STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 16 CVS 3878
JAMES S. SHAW in the right of GVEST PARTNERS, LLC, a North Carolina Limited Liability Company, Plaintiff, v. RAYMOND M. GEE, Defendant.	**ORDER ON MOTIONS IN LIMINE**

1. This case is scheduled for trial commencing February 5, 2018. Plaintiff James Shaw and Defendant Raymond Gee filed their respective Motions in Limine on January 8, 2018, followed by their responses on January 15, 2018. The Court held a final pretrial hearing on January 22, 2018, during which it heard argument as to the motions.

I.
BACKGROUND

2. Shaw and Gee are equal members and co-managers of Gvest Partners, LLC ("Gvest"). In this derivative action, Shaw claims that Gee breached his fiduciary duty by depriving Gvest of a business opportunity in the amount of $300,000.

3. The dispute arises out of Gvest's efforts, in 2013, to purchase real property in Sherrills Ford, North Carolina. Although Shaw, Gee, and other Gvest employees spent considerable time and money in the effort, Gvest ultimately decided not to make the purchase. The property was then purchased by Lullwater Holdings, LLC

("Lullwater"), whose principal, Tyson Rhame, had a preexisting business relationship with Shaw. In connection with the transaction, Lullwater paid Gvest approximately $243,000 for out-of-pocket costs incurred in its pursuit of the property, but Lullwater did not pay a commission to Gvest, apparently due to Shaw's preference not to seek fees or commissions from his business partners, such as Rhame.

4. According to Shaw, Gee later secretly requested that Lullwater pay him and Adam Martin (a Gvest employee) for their work on the Sherrills Ford project. Shaw further alleges that, to avoid disclosure of the payments to Shaw, Gee asked Rhame to make the payments, totaling $300,000, to entities controlled by Gee and Martin. Had he known of these payments, Shaw contends, he would have required Rhame to make them to Gvest, after which the money would have been distributed equally to Shaw and Gee under the terms of its operating agreement.

5. Gee does not appear to dispute that Lullwater paid $300,000 to him and Martin. Instead, he contends that the payments were related to a different transaction, having nothing to do with the Sherrills Ford property. Gee also contends that Shaw released any claim for breach of fiduciary duty when the two men entered into a Dissolution and Separation Agreement ("Separation Agreement") in April 2014 for the purpose of terminating their business relationship.

6. In an order denying Gee's motion to dismiss, this Court agreed with Gee that the release in the Separation Agreement applies to Shaw's right to bring a derivative claim on behalf of Gvest. *See Shaw v. Gee*, 2016 NCBC LEXIS 103, at *9 (N.C. Super. Ct. Dec. 21, 2016). Nevertheless, the Court concluded that Shaw had

adequately alleged that Gee procured the release through fraud—allegations that, if proved, would act as a bar to the release. *See id.* at *9–14.

7. Shaw moves the Court to exclude evidence of (1) his wealth and financial status, (2) a federal indictment of Shaw, Rhame, and Frank Bell, a related civil forfeiture complaint, and their underlying allegations, (3) allegations against Shaw of sexual harassment and excessive drinking, (4) the parties' other ongoing litigation, and (5) Shaw's receipt of benefits under the Separation Agreement. Gee moves to exclude evidence of (1) his failure to disclose during discovery an e-mail exchange between himself and Martin, and (2) Gee's alleged attempts to keep the payments from Lullwater secret.

II.
LEGAL STANDARD

8. "A motion *in limine* seeks pretrial determination of the admissibility of evidence to be introduced at trial." *State v. Britt*, 217 N.C. App. 309, 313, 718 S.E.2d 725, 728 (2011). "The Court's ruling on motions *in limine* is interlocutory and 'subject to modification during the course of the trial.'" *InSight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 91, at *6 (N.C. Super. Ct. Oct. 3, 2017) (quoting *Hamilton v. Thomasville Med. Assoc.*, 187 N.C. App. 789, 793, 654 S.E.2d 708, 710 (2007)).

