

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
MEMORANDUM IN OPPOSITION TO
MOTION FOR RETURN OF FLASH DRIVE
AND MOTION FOR COSTS****[REDACTED]**

INTRODUCTION

Twice in the last month, the Court has entered Orders directed at Michael Lythcott's violation of his non-disclosure obligations to the Estate. And twice now, Mr. Lythcott has responded by dictating to the Court how Mr. Lythcott intends to respond (or not respond as the case may be) to the Orders. What's more, Mr. Lythcott now seeks to profit from his misconduct by charging the Estate \$250 per hour (almost \$40,000 total) for personally reviewing the thousands of communications and documents he exchanged with third-parties in violation of his non-disclosure agreement.

The Court's February 27, 2019 Second Order Regarding Estate Confidential Information is clear—if, prior to March 8, 2019, Mr. Lythcott did not: (1) file a motion requesting an *in camera* review; (2) set forth the factual basis for every document being withheld as privileged; and (3) file a surety bond in the amount of \$25,000, the Court would turn over the flash drive produced by Mr. Lythcott to counsel for the Personal Representative. Mr. Lythcott has refused to comply with all three conditions. Contrary to Mr. Lythcott's representation that he has "complied" with the Court's February 13 Order, he produced to the Personal

Representative’s counsel less than half of the documents produced to the Court. Moreover, Mr. Lythcott is withholding nearly 10,000 documents on a groundless assertion of privilege. Based on the plain language of the February 27 Order and Minnesota Rule of Evidence 502, and because Mr. Lythcott has refused to produce a privilege log or otherwise substantiate his claim of privilege, the Court should provide the flash drive to counsel for the Personal Representative and determine that Mr. Lythcott has waived any protections of the attorney-client privilege and work-product doctrine.

Moreover, because Mr. Lythcott is contractually required to “take any and all measures requested by Comerica to contain and resolve any . . . unauthorized disclosure of Confidential Information,” he is not entitled to any compensation—much less than the \$40,000 he has requested—from the Estate for partially complying with the February 13 Order.

It is apparent from Mr. Lythcott’s motion that he still has not accepted responsibility for his serious and intentional misconduct. The Personal Representative respectfully requests that the Court deny the motion and make it clear to the parties and their agents that the unauthorized disclosure of the Estate’s confidential information will not be tolerated.

BACKGROUND

I. THE COURT ORDERED MICHAEL LYTHCOTT TO PRODUCE DOCUMENTS AND COMMUNICATIONS RELATED TO CONFIDENTIAL ESTATE INFORMATION.

Based on evidence that Michael Lythcott and Gregg Walker had disclosed confidential information to third-parties in violation of their non-disclosure agreements with the Estate—including a 75-page “pitch book” [REDACTED]—Comerica Bank & Trust, N.A. (the “Personal Representative”) requested an order requiring Mr. Lythcott and Mr. Walker to produce all communications (and related documents) with third parties related to the Estate’s confidential information. (Feb. 8,

2019 Letter to Judge Eide.) On February 13, the Court entered an order (the “February 13 Order”) requiring:

Within 10 days, Michael Lythcott and Gregg Walker shall provide counsel for Comerica all communications and related documents with any third-parties (including, but not limited to, the two entities referenced in the February 8, 2019 Letter filed by Alfred Jackson, Omarr Baker, and Tyka Nelson) that included confidential information that belongs to the Estate. Without limiting the foregoing, Mr. Lythcott and Mr. Walker shall provide all communications and documents related to the “pitch book” attached to the February 11, 2019 letter filed by White Wiggins & Barnes, LLP. Mr. Lythcott and Mr. Walker shall also provide an access log to the data site referenced in the White Wiggins & Barnes, LLP letter that discloses all parties who accessed the site and what they reviewed.

(Feb. 13 Order, ¶ 1.)

