

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

**TERRELL K. RALEY, individually, and )  
on behalf of 4 POINTS HOSPITALITY, LLC, )**

**Plaintiffs, )**

**VS. )**

**CEES BRINKMAN and BRINKMAN )  
HOLDINGS, LLC, )**

**Defendants, )**

**AND )**

**CEES BRINKMAN, individually, and )  
on behalf of 4 POINTS HOSPITALITY, LLC, )**

**Counterclaimant, )**

**VS. )**

**TERRELL K. RALEY, AMARANTH )  
HOSPITALITY GROUP, LLC, )**

**Counterdefendants. )**

**NO. 16-196-BC**

DAVIDSON COUNTY  
CLERK OF COURT  
DCAH

2016 SEP 15 PM 1:46

FILED

**MEMORANDUM AND ORDER GRANTING PLAINTIFF'S MOTION  
FOR SUBMISSION OF ISSUES TO ACCOUNTANTS WITH MODIFICATIONS**

After reviewing Plaintiff's *Proposed Issues for Submission to Accountants*, Defendant's *Opposition* and Plaintiff's *Reply*, and pursuant to the Court's authority under Tennessee Civil Procedure Rules 16 and 26, the Court grants that part of the Plaintiff's motion for each side to file expert reports from a certified public accountant retained by each side to perform accounting on and quantify some of the financial issues in this case before

depositions are taken. The Court does not grant that part of the motion which seeks for the CPAs to confer.

The rationale for this sequencing of discovery with the filing of these expert opinions on certain identified matters at the outset of discovery is that by comparing the reports the parties can quantify how significant the various disputes are and see what the dollar differences are. This will enable the parties to evaluate the options for the ultimate outcome of this case of agreed buy-out, judicially ordered member termination, judicially ordered buy-out, or dissolution, and in that regard whether mediation, prior to depositions would be productive, or if litigation, including depositions, should proceed with an eye toward member termination, judicially ordered buy-out or dissolution, and award of attorneys fees.

The issues the CPAs will prepare expert reports on, listed below, are limited to accounting and quantification. The inferences to be drawn from the expert reports or use of the accounting and quantification of the expert reports as circumstantial evidence on issues, is the role of the Counsel and Court in dispositive motions and trial, for example, on such issues as the terms of the salary agreement and lease agreement, the 4 Points tax returns, the IP Agreement.

The reason the Court denied that part of the motion for the CPAs to confer is that without the agreement to this of Defendant's Counsel, there are potential issues of divulging work product and intruding upon the attorney-client privilege. There also could be unintended evidentiary consequences of such conferral such as admissions, impeachment,

or settlement discussions. Using the standard discovery procedure of the filing of expert reports but sequencing the production of those reports as a preliminary matter is well within the bounds and routine of the Tennessee Rules of Civil Procedure. Additionally, by limiting the scope of the reports to accounting and quantification reserves to a later date the opinions of these experts on matters which first need depositions and other discovery.

It is therefore ORDERED that Plaintiff Raley and Defendant Brinkman shall each retain a certified public accountant to examine the books and records of 4 Points and the responses to discovery served to date, including forthcoming responses, not yet received, to Mr. Brinkman's latest round of discovery from Mr. Raley for an accounting for certain expenditures, and by October 28, 2016, prepare expert reports to serve on opposing Counsel and file with the Court on the following:

1. How much did Mr. Raley contribute to the build out (§ 27 of Verified Amended Complaint ("VAC") filed 7/29/16)
2. Amount of build out costs paid by 4 Points and Holland House (§ 46 of VAC)
3. Amount of financial capital Mr. Brinkman has contributed to 4 Points (§ 50 of VAC)
4. The amount of each monthly rental payment paid to Brinkman Holdings, LLC and the total (§ 54 of VAC)

5. The total amount of payroll checks from 11/7/13 to 12/9/15 Mr. Brinkman has taken (¶ 55 of VAC)

6. How many occasions Mr. Raley received less than 8% of gross sales as his salary and the total underpayment (¶¶ 103-105 of VAC)

7. The total amount of 4 Points funds used to pay expenses of Butchertown Hall (¶ 20 of 7/18/16 Amended Counterclaim (“ACC”))

8. Which parties received what amounts (i.e., as to salary, profit distributions, etc.) for the time periods pertinent to the case (¶ 20(b)-(d), 29, 30, 32-34 ACC and ¶ 2 of Plaintiff's 8/25/16 Proposed Issues (“PI”))

9. When and to whom Mr. Brinkman's initial \$175,000 capital contribution was made (¶ 3 PI)


10. When, in what amount, and to whom Mr. Brinkman wrote checks for improvements, and repairs (¶ 5 PI)

11. Whether 4 Points funds were used to pay for Butchertown Hall expenses and, if so, when and whether such funds were paid back to 4 Points (¶¶ 24-27 ACC and ¶ 6 PI)

12. The amount of profit distributions made to each party and opine as to the quantified impact regarding the tax return ownership percentages (¶ 7 PI)

13. The amount and percentage of Mr. Raley's salary payments and the amount and percentage of payments to Mr. Brinkman. (¶¶ 8-9 PI)

14. Whether 4 Points funds were used to pay for non-4 Points expenses and, if so, when and whether such funds were paid back to 4 Points (§ 10 PI)
15. Identify projects at The Pharmacy Mr. Raley commissioned and what dollar amount was spent on them (§ 11 PI)
16. Payments made by Mr. Brinkman toward The Pharmacy build-out, and to whom they were paid (§ 12 PI)
17. The amount reserved for future restaurant expansion (§ 12 PI)
18. State the base financial information used to perform calculations (i.e., gross sales, net profits, etc.) for the time periods pertinent to the case (§ 1 PI)

  
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ELLEN HOBBS LYLE  
CHANCELLOR  
TENNESSEE BUSINESS COURT  
PILOT PROJECT

cc: Robert G. McDowell  
James A. DeLanis  
Austin Shaver  
W. Scott Sims  
D. Gil Schuette  
Impact Hospitality/Dynamic Hospitality

 **MAILED** + *ferred*  
9-15-10