III.
ANALYSIS

A. Shaw's Motion in Limine

1. Evidence of Shaw's Wealth and Financial Status

9. Shaw seeks to exclude evidence of his wealth and financial status on the grounds that such evidence is not relevant to the claims and defenses in this case under Rule 402 and that its admission would be unfairly prejudicial under Rule 403. Gee contends that evidence of Shaw's wealth is relevant to show (1) Shaw's motivation for refusing a commission payment to Gvest for the Sherrills Ford transaction, and (2) Shaw's "disproportionate influence over the operation of Gvest Partners." (Def.'s Br. Opp'n to Pl.'s Mot. Lim. 4 ["Def.'s Opp'n"], ECF No. 65.)

10. Even if Shaw's wealth had some minimal relevance to a material factual dispute, the probative value would be substantially outweighed by the danger of unfair prejudice. Our State recognizes the general rule that "neither the wealth of one party or the poverty of the other should be permitted to affect the administration of the law." *Lutz Indus., Inc. v. Dixie Home Stores*, 242 N.C. 332, 344, 88 S.E.2d 333, 342 (1955); *accord Scallon v. Hooper*, 58 N.C. App. 551, 556, 293 S.E.2d 843, 845–46 (1982). For that reason, courts often find references to one party's wealth or financial status to be "highly prejudicial." *Whittenburg v. Werner Enters. Inc.*, 561 F.3d 1122, 1130 n.1 (10th Cir. 2009); *see also Martensen v. Koch*, 2015 U.S. Dist. LEXIS 8463, at *2–3 (D. Colo. Jan. 26, 2015) (references to "plaintiff's financial resources plainly would create a substantial danger of unfair prejudice"); *Estate of Ward v. Trans Union Corp.*, 2007 U.S. Dist. LEXIS 98169, at *2 (E.D.N.C. Aug. 30, 2007) ("potential

prejudice of mentioning Defendant's financial status or wealth would outweigh any probative value").

11. Gee insists that any prejudice would be minimal because the jury will hear evidence of the multi-million dollar purchase price for the Sherrills Ford property. In his view, the jurors will "recognize that such transactions are usually limited to individuals with significant means." (Def.'s Opp'n 4.) Perhaps so. But the fact that some neutral facts may reflect indirectly on the parties' wealth is not a persuasive reason to admit other evidence that highlights Shaw's personal financial status. The latter necessarily draws a contrast with Gee, which poses precisely the type of unfair prejudice that Rule 403 is designed to prevent.

12. Accordingly, the Court concludes, in its discretion, that the risk of unfair prejudice substantially outweighs the probative value of this evidence, if any. *See* N.C. R. Evid. 403. The Court grants Shaw's motion to exclude references to his wealth and financial status.

2. Evidence of Federal Indictment, Civil Forfeiture Complaint, and Their Underlying Allegations

13. Shaw and Rhame are co-owners of Sterling Currency Group, LLC, a currency sales and exchange business. In February 2016, a federal indictment charged Shaw, Rhame, and two other men (Frank Bell and Terrence Keller) with several counts of mail and wire fraud, money laundering, and conspiracy, all relating to Sterling Capital Group's sales of the Iraqi dinar. *See United States v. Rhame*, No. 1-16-CR-67-SCJ-CMS (N.D. Ga). Rhame and Bell are also subject to charges of

making false statements to federal investigators. According to Shaw, the charges are contested.

14. Shaw moves to exclude the indictment, a related civil forfeiture complaint, and any reference to the underlying allegations under Rules 402 and 403. Shaw also argues that Gee "should be prohibited from asking questions about" any aspect of the federal criminal proceeding, "including the joint defense agreement between Shaw and other defendants in those proceedings, in an attempt to impeach the credibility of Shaw, Rhame, or Bell," each of whom is a potential witness at trial. (Pl.'s Br. Supp. Mot. Lim. 6 ["Pl.'s Br."], ECF No. 59.)