II. MICHAEL LYTHCOTT RESPONDED TO THE FEBRUARY 13 ORDER BY PROVIDING THE COURT A FLASH DRIVE HOLDING MORE THAN 20,000 COMMUNICATIONS AND RELATED DOCUMENTS AND PRODUCING A DIFFERENT SET OF DOCUMENTS TO THE PERSONAL REPRESENTATIVE.

On February 22, 2019, counsel for Mr. Lythcott noticed their appearance and served a letter, which counsel claimed was notifying the Court of “our compliance with Your Honor’s Order.” (Feb. 22 C. Madel Letter.) However, instead of actually complying with the February 13 Order (which required a production of documents to counsel for the Personal Representative), Mr. Lythcott told the Court that he was producing a flash drive with more than 20,000 documents directly to the Court, with instructions that the Court review the documents. (Feb. 27 Order, at p. 1.)

In response to Mr. Lythcott’s production, the Court entered the February 27, 2019 “Second Order Regarding Estate Confidential Information,” which put Mr. Lythcott on notice that the Court would turn the flash drive over to counsel for the Personal Representative unless by March 8, 2019, he filed a motion requesting an *in camera* review, provided the factual bases for his claims of privilege, and filed a \$25,000 bond with the Court. (Feb. 27 Order, at p. 2.)

Based on comments made by the Court at the February 22, 2019 meeting, Mr. Lythcott also produced to the Personal Representative on February 25 a subset of what he had provided the Court, totaling 9,561 emails and documents. (March 15, 2019 Declaration of Joseph J. Cassioppi (“March 15 Cassioppi Dec.”), ¶ 2.)¹ The Personal Representative sought clarification from Mr. Lythcott’s counsel regarding the difference between what was provided to the Court and what was provided to the Personal Representative. Counsel for Mr. Lythcott advised that some of the more than 20,000 documents provided to the Court were being withheld as privileged, some were non-responsive, and that the Personal Representative would be receiving a supplemental production with the remaining responsive non-privileged documents. (*Id.*)

On March 7, the Personal Representative received a production totaling 5,346 documents from Mr. Lythcott, which his counsel explained was not a supplement to, but was designed to replace, the 9,561 emails and documents produced on February 25. (March 15 Cassioppi Dec., Ex. 1.) Mr. Lythcott did not provide any explanation of what (if any) new documents he was producing and what the differences were between the original and replacement productions. (*Id.*)

III. MICHAEL LYTHCOTT HAS WITHHELD ALMOST TEN THOUSAND DOCUMENTS AS PRIVILEGED WITHOUT A PRIVILEGE LOG OR ANY EVIDENCE OF PRIVILEGE.

Also on March 7, Mr. Lythcott notified the Personal Representative that “[t]here are 9,647 privileged documents that were withheld” from his production to the Personal Representative. (March 15 Cassioppi Dec., Ex. 1.) Additionally, Mr. Lythcott informed the

¹ To reduce the volume of Court filings, the Personal Representative is citing to both the March 5, 2019 Declaration of Joseph J. Cassioppi submitted in support of the Motion to Hold Gregg Walker in Contempt (“March 5 Cassioppi Dec.”) and a new March 15, 2019 Declaration submitted with this Opposition (“March 15 Cassioppi Dec.”).

Personal Representative that, despite the requirement of the February 27 Order requiring him to set forth the factual bases for his privilege claims and the Personal Representative's request for a privilege log, he would not be providing a log unless the Personal Representative paid for it. (*Id.*)

On March 11, Mr. Lythcott sent a letter to the Personal Representative demanding that it destroy 1,007 documents Mr. Lythcott had produced on February 25. (March 15 Cassioppi Dec., Ex. 2.) Mr. Lythcott did not even attempt to explain why the 1,007 documents were privileged, other than the conclusory statement that "we received confirmation of the specific documents, or families that hit on privilege terms." (*Id.*) Mr. Lythcott has not disclosed what those "privilege terms" were, the identity of any attorneys with whom he communicated, or any other details that would allow the Personal Representative to determine the validity of his alleged privilege claims.

