

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF CARVER****FIRST JUDICIAL DISTRICT
CASE TYPE: PROBATE DIVISION**

In the Matter of:

Case File No.: 10-PR-16-46

Estate of Prince Rogers Nelson,

**DECLARATION OF ELLEN
M. AHRENS**

Decedent.

REDACTED

I, Ellen M. Ahrens, have personal knowledge of the following facts and if called as a witness would testify that:

1. I, along with Christopher W. Madel and Jennifer M. Robbins, am counsel at MADEL PA representing Michael Lythcott in the above-captioned matter.
2. In providing the flash drive to the Court on February 22, 2019, Mr. Lythcott and his counsel worked as quickly as possible to respond to the Court's February 13 Order.
3. After providing the flash drive to the Court, we learned from further discussions with our client that we inadvertently produced privileged information. For this reason, I called Joseph J. Cassioppi, counsel for Comerica, on February 25, 2019, the following business day, at 9:13 a.m. As I explained in my March 8, 2019 declaration, I asked him not to review any documents he may receive from the flash drive provided to the Court because it contained privileged information.
4. That same day, my colleagues and I had additional conversations with Mr. Lythcott about privileged terms and believed that the February 25 production did not contain privileged information.
5. Following the February 25 production, my colleagues and I continued to work with Mr. Lythcott to confirm the privilege terms and separate them from the nonresponsive terms. As a

result of these conversations, our privilege terms changed slightly in preparation for the March 7 production. We also worked to ensure that the privileged terms were searched separately from the non-responsive terms to ensure that the term “privilege” was not used too broadly.

6. When we compared the February 25 and March 7 productions, we discovered that we had inadvertently disclosed 1,007 privileged documents in the February 25 production.

7. On March 11, we notified Comerica of the specific documents that had been—that same day—identified as privileged. The letter containing this communication is filed as Exhibit 2 to the Declaration of Joseph J. Cassioppi dated March 15, 2019.

8. We are open to discussing the privilege terms with Comerica’s counsel, including potentially providing privilege terms to Comerica, but Comerica has not responded to our invitations.

9. Our efforts to provide privilege terms to Comerica have been hampered by Comerica’s filings with the Court and letters that require responses on short time frames.

10. Attached hereto as Exhibit 1 is a true and correct copy of the email I sent to Comerica’s counsel on March 13, 2019 providing a chart comparing the DocumentIDs from Lythcott’s February 25, 2019 native production to the duplicate documents produced with Bates numbers on March 7, 2019.

11. Attached hereto as Exhibit 2 is a true and correct copy of the March 18, 2019 letter Comerica’s counsel sent to Lythcott’s counsel.

12. Attached hereto as Exhibit 3 is a true and correct copy of the March 21, 2019 letter and letter I sent to Comerica’s counsel. The email contained a link to the archive of the data site.

13. Exhibit 1 attached to the Declaration of Michael Lythcott is filed under seal with redactions because the redacted information is protected by attorney-client privilege.

14. Exhibit 2 attached to the Declaration of Michael Lythcott is filed under seal with redactions because the redacted information is protected by attorney-client privilege.

Executed on April 8, 2019 in Minneapolis, Minnesota.

By: s/ Ellen M. Ahrens
Ellen M. Ahrens

EXHIBIT 1

(REDACTED)

eanrens@madellaw.com
www.madellaw.com



Final Production
Duplic...[1].xlsx

EXHIBIT 2

(REDACTED)



March 18, 2019

VIA EMAIL

Jennifer M. Robbins, Esq.
Ellen M. Ahrens, Esq.
Madel PA
800 Pence Building
800 Hennepin Ave.
Minneapolis, MN 55403

Re: *In re the Estate of Prince Rogers Nelson*
Court File No. 10-PR-16-46

Counsel:

I am writing in response to the three letters you sent on March 11 and 12, 2019 on behalf of your client Michael Lythcott.

I. MARCH 11 LETTERS.

The first of the two letters dated March 11 demanded that we return or destroy 1,007 documents included in Mr. Lythcott's February 25, 2019 production because they "hit on privilege terms." While we have sequestered the 1,007 documents identified in your letter, you have yet to provide any information regarding the basis for your privilege claims, which is required by Minn. R. Civ. P. 26.02(f)(2) and few, if any, of the documents appear privileged. Additionally, as set forth in the memorandum we filed with the Court on Friday, any applicable privilege was waived by your client's intentional production of the documents and refusal to provide a privilege log.

The second March 11 letter responded to our March 5 letter. In it, your client admitted that he failed to preserve the data site where he provided unauthorized access to confidential Estate records to more than 100 individuals. Moreover, the letter states that Mr. Lythcott had his vendor "take down" the site on March 6 after we demanded that he "not modify, alter, or otherwise destroy any of the data associated with the site" Your client's action in taking down the site after (1) a Court Order specifically requiring Mr. Lythcott to produce information from the site (which he only complied with in part) and (2) we notified him that we were seeking additional information from the site, constitutes spoliation of evidence under Minnesota law.

