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EXHIBIT G

Second Declaration of Peter J. Gleekel

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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUCIDIAL DISTRICT

Jobu Presents, LLC, 10-CV-17-368

v. Order of Special Master

Charles Koppelman, et. al

By the Court's order of November 22, 2019, the undersigned was appointed as the Court's special master to preside over the taking of Mr. Gleekel's deposition and to determine related disputes concerning protections claimed to be afforded by the work product doctrine. At Mr. Gleekel's deposition certain notes of witness interviews taken by Mr. Gleekel were the subject of inquiry and request, and Mr. Gleekel declined such inquiry and request based on the work product doctrine. Argument was heard by the undersigned and counsel have provided, at the undersigned request, legal authorities relative to the subject issues. On the argument and submissions of counsel, and the files and proceedings herein, the undersigned makes the following:

ORDER

1. With the exception of the orders in the following two paragraphs, Mr. Gleekel's objections to the subject inquiry and request for the content of interview notes is sustained and the same need not be produced;

2. Mr. Gleekel shall, within 10 business days from the date hereof, provide to Mssrs Koppelman and McMillan (1) the names and addresses of any witnesses discussed by any witness in the subject witness interviews, and (2) a detailed and complete description of the knowledge of any such witness if and as described in the subject interview notes;

3. Except as Mr. Gleekel affirms in writing that he will not use for any purpose against Mr. Koppelman or against Mr. McMillan (as the case may be) in such person's deposition or at trial, the answers given by such person described in the person's subject interview notes, Mr. Gleekel shall, within 10 business days from the date hereof, provide to Mr. Koppelman a copy of the notes of Mr. Koppelman's interview, and provide to Mr. McMillan a copy of the notes of Mr. McMillan's interview. If Mr. Gleekel contends in good faith that any portion of such notes or "minutes" reveal his mental impressions, he may redact such portion without redacting what the subject interviewee said, providing to the undersigned *in camera* the subject interview note with the portion contended to reveal such mental impressions highlighted; and

4. The below memorandum is a part of this order.

Dated: January 13, 2020

Richard B. Solum

Rule 53 Master

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MEMORANDUM

I. Introduction

In connection with the Court's appointment of the undersigned as a Master under Rule 53 of the Minnesota Rules of Civil Procedure, I was asked to oversee the issues surrounding the taking of the deposition of the Prince Estate's Second Special Administrator ("SSA"), Mr. Peter Gleekel, including the determination of any claims based on the invocation of the "work product" privilege. In connection with Mr. Gleekel's deposition, there was a request for notes of witness interviews which an associated of Mr. Gleekel created when Mr. Gleekel, acting as the SSA, conducted the interviews. The operative rule from Rule 26 of the Minnesota Rules of Civil Procedure, is:

> (3) *Trial Preparation: Materials.*
>
> *(A)* Documents and Tangible Things. *Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:*
>
> *(i) they are otherwise discoverable under Rule 26(b)(1); and*
>
> *(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.*
>
> *(B)* Protection Against Disclosure. *If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.*
>
> *(C)* Previous Statement. *Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:*
>
> *(i) a written statement that the person has signed or otherwise adopted or approved; or*
>
> *(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.*

(Emphasis Added)

Somewhat important to this inquiry is the fact that the Court appointing the SSA and the investigation in which the subject interviews took place, provided that the purpose of the investigation was for the SSA to determine whether any "reasonable basis for a claim," and the Court in doing so provided that the SSA "shall have the power to compel and take evidence from parties and non-parties . . . " and that the Court "expects all parties to this matter, especially those parties who participated . . . including their agents and experts to cooperate with the SSA . . . "

Important aspects of the dispute here are:

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1. Neither Mr. Gleekel nor his associate, in conducting the investigation and the subject interviews, were acting as lawyers for a client, and although they were lawyers, they were acting as court-appointed investigators;

2. As noted above, the subject interview notes (exemplars of which were examined by me in camera,) are not transcriptions and do not attempt to be verbatim recordings of what the witness said;

3. The subject notes labeled "minutes" do not facially describe any thoughts or mental impressions of Mr. Gleekel or his associate—but rather appear to be summaries of what the witness said in response to Mr. Gleekel's inquiry;

4. The notes implicitly may reveal the questions Mr. Gleekel thought to be important, thereby providing some, however modest, information as to Mr. Gleekel's thoughts as to what was important;

5. There is no evidence that the witnesses are not deceased or otherwise unavailable to have their deposition taken or perhaps submit to further voluntary interviews. Two of the witnesses are parties to the claims prosecuted as a result of the SSA's investigation and are seeking the notes—including the notes of their own interviews;