In compliance with Minnesota Rule of Civil Procedure 26(f)(2), the Personal Representative has sequestered the 1,007 documents. Along with this filing, and as required by the Rule, the Personal Representative is filing under seal (with notice only to counsel for Mr. Lythcott) examples from the documents Mr. Lythcott has asserted are privileged. (March 15, 2019 Declaration of Emily A. Unger, Exs. A-K.) As the Court will see from reviewing those records, Mr. Lythcott's privilege designations are baseless and he is attempting to shield from the Court's February 13 Order documents that demonstrate the scope and extent of his misconduct.

IV. THE PERSONAL REPRESENTATIVE REQUESTED ADDITIONAL INFORMATION FROM MR. LYTHCOTT REGARDING HIS DATA SITE AND MR. LYTHCOTT RESPONDED BY TAKING DOWN THE SITE.

Mr. Lythcott's February 25 production included an "access log," which showed that Mr. Lythcott and Mr. Walker had provided [REDACTED]

[REDACTED] (March 5 Cassioppi Dec., ¶ 9 & Ex. G.)

However, the access log was incomplete because it did not list (at a minimum) Kennedy Barnes, whose access to the data site was confirmed in his February 11, 2019 letter to the Court. The access log [REDACTED], but did not list which [REDACTED] individuals downloaded records. The ability to download records was a function the site apparently offered since Mr. Barnes was able to download and provide the Court a copy of the pitch book. (March 5 Cassioppi Dec., ¶ 9.)

Based on those discrepancies, the Personal Representative sent Mr. Lythcott and Mr. Walker a letter on March 5 requesting a log from the site showing which individuals had downloaded information. (See Feb. 13, 2019 Order (requiring that Mr. Lythcott and Mr. Walker “disclose[] all parties who accessed the site and what they reviewed”)); March 15 Cassioppi Dec., Ex. 3.) The Personal Representative also requested that Mr. Lythcott and Mr. Walker disable all third-party access to the site “but not modify, alter, or otherwise destroy any of the data associated with the site, which must be preserved pending the resolution of your clients’ violation of their confidentiality obligations.” (*Id.*)

The next day, Mr. Lythcott had the site taken down. (March 15 Cassioppi Dec., Ex. 4.) On March 11, Mr. Lythcott responded, refusing to provide the requested information and stating “[b]ecause the site has already been taken down, we no longer have access to the site.” (*Id.*)

ARGUMENT

I. THE COURT SHOULD PROVIDE THE FLASH DRIVE TO THE PERSONAL REPRESENTATIVE AND DETERMINE THAT MICHAEL LYTHCOTT HAS WAIVED ANY ATTORNEY-CLIENT PRIVILEGE AND WORK-PRODUCT PROTECTIONS.

A. Michael Lythcott Has Not Complied With The Court’s February 27, 2019 Order.

The February 27 Order is unambiguous—the Court ordered Mr. Lythcott by March 8, 2019 to: (1) “file a motion requesting *in camera* review;” (2) “set forth the basis for a claim of privilege

and the factual basis upon which the claim of privilege is being made;” and (3) “file a surety bond of \$25,000 with the Court which shall be used to pay the fee of a special master to review the contents of the flash drive if the Court grants the motion.” (Feb. 27 Order, ¶ 1.) The Order further provides that “[i]f the requirements of the paragraph 1 herein are not complied with by March 11, 2019, the Court shall turn the flash drive over to counsel for the Personal Representative in compliance with the Court’s February 13, 2019 Order.” (*Id.*, ¶ 2.)

March 8 has come and gone, and Mr. Lythcott did not comply with any, much less all, of the requirements of the Court’s February 22 Order. He did not file a motion for *in camera* review. He did not provide any basis to substantiate that any of the more than 20,000 documents provided to the Court were privileged. He did not file a surety bond. As a result, the Court should provide the flash drive to counsel for the Personal Representative.