15. Gee's exhibit list includes both the federal indictment and the civil forfeiture complaint. Gee contends that this evidence is substantively relevant to show bias. (Def.'s Opp'n 9–11.) He further contends that the evidence is admissible for purposes of impeachment under Rule 608(b). (Def.'s Opp'n 8–10.)

16. The Court concludes that the federal indictment, civil forfeiture complaint, and underlying allegations are not relevant to any claim or defense in this litigation. The alleged currency fraud scheme has no bearing on any aspect of the Sherrills Ford transaction.

17. Whether Gee may impeach Shaw, Rhame, or Bell by questioning them about the allegations of fraud and false statements is a much closer question. Rule 608(b) expressly permits, "in the discretion of the court," a party to cross-examine a witness regarding specific instances of conduct "concerning his character for truthfulness or

untruthfulness." The North Carolina Supreme Court has explained that this rule applies:

> only in the very narrow instance where (1) the *purpose* of producing the evidence is to impeach or enhance credibility by proving that the witness' conduct indicates his character for truthfulness or untruthfulness; and (2) the conduct in question is *in fact probative* of truthfulness or untruthfulness and is not too remote in time; and (3) the conduct in question did *not result in a conviction*; and (4) the inquiry into the conduct *takes place during cross-examination*.

State v. Morgan, 315 N.C. 626, 634, 340 S.E.2d 84, 89–90 (1986). Any such evidence also remains subject to Rule 403 balancing. *See id.* Case law interpreting Federal Rule of Evidence 608(b), which is nearly identical to North Carolina Rule 608(b), may be persuasive authority. *See State v. Bailey*, 80 N.C. App. 678, 681, 343 S.E.2d 434, 436 (1986).

18. At the hearing, Shaw's counsel argued that the federal government's allegations are not probative of character for untruthfulness and are too remote in time. The Court disagrees. The relevant allegations include multiple instances of fraud and making false statements to federal investigators. These allegations fall squarely within the category of conduct indicative of a witness's character for truthfulness or untruthfulness. *See Morgan*, 315 N.C. at 635, 340 S.E.2d at 90 (noting that giving false testimony and attempting to defraud others are "[a]mong the types of conduct most widely accepted as falling into this category" (citation omitted)); *see also State v. Goode*, 341 N.C. 513, 545, 461 S.E.2d 631, 650 (1995) (holding that cross-examination as to false statements was properly admitted and satisfied *Morgan* test); *United States v. Chevalier*, 1 F.3d 581, 584 (7th Cir. 1993) (affirming decision to permit cross-examination as to allegations of bank fraud); *United States v. Walia*,

2014 U.S. Dist. LEXIS 102246, at *45–46 (E.D.N.Y. July 25, 2014) (allowing cross-examination as to allegations of forgery, false personation, and perjury); *United States v. Pickard*, 211 F. Supp. 2d 1287, 1292 (D. Kan. 2002) (allowing cross-examination as to bankruptcy fraud, other fraudulent activity, misrepresentation, and theft).

19. Nor are the allegations too remote in time. The fraud allegations cover activities from 2011 through 2015. (*See* Pl.'s Br. Ex. A, *United States v. Rhame*, First Superseding Criminal Indictment ["Criminal Indictment"] ¶¶ 17–22.) Similarly, the federal government alleges that Rhame and Bell made false statements to investigators in 2015. (*See* Criminal Indictment ¶¶ 27–38.) Each period overlaps with the events giving rise to this dispute, all of which occurred in 2014.

20. Accordingly, the Court concludes that the alleged fraud and false statements satisfy the standard set forth in *Morgan*. They are a permissible topic for cross-examination of Shaw, Rhame, and Bell under Rule 608(b)—though subject to two important restrictions.