6. The taking of the depositions of those witnesses who were interviewed may be more costly than warranted, and there could be impeachment value to the notes; and

7. As noted above, the Court in its SSA appointing orders provided that the purpose of the investigation was for the SSA to determine any "reasonable basis for a claim," and the Court in doing so provided that the SSA "shall have the power to compel and take evidence from parties and non-parties . . . " and that the Court "expects all parties to this matter, especially those parties who participated in the motion regarding rescinding the UMG Agreement including their agents and experts to cooperate with the SSA . . . "

II. Discussion

Having read *in camera* exemplars of the subject interview notes, it seems that while they are not raw verbatim recordings of witness statements, they are not clearly subject to the absolute protection of writings revealing the mental impressions of lawyers constituting their work product in furthering a client's position in litigation. The revelation of such mental impressions in these notes or "minutes" appears to be minimal if any. However, I have read all the cases provided by counsel, which given the quality of counsel on both sides, means it is likely I have the read the best precedent available on the particular questions presented here. And it is clear that the general rule is that notes of interviews of witnesses, as opposed to verbatim transcripts of such interviews, can be protected if created in anticipation of litigation—and may be discovered only upon a showing of substantial need in that the equivalent cannot be obtained without "undue hardship" on the requesting party.[1]

[1] The cases are varied relative to notes of witness interviews, some notes being mere lawyer summaries more revealing of lawyer mental impressions, and some notes being the note-taker's best effort of recording what the witness said—albeit not a verbatim transcription. And the cases do teach that the work product doctrine is to be applied in a practical sense given all the circumstances of the case and in furtherance of the doctrine's purpose of protecting a party's preparation materials from disclosure to and

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And it is also clear that the protection obtains whether the person doing the interviewing or taking the notes is a lawyer acting as such or one not acting as a lawyer but as an investigator. Further, it also seems from the cases that the neither the cost of taking depositions of the subject witnesses or the possible use of prior interview notes for potential but undefined impeachment, implicates undue hardship. Thus, with the exceptions described below and the subject of paragraphs 2 and 3 of the above order, given the availability of the subject witnesses to deposition inquiry, no legally cognizable undue hardship has been shown here.

So the issue boils down to whether the notes were created in anticipation of litigation. The cases provided by counsel to Mr. Koppelman largely involve notes of witness statements resulting from an insurance company's investigation of a claim prior to any determination of whether there would or would not be any related litigation. In this insurance claims context, there are a number of cases which deny "work-product" protection to such notes, courts concluding that the witness statements were gathered in the ordinary course of an insurer's business with no particular anticipation of litigation—most claims being resolved without litigation and claims investigations being necessary to an insurer's obligations relative to assessing injury, coverage, liability, etc. The 8th Circuit, in discussing the rule stated that the test was whether the statement was created because of the prospect of litigation, and that the statement was not protected if created because the creator's business required the subject investigation as part of its business to investigate and evaluate claims. Similarly stated is that the privilege does not come into play simply because there is a "remote possibility" of litigation.

At first blush, the insurance cases have some resemblance to the circumstances here, in that Mr. Gleekel was acting as an investigator with no pre-determined view that the claims being investigated would be the subject of litigation. However, on close examination and a review of the cases provided by Mr. Gleekel's counsel, it seems the better side of the argument is that the subject interview notes are not akin to those generated in an insurance claims investigation. Mr. Gleekel's investigation was not in the ordinary course of his business, and the particular investigation here was not a regular business activity of Mr. Gleekel or the appointing Court. Rather, if one examines the record of the Estate proceedings, about which I have familiarity as the Court's special master during the last couple years, it is clear that the SSA order was underpinned by at least some warranted concern that the Estate may have claims against third parties in respect to two circumstances about which the Estate incurred known damage.[2] As noted above, the Court's appointment of the SSA was for the purpose of determining any "reasonable basis for a claim," any such claim by definition necessarily involving litigation. In the insurance investigation context, the purpose of an ordinary claims investigation is not necessarily to determine if there is to be litigation, but to accommodate the insurer's contractual obligation to adjust an insured's claim—which in most cases is accomplished in the ordinary course without litigation.

In short, not only was this investigation not in the ordinary course of either the Court's or Mr. Gleekel's business, but it was an investigation for the express purpose of assessing potential claims and the factors associated with the interests of the Estate in their pursuit. The prospect of litigation,

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related unfair advantage of the party's adversary. Here the notes or "minutes" appear to be akin to those afforded less and no absolute protection, and from my review of exemplars there does not appear to be any meaningful possible usurpation of Mr. Gleekel's trial preparation efforts by the Estate's adversaries.