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

March 18, 2019

Page 2

Please immediately send us the contact information for the vendor who maintained the site so that we can serve a subpoena to collect any remaining data which has not been destroyed by your client's actions. The Estate reserves all rights based on your client's intentional spoliation of evidence.

The letter also stated that Mr. Lythcott was refusing to provide contact information for the individuals to whom he provided access to the Estate's confidential information, asserting that "[t]his information is available to you in the production we provided on March 7, 2019." While we have identified some of the individuals from information included in your client's production, your assertion is not accurate that all of their contact information is available in the productions. Your client has ready access to this information and we should not be required to charge the Estate to review thousands of records to glean incomplete contact information. Please let us know by Wednesday, March 20, whether your client will provide the information without a Court order.

Finally, your client refused to provide the notice set forth in our March 5 letter to the individuals to whom he provided confidential Estate information, instead offering, at some uncertain point in the future, to "request that third parties—[REDACTED]—destroy all confidential information in their possession and notify us of any disclosures they have made." Based on that refusal, we will proceed with sending notice and demands for destruction to all parties we are able to identify. Your assertion that his non-disclosure agreement with the Estate allowed Mr. Lythcott to disseminate hundreds of confidential Estate records (including under-seal Court filings Mr. Lythcott was not permitted to view himself [REDACTED] [REDACTED] is frivolous and has been rejected by the Court.

II. MARCH 12 LETTER.

Your March 12 letter responded to our March 7 letter to the Court, wherein we notified the Court that we intend to send notices to the parties who improperly received the Estate's confidential information from your client, demanding that they destroy the information and disclose whether they disseminated the information to any third parties. Your letter threatens that if we send these notices, you "will be forced to take appropriate action against all responsible," including asserting claims against the Estate for tortious interference.

Respectfully, your client's threats are ridiculous. We hope that your client can take a step-back, recognize the erroneous manner in which he is approaching this issue, and work with us to remediate his improper conduct rather than exacerbate it. Your client is required to indemnify the Estate for all amounts it incurs as a result of the improper dissemination of the Estate's confidential information. Your client's refusal to cooperate (which is, itself, a separate breach of the NDA) and attempts to forestall the Estate's attempts to correct Mr. Lythcott's misconduct is only increasing his indemnification responsibilities and ultimate legal exposure.

March 18, 2019
Page 3

The Estate reserves all rights.

Regards,

/s/ Joseph J. Cassioppi

Joseph J. Cassioppi

Direct Dial: 612.492.7414

Email: jcassioppi@fredlaw.com

CC: Mark W. Greiner, Esq.

66234610.1

EXHIBIT 3

(REDACTED)

MADEL PA

800 PENCE BUILDING
800 HENNEPIN AVENUE
MINNEAPOLIS, MINNESOTA 55403
(612) 605-0630
WWW.MADELLAW.COM

ELLEN M. AHRENS
DIRECT DIAL
(612) 605-0641
EAHRENS@MADELLAW.COM

March 21, 2019

Joseph J. Cassioppi
200 South 6th St
Suite 4000
Minneapolis, MN 55402
jcassioppi@fredlaw.com

Via Email

Re: *In re the Estate of Prince Rogers Nelson*
Court File No. 10-PR-16-46

Dear Joe,

I write in response to your March 18, 2019 letter.

As an initial matter, we have invited you to set up a call to discuss privilege issues, and you have not. Instead, you have sent briefs and letters to the Court and to us alleging we waived privilege, complaining of our alleged behavior, and demanding responses within extremely short timeframes. If your goal is to truly resolve any of myriad of disputes you are asserting, this the least efficient method of accomplishing it.

We dispute that we have waived any applicable privilege with the production of our documents. Within two business days of the March 7 production, we sent our March 11 letter demanding that you destroy 1,007 documents, identified by DocID, that responded to privilege terms. As we have explained, given the volume of documents and the short timeline, it was impossible for us to create a privilege log and maintain our timeline to provide the March 7 production to you – the timeline that you complained about in your February 25 letter to the Court. We are open to proposals that will allow you to assess our privilege claims without conducting a full privilege review at your expense.

With respect to taking down the data site, that action was not taken in response to your letter. Mr. Lythcott requested that the data site be taken down before the Court issued its Order on February 13, 2019 because it was no longer needed and to prevent incurring additional storage costs of \$2,000 per month. On February 28, Mr. Lythcott reiterated that request. Regardless of the reason for taking down the data site, we have not destroyed evidence and have, in fact, complied with Request No. 1 of your March 5 letter. First, as we stated earlier, taking down the data site