21. First, the indictment and forfeiture complaint are not admissible as exhibits. Rule 608(b) expressly prohibits the use of "extrinsic evidence" to prove allegations of dishonest acts. Extrinsic evidence in this context means "[e]vidence that is calculated to impeach a witness's credibility, adduced by means other than cross-examination of the witness." *State v. Lee*, 189 N.C. App. 474, 478, 658 S.E.2d 294, 298 (2008) (quoting *Black's Law Dictionary* 597 (8th ed., 2004)). In other words, "only cross-examination may be employed to expose dishonest acts." *Pickard*, 211 F.

Supp. 2d at 1292; *see, e.g.*, *United States v. Zidell*, 323 F.3d 412, 426 (6th Cir. 2003) (finding no error where cross-examining party "accepted [witness's] flat denial on its face, without seeking to introduce extrinsic evidence that might contradict his testimony").

22. Second, the Court concludes that Rule 403 imposes restrictions on the scope of any cross-examination. Specifically, Gee may not ask questions about the fact of the indictment or the other federal proceedings stemming from the events. The fact of the indictment (as opposed to the alleged fraudulent conduct) does not speak one way or another as to the credibility of Shaw, Rhame, or Bell. Yet it does pose a unique danger of unfair prejudice "because of the indictment's official nature and the seriousness of the counts." *Baxter Health Care Corp. v. Spectramed, Inc.*, 1992 U.S. Dist. LEXIS 19769, at *9 (C.D. Cal. Aug. 27, 1992). The danger of unfair prejudice substantially outweighs any probative value that would result from an inquiry into the fact of the indictment or other aspects of the criminal proceedings.

23. On the other hand, "the facts underlying the indictment may have significant probative value." *Id.* As noted, instances of fraud and false statements are directly relevant to a witness's character for truthfulness. The Court perceives little danger of unfair prejudice, confusion of issues, and misleading the jury, and any perceived prejudice may be mitigated by a limiting instruction from the Court. Accordingly, Gee's cross-examination regarding the alleged wrongdoing "should be phrased in terms of the underlying event itself." *Young v. James Green Mgmt., Inc.*, 327 F.3d 616, 626 n.7 (7th Cir. 2003) (citation omitted); *Baxter Health Care*, 1992 U.S.

Dist. LEXIS 19769, at *8–10 (permitting cross-examination as to allegations of securities fraud and tax evasion but granting "motion in limine as to the fact of the indictment itself").

24. For these reasons, the Court grants in part Shaw's motion. Gee may not introduce the federal indictment and civil forfeiture complaint, and he may not cross-examine Shaw, Rhame, or Bell about them. Gee may, however, cross-examine these witnesses regarding the underlying allegations of fraud and false statements. The Court may, in its discretion, revisit this ruling as the evidence develops at trial.

3. Evidence of Allegations of Sexual Harassment or Excessive Drinking Against Shaw

25. Shaw moves to exclude references to allegations of sexual harassment made against him by a former bookkeeper (Jennifer Arndt) employed by Gvest, along with a draft of an employment separation and release agreement. Gee argues that the draft agreement, which was created prior to the negotiation of the Separation Agreement, shows Shaw's familiarity with and knowledge of "the matters to be negotiated in a release along with the language and terms used in a release agreement." (Def.'s Opp'n 12.)

26. The Court concludes that any allegations of sexual harassment are irrelevant to the claims and defenses at issue. This dispute concerns the circumstances surrounding the Sherrills Ford transaction and payments allegedly made by Rhame to Gee and Martin. Unrelated allegations of sexual harassment would not have "any tendency to make the existence of any fact that is of consequence to the determination of [this] action more probable or less probable." N.C. R. Evid.

401. This evidence is therefore irrelevant and inadmissible. *See* N.C. R. Evid. 402. Alternatively, the Court excludes this evidence under Rule 403. The risk of unfair prejudice stemming from allegations of sexual harassment substantially outweighs any probative value the evidence might have. *See* N.C. R. Evid. 403.