Mr. Lythcott appears to assert that because he produced some documents directly to the Personal Representative, he was not required to comply with the February 27 Order. But Mr. Lythcott did not produce the same documents to the Personal Representative as he produced to the Court, nor did he provide a privilege log or any other information to substantiate what documents he is withholding as privileged and why. More fundamentally, Mr. Lythcott does not get to decide whether or how he complies with the Court’s Orders. The February 27 Order was only necessitated by Mr. Lythcott’s refusal to comply with the plain terms of the February 13 Order. (Feb. 27 Order, at p. 1 (“The Court ordered that the documents be turned over to counsel for the Personal Representative, a motion has not been filed with the Court, and the Court does not have the resources to conduct such a review.”).) Yet, the Court provided Mr. Lythcott a second chance. The Court could not have been more clear regarding what Mr. Lythcott was required to do to avoid having the flash drive turned-over to counsel for the Personal Representative. He simply chose not

to comply with the Order. As a result, the Court should turn over the flash drive to the Personal Representative's counsel.²

B. Michael Lythcott Has Waived The Attorney-Client Privilege By Disclosing Allegedly Privileged Communications and Failing To Produce a Privilege Log.

In addition to Mr. Lythcott's failure to comply with the February 27 Order, Mr. Lythcott has waived the attorney-client privilege with respect to all documents he produced to the Personal Representative and the Court by: (1) failing to provide a privilege log or otherwise explain what documents he is withholding and why; and (2) not taking reasonable precautions to prevent disclosure of privileged communications.

As the party withholding documents that the Court has ordered him to produce, Mr. Lythcott bears the burden of presenting facts to establish the documents are privileged. *Kobluk v. University of Minn.*, 574 N.W.2d 436, 440 (Minn. 1998); *State v. Lender*, 124 N.W.2d 355, 358 (Minn. 1963) (holding that the party claiming the privilege must "present facts which establish that he has a right to assert the claim and that the communication falls within the scope of a particular interest or relationship."); *see also* Minn. R. Civ. P. 26.02 (explaining that a party asserting a privilege "shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without

² Mr. Lythcott has implied that because he is not a party to this action, it was somehow improper for the Court to require him to produce documents. To the contrary, the February 13 and February 27 Orders were squarely within the Court's authority because they were designed to address the unauthorized disclosure of confidential information that belongs to the Estate and the Court has "jurisdiction over all issues that arise when resolving an estate, except those issues specifically excluded by statute." *In re Estate of Evanoff*, 1998 WL 747167, at *2-3 (Minn. Ct. App. Oct. 27, 1998); *see also Reed v. A & A Stanley Const., Inc.*, 2014 WL 6473426, at *2 (D. Minn. Nov. 18, 2014) (explaining that the power of courts to issue orders "extends to non-parties who have notice of the Court's order and the responsibility to comply with it," including to agents and officers of a party to the case).

revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”).

Mr. Lythcott has utterly failed to meet his burden of establishing that any of the 10,654 documents he has either withheld, or which he has demanded the Personal Representative destroy, are protected by either the attorney-client privilege or work-product doctrine. He has not identified: (1) the attorneys from whom he was seeking legal advice; (2) the topic of the communications; (3) the type of privilege he is claiming (attorney-client or work product); (4) the other persons included in the communications, if any; or (5) whether he is claiming privilege as to the entire document or only portions thereof. Despite the February 27 Order specifically requiring Mr. Lythcott to explain by March 8 the factual basis for his privilege claim, Mr. Lythcott has provided precisely no information to substantiate that the documents he is withholding are, in fact, privileged. Additionally, despite a request from the Personal Representative, Mr. Lythcott has refused to provide a privilege log unless the Personal Representative pays him to do so. (March 15 Cassioppi Dec., Ex. 1.) *See Incompass IT, Inc. v. XO Commc'ns Servs., Inc.*, 2011 WL 13233488, at *4 (D. Minn. Nov. 14, 2011) (explaining the failure to produce a privilege log may result in waiver of all documents withheld as privileged). Mr. Lythcott is treating the clear requirements of the February 27 Order as “suggestions” and something to negotiate further, rather than the defined terms of a properly issued Order necessitated by his misconduct and earlier disregard of the February 13 Order. The Court should determine that Mr. Lythcott has waived the protections of the attorney-client privilege and work-product doctrine and provide the flash drive to counsel for the Personal Representative.

