEC FOIA language, and then re-start processing of the production, which would likely delay the SEC Production by at least two additional weeks.

In sum, UDF’s reasonable proposal satisfies the interests of both parties, and there is no legitimate reason to require physical SEC bates numbers on the SEC Production.

C. UDF will provide the SEC Production to Hayman by September 15, and the other documents set forth in the proposed order by August 30.

Finally, Hayman complains that UDF has taken too long to review and process the SEC Production, arguing that UDF should have just “hand[ed] [it] over.” (Mot. at 5). For context, the SEC Production alone is roughly *twelve times*

the size of Hayman’s entire production to date, which Hayman produced over the course of more than a year. A production of this size takes time to process and review, and UDF has been diligently working to complete this process.

In addition, Hayman’s argument that UDF can just “hand over” the SEC Production is based the false premise that UDF has no right to withhold or redact personal financial and/or tax-related information (which, as explained above, is entirely proper).

In any event, Hayman’s timing complaints are now effectively moot. Absent unforeseen technical delays or additional production parameters imposed by the Court, UDF will provide Hayman with the SEC Production on September 15, and the items identified in paragraphs 2-5 of the proposed order on Monday, August 30.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Hayman’s Motion, and enter an Order in the form proposed by UDF.

DATED: August 27, 2021

Respectfully submitted,

By: /s/ Ian E. Browning

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This is to certify that on August 27, 2021, a true and correct copy of the foregoing instrument was delivered to Defendants' counsel of record through a court-approved electronic filing system.

/s/ Ian E. Browning _____
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