27. The Court defers ruling on the admissibility of Ms. Arndt's draft employment separation and release agreement. An issue in this case concerns the enforceability of the release in the Separation Agreement between Shaw and Gee. According to Gee, the extent of Shaw's knowledge of and familiarity with negotiating release agreements may be relevant to that issue. It seems unlikely that Shaw, a sophisticated businessman, will deny his familiarity with contractual releases. Nevertheless, because the development of evidence at trial may provide context allowing the Court to make a more informed ruling, the Court defers ruling on the admissibility of the agreement itself until the appropriate time at trial.

28. Shaw also moves to exclude references to his alleged drinking habits. The purportedly relevant evidence appears to be a single statement by Martin that both Shaw and Gee did "a lot of drinking." (Pl.'s Br. Ex. D, Martin Dep. 204:2–6.) This isolated remark has no relevance to any issue to be decided by the jury, and even if it did, the risk of unfair prejudice resulting from references to excessive drinking would far outweigh any probative value. *See* N.C. R. Evid. 402, 403.

29. The Court therefore grants Shaw's motion to the extent it seeks to exclude references to alleged sexual harassment and excessive drinking. The Court defers ruling on the admissibility of Ms. Arndt's separation and release agreement.

4. Evidence of the Parties' Other Ongoing Litigation

30. In addition to this litigation, Shaw and Gee (or entities controlled by them) have filed two other lawsuits against each other to resolve disputes arising out of their business relationship. Both actions are pending in this Court. *See JS Real Estate Invs. LLC v. Gee Real Estate, LLC*, No. 2015-CVS-22232 (N.C. Super. Ct.); *Gvest Real Estate, LLC v. JS Real Estate Invs. LLC*, No. 2016-CVS-21135 (N.C. Super. Ct.). Rhame has also sued Gee in federal court. *See Rhame v. Gee*, No. 16-CV-230 (M.D.N.C.). These actions involve many of the same parties but have distinct claims for relief.

31. Shaw argues that references to these actions or to the parties' contentions in the actions are irrelevant and that admission of such evidence would lead to "wasteful 'trials within the trial' about the disputed issues in the other lawsuits." (Pl.'s Br. 11 & n.3.) Gee's response does not address any specific evidence that he intends to introduce but generally contends that the other ongoing litigation is relevant evidence of Shaw and Rhame's bias. (Def.'s Opp'n 12.)

32. The Court agrees with Shaw. Evidence as to the other lawsuits is not relevant to any material fact in this case. Furthermore, references to these lawsuits or to the parties' contentions in the lawsuits would pose a substantial risk of misleading the jury, confusing the issues, and causing undue delay, all of which substantially outweigh the evidence's probative value, if any. *See* N.C. R. Evid. 403; *see also, e.g.*, *Escobar v. Airbus Helicopters SAS*, 2016 U.S. Dist. LEXIS 140152, at

*13 (D. Haw. Oct. 7, 2016); *Posteraro v. Citizens Fin. Grp.*, 2016 U.S. Dist. LEXIS 606, at *7–8 (D.N.H. Jan. 5, 2016).

33. The Court therefore grants Shaw's motion. Gee may not introduce evidence or refer to the parties' other ongoing litigation.

5. Evidence of Shaw's Receipt of Benefits Under the Separation Agreement Before Learning of Gee's Alleged Fraud

34. As part of his ratification defense, Gee alleges that Shaw accepted benefits under the Separation Agreement. Specifically, Gee alleges that, in August 2014, Shaw received and accepted a payment of approximately $488,000 in return for Gee's buyout of his membership interest in an entity owning an office building in Charlotte, North Carolina. Shaw asserts that he learned of Gee's alleged fraud no earlier than August 2015 and, thus, any benefit received prior to that date is not relevant to Gee's ratification defense. Shaw seeks to exclude evidence of his receipt of benefits—specifically, four trial exhibits concerning the $488,000 buyout—prior to learning of Gee's alleged fraud.