At a minimum, Mr. Lythcott waived the protections of the attorney-client privilege and work-product doctrine—to the extent that any documents were privileged in the first place—by

voluntarily producing documents to the Personal Representative. The new Minnesota Rule of Evidence 502 (adopted in 2018) sets the limited circumstances under which an “inadvertent disclosure” of privileged documents does not waive the privilege. Specifically, the Rule provides:

When made in a state court proceeding, the disclosure [of a privileged document] does not operate as a waiver if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Minnesota Rule of Civil Procedure 26.02(f)(2).

Minn. R. Evid. 502(b). As the party claiming that its disclosure of privileged information was inadvertent, Mr. Lythcott bears the burden of proving the three elements in the Rule. *Williams v. D.C.*, 806 F. Supp. 2d 44, 48 (D.D.C. 2011) (interpreting Fed. R. Evid. 502(b)); *see also See Fair Isaac Corp. v. Experian Info. Sols., Inc.*, 2009 WL 10677709, at *2 (D. Minn. Sept. 4, 2009).

Mr. Lythcott cannot possibly meet the showing required by Rule 502(b). In the face of the Court’s February 13 Order, Mr. Lythcott could have taken several actions to both comply with the Order and protect the attorney-client privilege. He could have sought an extension from the Court or the Personal Representative. He could have requested a “claw back” agreement from the Personal Representative under Minnesota Rule of Evidence 502(d). He could have made a rolling production of documents following review by counsel. But Mr. Lythcott did the one thing guaranteed to waive privilege—he intentionally provided documents to the Personal Representative and the Court, knowing that they had not been reviewed for privilege. As set forth above, it appears that few (if any) of the 1,007 documents Mr. Lythcott is attempting to claw back from the Personal Representative were privileged in the first place, but even if they were, Mr. Lythcott cannot—as a matter of law—establish that he “took reasonable steps to prevent disclosure” under Rule 502(b).

See Williams, 806 F. Supp. 2d at 50-51 (explaining that producing party could not meet the requirements of Rule 502(b) when it failed to show that it took reasonable steps to prevent disclosure of privileged information). At a minimum, Mr. Lythcott has waived the privilege with respect to the 1,007 documents he is attempting to claw back from the Personal Representative.

II. MICHAEL LYTHCOTT IS NOT ENTITLED TO COMPENSATION FOR HIS TIME SPENT RESPONDING TO, OR THE COSTS INCURRED COMPLYING WITH, THE FEBRUARY 13 ORDER.

Mr. Lythcott asserts that the Estate should reimburse him for his efforts responding to the February 13 Order. Setting aside the irony inherent in Mr. Lythcott demanding to be paid \$250 per hour to prepare a document production necessitated only by his own misconduct, there is no factual or legal basis for Mr. Lythcott's request for fees or expenses.

First, Mr. Lythcott's motion is premised on the applicability of Minnesota Rule of Civil Procedure 45, which by its plain terms does not apply because the Personal Representative did not serve Mr. Lythcott with a subpoena. The Court, based on evidence that Mr. Lythcott had violated his confidentiality obligations to the Estate, ordered Mr. Lythcott to produce documents to counsel for the Personal Representative. Mr. Lythcott has not cited any authority that would allow an agent for a party to obtain compensation for producing documents required by a Court order. *Cf. Macy's Retail Holdings, Inc. v. Cnty. of Hennepin*, 2014 WL 1379288 (Minn. Tax. Ct. Feb. 25, 2014) (explaining that, while a third-party is ordinarily entitled to compensation for responding to a subpoena, compensation was not warranted because the records were required to be produced pursuant to a Court order).

Second, Mr. Lythcott is contractually bound to assist the Personal Representative to remediate his unauthorized disclosure of confidential information. Specifically, his non-disclosure agreement provides:

The Recipient [Mr. Lythcott] shall immediately notify Comerica in the event of any lost or unauthorized disclosure of Confidential Information, and shall take any and all measures requested by Comerica to contain and resolve any such unauthorized disclosure of Confidential Information.

(March 15 Cassioppi Dec., Ex. 5, ¶ 5.) While Mr. Lythcott failed to notify the Personal Representative that he was intentionally disseminating confidential information to dozens of third parties, that does not eliminate his responsibility to now assist the Personal Representative to rectify the improper disclosures. The Personal Representative requires copies of all documents and communications related to Mr. Lythcott's disclosure of confidential information to determine the scope and extent of the disclosure, so that it may be contained and any associated damage be mitigated. Mr. Lythcott is required, under the NDA, to provide those documents and no provision of the agreement entitles Mr. Lythcott to compensation for those efforts. Instead, Mr. Lythcott's promise to assist the Personal Representative was part of the consideration he provided in exchange for access to the Estate's confidential information, a privilege which he blatantly abused.

Finally, Mr. Lythcott is required to indemnify the Personal Representative for "any damages to the Disclosing Parties (including reasonable attorneys' fees) resulting from unpermitted disclosure of Confidential Information by [Mr. Lythcott]." (March 15 Cassioppi Dec., Ex. 5, ¶ 11.) As a result, even if Mr. Lythcott were otherwise entitled to compensation from the Estate related to his production of documents, he would be forced to turn-around and provide that money right back to the Personal Representative under his NDA.

III. MICHAEL LYTHCOTT KNOWINGLY VIOLATED HIS NON-DISCLOSURE AGREEMENT AND MULTIPLE COURT ORDERS TO PERSONALLY ENRICH HIMSELF.

Finally, in his declaration submitted with the motion, Mr. Lythcott continues to assert "I do not believe that I have violated my nondisclosure agreement ("NDA") with the Estate."

(Lythcott Dec., ¶ 1.) Although it goes without saying, Mr. Lythcott's position is baseless.³ Mr. Lythcott knowingly provided confidential Estate information [REDACTED] [REDACTED] to convince them to make loans or purchase assets from the Estate. The records produced by Mr. Lythcott confirm that he disclosed the confidential information to personally enrich himself.

As an initial matter, Mr. Lythcott argues that a provision in his NDA allowed him to share information with literally any third party, so long as he (in his own mind) designated that third party as a "professional advisor." The NDA allows nothing of the sort. Instead, the agreement provides that "certain non-excluded heirs of the Estate have retained [Mr. Lythcott] to provide advisory services to such non-excluded heirs and, in connection with such advisory services, have requested that Comerica provide certain Confidential Information to [Mr. Lythcott]." (March 15 Cassioppi Dec., Ex. 5 at p. 1.) Mr. Lythcott is prohibited from disclosing any "Confidential Information" to third parties:

except to [his] employees, independent contractors, accountants, attorneys, and other professional advisors . . . who have a need to know such information in connection with the purpose permitted by this Agreement.

(*Id.*, ¶ 2.)

Far from limiting his disclosure of confidential Estate information to his employees, representatives and agents, Mr. Lythcott surreptitiously provided [REDACTED] access to some of the Estate's most confidential records. (March 5 Cassioppi Dec., ¶ 9 & Ex. G.)