[2] In the matter involving the rescission of the UMG Agreement, there was the commission paid, and in the Jobu Presents matter there was the return of the advance made by Jobu, all fully known to the Court when the SSA appointment orders were entered.

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while not a certainty, was reasonably meaningful, and undoubtedly in the anticipation of Mr. Gleekel as he performed his investigative work. As the cases note, future litigation need not be a certainty to be anticipated, and here such anticipation was reasonable to Mr. Gleekel even as he was objectively discharging his responsibility to make a determination respecting a host of factors ordered by the court. And again, here there was already the existence of one element of a litigable cause of action, namely damage to the Estate. In the insurance claims setting, the elements of damage are not elements of a future cause of action, but simply an ordinary element of an insurance claim about which insurance coverage and adjustment (not litigation) is the customary inquiry irrespective of any litigation—insurance claims generally settled in the ordinary course contract without any litigation. Further, here the SSA was appointed by the Court having some evidence giving rise to the concerns prompting the order for the investigation. No such circumstance necessarily exists in the normal everyday opening of an insurance claims file. As the cases discuss, investigations commenced on the basis of complaints of wrongdoing bring an inherent anticipation of litigation, unlike investigations commenced simply because there has been an automobile accident implicating an auto insurance policy.

As provided in a case provided by counsel to Mr. Gleekel, "the work product doctrine is not confined to situations in which litigation is certain [but] in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtain because of the prospect of litigation . . . the fact that the case might never be brought did not disqualify . . . " Here, for all the reasons discussed above, I had to recognize the reasonableness of Mr. Gleekel's anticipation of litigation when the interviews were conducted and the subject notes created.

III. Exceptions

However the issues, including the undue hardship issue, change somewhat in respect to two items, First, if there are portions of the interviews which identify other witnesses or documents, the same may not otherwise be available to Mssrs Koppelman and McMillan, and they should be available so long as any of Mr. Gleekel's mental impressions in the interview notes are protected—which protection is not an issue and is inherent in respect to the limited requirements of paragraph 2 of the above order.

Second, absent the degree of judicial compulsion imposed on Mssrs. Koppelman and McMillan as described above, it appears from the discussions at the deposition, and as would be expected, neither Mr. Koppelman not Mr. McMillan, as the apparent targets of the potential claims of the SSA's investigation, would have cooperated in voluntarily giving informal interviews. Rather, their responses to the SSA's inquiry would have undoubtedly been in a context in which they at least would have insisted on signing a summary of their answers, or a proceeding in which their answers were transcribed. Under Rule 26(b)(3) above, Mssrs Koppelman and McMillan would have had the absolute right to obtain the evidence of their own answers to Mr. Gleekel's inquiries—their own "previous statements." Thus, given all the somewhat unique circumstances here, I have found the requisite undue hardship associated with the unfairness to Mssrs. Koppelman and McMillan from withholding the notes or "minutes" of their own interview, and have adopted paragraph 3 of the above order accordingly.[3] Protection of mental impressions has been provided in the order. And as

[3] The comments to the Rules of Procedure recognize all of the potential unfairness to any withholding of previous statements of the party requesting them, as the use of such statements at trial can be given an unwarranted advantage to the party's adversary: *"Courts which treat a party's statement as though it were that of any witness overlook the fact that the party's statement is, without more, admissible in evidence. Ordinarily, a party gives a statement without insisting on a copy because he does not yet have a lawyer and*

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provided in such paragraph 3, Mr. Gleekel can decline to provide such notes if it eliminates the subject hardship or unfairness to either Mr. Koppelman or Mr. McMillan, by affirming that there would be no use of what either person said in such interview in such person's deposition or against such person at trial. If there is to be no such use, the undersigned does not find the hardship or unfairness associated with the work product protection of such notes.

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does not understand the legal consequences of his actions. Thus, the statement is given at a time when he functions at a disadvantage. Discrepancies between his trial testimony and earlier statement may result from lapse of memory or ordinary inaccuracy; a written statement produced for the first time at trial may give such discrepancies a prominence which they do not deserve. In appropriate cases the court may order a party to be deposed before his statement is produced. E.g., Smith v. Central Linen Service Co., 39 F.R.D. 15 (D.Md. 1966); McCoy v. General Motors Corp., 33 F.R.D. 354 (W.D.Pa. 1963)."