35. In his opposition, Gee does not contend that Shaw knew of the alleged fraud in August 2014. Instead, he points to Shaw's deposition testimony, which suggests Shaw harbored suspicions about the Sherrills Ford transaction prior to closing, particularly concerning whether any money was being paid outside of closing. Gee contends that Shaw ratified the Separation Agreement by "accepting the benefits" of the August 2014 transaction at a time when "he *should have known* of the alleged concealment by Gee." (Def.'s Opp'n 13 (emphasis added).) Therefore, he argues, this evidence is relevant.

36. Gee misreads the law on ratification. As the Court stated in its order denying Gee's motion to dismiss, "if one, who has been induced by fraud and misrepresentation to execute a release and subsequently learns the true import thereof, knowingly takes the benefits of it he thereby ratifies and gives it force and effect." *Presnell v. Liner* 218 N.C. 152, 154, 10 S.E.2d 639, 640 (1940). In other words, "[i]f [Shaw] *knew* the facts and circumstances of the execution of the release and knew its provisions, and then accepted its benefits he is thereby estopped to deny its validity." *Id.* (citing *Sherrill v. Little*, 193 N.C. 736, 138 S.E. 14 (1927)) (emphasis added). On the other hand, an act "will not constitute a ratification of the transaction thereby induced unless, at the time of such act, the victim had *full knowledge* of the facts and was then capable of acting freely." *Link v. Link*, 278 N.C. 181, 197, 179 S.E.2d 697, 706 (1971) (emphasis added).

37. Gee does not cite any contrary case law. Rather, he points to North Carolina Pattern Jury Instruction 800.00A, which concerns a statute-of-limitations defense to fraud. (Def.'s Opp'n 13.) The pattern instruction recites the well-settled rule that the statute of limitations begins to run at the time a plaintiff learns facts that would enable him to discover the alleged fraud in the exercise of reasonable diligence. Gee has not pleaded the statute of limitations as a defense, and the Court is not aware of any authority importing the discovery rule for the statute of limitations into the doctrine of ratification.

38. Accordingly, the Court grants Shaw's motion. Gee's only theory of relevance depends on a misunderstanding of the law, and his response does not forecast any

evidence from which a jury could reasonably conclude that Shaw knew of the alleged wrongdoing at the time he accepted the $488,000 under the Separation Agreement. That said, Gee does not expressly concede that Shaw first became aware of the alleged wrongdoing in August 2015. In the event Gee develops evidence at trial to demonstrate earlier knowledge by Shaw, the Court may revisit its ruling. In the absence of a revised ruling, however, Gee may not introduce evidence of Shaw's receipt of benefits before August 2015 to establish ratification.

B. Gee's Motion in Limine

1. Evidence of Gee's Discovery Omission

39. Shaw's exhibit 47 is an e-mail exchange between Gee and Martin. It is undisputed that Gee failed to produce the e-mail during discovery in this case. Shaw became aware of the e-mail because Gee produced it in the *JS Real Estate* litigation, which is also pending before this Court. According to Shaw, the e-mail is a "smoking gun" in which Gee characterizes the $300,000 that he and Martin received from Lullwater as payment of fees for the Sherrills Ford project. (Pl.'s Mem. Opp'n to Def.'s Mot. Lim. 3 ["Pl.'s Opp'n"], ECF No. 64.) Shaw intends to introduce not only the e-mail exchange but also evidence that Gee omitted it from his document production. (Pl.'s Opp'n 3.)

40. Gee does not object to the admissibility of exhibit 47. Rather, Gee seeks to exclude any reference to the fact that he omitted the e-mail exchange from his document production. According to Gee, (1) the omission was inadvertent, (2) he did in fact produce the e-mail albeit in another case, (3) the omission is not relevant and

its admission would be unfairly prejudicial, and (4) admission of the discovery omission would require Gee to introduce rebuttal evidence of Shaw's lack of production relative to Gee's own production.