³ Perhaps the most specious statement in Mr. Lythcott's declaration is his claim that "I did not know whether Gregg Walker had signed an NDA with the Estate so I refused to provide confidential information to him . . ." (Lythcott Dec., ¶ 3.) Mr. Lythcott makes this sworn representation to the Court despite the fact that Mr. Lythcott's own documents show that, among other disclosures, Mr. Lythcott provided Mr. Walker with confidential Estate information. (March 5 Cassioppi Dec., Ex. E.)

As acknowledged in the non-disclosure agreements Mr. Lythcott and Mr. Walker executed with at least some of the third parties to whom they provided the Estate's information, the recipients were not "professional advisors," but instead were counter-parties to a proposed "Transaction [for] the acquisition of the Estate, or some or all of its subsidiary(s) and or assets." (March 5 Cassioppi Dec., Ex. F.) In short, Mr. Lythcott does not have a colorable claim that the disclosure of information was authorized to any third party, [REDACTED] individuals to whom he provided access to confidential Estate records.

As set forth in greater detail in the Personal Representative's March 5, 2019 Motion to Hold Gregg Walker in Contempt, Mr. Lythcott and Mr. Walker engaged in a scheme beginning at least by August 2018 to provide third parties access to a data site containing the Estate's most commercially sensitive documents and information. (March 5 Cassioppi Dec., Exs. C-G.) They acknowledged that the records were confidential, and subject to confidentiality orders imposed by the Court, but nonetheless proceeded to provide [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Despite a request from the Personal Representative, Mr. Lythcott and Mr. Walker have refused to assist with the identification of the parties to whom they provided the Estate's confidential information. Instead, Mr. Lythcott has instructed the Personal Representative to find that information itself by searching the thousands

of documents he produced in response to the February 13 Order. (March 15 Cassioppi Dec., Ex. 4.)⁴

The records produced by Mr. Lythcott also explain why he was willing to blatantly violate his non-disclosure obligations—money. Specifically, the transaction proposed by Mr. Lythcott and Mr. Walker [REDACTED]
[REDACTED]
[REDACTED] (March 5 Cassioppi Dec., Exs. E-4 – E6.) Mr. Walker and Mr. Lythcott proposed that they receive [REDACTED]
[REDACTED] (*Id.*, Exs. E-3, E-5.) Mr. Lythcott understood that, by providing confidential Estate information [REDACTED]
[REDACTED] he would personally receive a portion of the loan financing, as well as additional sums if the investors subsequently purchased asserts from the Estate. As Mr. Lythcott explained in a January 29, 2019 email:

[REDACTED]

(March 15 Cassioppi Dec., Ex. 6.) Mr. Lythcott’s efforts were successful. [REDACTED]
[REDACTED]
[REDACTED] (*Id.*, Ex. 7.)

⁴ Thus far, the Personal Representative has been able to identify [REDACTED]
[REDACTED]
[REDACTED] (March 15 Cassioppi Dec., ¶ 10.)

The Personal Representative will continue to develop the record for purposes of providing a report to the Court—including with any additional documents its receives from Mr. Lythcott and Mr. Walker—but just the documents reviewed thus far establish a long-standing and intentional scheme orchestrated by Mr. Lythcott (with the assistance of Mr. Walker and others) to provide access to the Estate’s confidential information to third parties for their own personal enrichment. Now that the scheme has been exposed, Mr. Lythcott has responded not with contrition, but by continuing his pattern of denying any wrongdoing and criticizing the Personal Representative for having the temerity to challenge his conduct. Upon completion of its investigation, the Personal Representative will make a recommendation regarding what actions should be taken to compensate the Estate for the damage caused by Mr. Lythcott’s intentional misconduct.

CONCLUSION

For the reasons set forth herein, the Personal Representative respectfully requests that the Court deny Michael Lythcott’s motion, provide the flash drive to counsel for the Personal Representative, and determine what Mr. Lythcott has waived the attorney-client privilege.

Dated: March 15, 2019

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