41. In the Court's view, discovery violations ordinarily should be addressed under the Rules of Civil Procedure, not the Rules of Evidence. Clearly, an intentional omission of a highly relevant document would violate the Rules of Civil Procedure. Here, however, Shaw did not seek relief from the Court for an alleged violation of Gee's discovery obligations. Shaw acknowledges that he learned of the relevant e-mail exchange prior to the end of the discovery period and that he had an opportunity to question Gee about it during his deposition. At no point did Shaw initiate a discovery dispute conference pursuant to Business Court Rule 10.9, file a motion to compel, or seek sanctions for the omission.

42. Given Shaw's decision not to raise the issue with the Court, his argument for airing the discovery grievance before a jury is substantially weakened. It bears emphasis that the reason Shaw possesses the e-mail exchange between Gee and Martin is because Gee disclosed it to him in the *JS Real Estate* matter. Although there appears to be no dispute that Gee also should have produced the e-mail in this matter, his failure to do so is not relevant to any issue, including Gee's alleged concealment of the payments received from Lullwater. Evidence of Gee's discovery omission is therefore not admissible. *See* N.C. R. Evid. 402. Alternatively, the Court concludes, in its discretion, that such evidence is inadmissible under Rule 403

because its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, and misleading the jury.

43. The Court grants Gee's motion. Shaw may not introduce evidence regarding Gee's failure to produce exhibit 47 in this litigation. This ruling, of course, does not exclude the exhibit itself.

2. Evidence that Gee Asked Rhame to Keep Payments Secret or Hidden from Shaw

44. In his motion, Gee argues that the Court should exclude evidence that he attempted to keep the payments from Lullwater secret. (Def.'s Mot. Lim. 4–6, ECF No. 60.) At the hearing, Gee's counsel clarified that the motion concerns Shaw's deposition testimony recalling a conversation with Rhame. According to Shaw, Rhame stated that Gee asked Rhame not to disclose any payments to Shaw. (*See* Pl.'s Opp'n 8 (citing Pl.'s Opp'n Ex. F, Dep. Shaw 117:3–12, ECF No. 64.2).) Gee argues that Rhame testified otherwise during his own deposition. He contends Shaw's testimony would be unduly prejudicial and, at the hearing, argued that it may be hearsay.

45. The Court defers ruling on this motion. The relevance of this evidence, and any potential prejudice that might result, must be considered in context. The Court therefore awaits further development of evidence at trial. In the interim, and because the Court may ultimately conclude that such testimony or evidence is inadmissible, the parties shall not refer to Rhame's alleged statement to Shaw before the jury pending a further ruling from the Court permitting introduction of this evidence.

IV.
CONCLUSION

46. For the foregoing reasons,

- Shaw's motion to exclude evidence of Shaw's wealth or financial status is **GRANTED**;
- Shaw's motion to exclude evidence of the federal indictment, forfeiture complaint, and their underlying allegations is **GRANTED in part** and **DENIED in part**;
- Shaw's motion to exclude evidence of allegations of sexual harassment or excessive drinking against Shaw is **GRANTED in part**, and the Court defers ruling on the admissibility of the draft employment separation and release agreement;
- Shaw's motion to exclude evidence of the parties' other litigation is **GRANTED**;
- Shaw's motion to exclude evidence of Shaw's receipt of benefits under the Separation Agreement before learning of Gee's fraud is **GRANTED**;
- Gee's motion to exclude evidence of his purported discovery omission is **GRANTED**;
- The Court defers ruling on Gee's motion to exclude evidence that Gee requested Tyson Rhame to keep the checks paid to Gee and Adam Martin secret or hidden from Shaw.

This the 30th day of January, 2018.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases