

STATE OF MINNESOTA  
COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
DISTRICT COURT  
PROBATE DIVISION

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In re Estate of:

Court File No.: 10-PR-16-46  
Honorable Kevin W. Eide

Prince Rogers Nelson,

Deceased.

**MEMORANDUM IN SUPPORT OF  
ALFRED JACKSON AND OMARR  
BAKER'S MOTION AND MOTION TO  
AMEND COURT'S ORDER  
REGARDING CONFIDENTIAL  
ESTATE INFORMATION DATED  
FEBRUARY 13, 2019**

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**INTRODUCTION**

On February 13, 2019, the Court issued an Order Regarding Estate Confidential Information (hereinafter "Feb. 13 Order"), which required certain information to be provided by Michael Lythcott and Gregg Walker and revoked the Court's appointment of Mr. Lythcott and Mr. Walker as Heirs' representatives. The Feb. 13 Order was, by its own terms, temporary and the Order invited any Heir to request a hearing to vacate or amend the Order.

Heirs Alfred Jackson and Omarr Baker (hereinafter collectively the "Moving Heirs") are moving to amend the Feb. 13 Order pursuant to Minn. R. Civ. P. 60.02, specifically to restrict the dissemination of the information the Court has ordered be produced by Mr. Lythcott and Mr. Walker, and to reinstate Mr. Lythcott as a representative of the Heirs (hereinafter "Motion to Amend"). The Moving Heirs

respectfully submit that Mr. Lythcott is a valuable advisor to the Moving Heirs and that with full information regarding the subject of the Feb. 13 Order, the Court has grounds to amend the Feb. 13 Order pursuant to Minn. R. Civ. P. 60.02.

The Court should grant Alfred Jackson and Omarr Baker's Motion to Amend.

### ARGUMENT

#### **I. THE COURT SHOULD AMEND THE FEB. 13 ORDER SO AS TO REINSTATE MICHAEL LYTHCOTT AS A REPRESENTATIVE OF THE HEIRS.**

The Court should amend the Feb. 13 Order to reinstate Mr. Lythcott as a representative of the Heirs for at least two reasons: 1) there was no violation of the Non-Disclosure Agreement; and 2) Mr. Lythcott remains a valuable advisor to the Moving Heirs and are necessary to protecting the interests of the Moving Heirs.

##### ***A. Mr. Lythcott Did Not Violate the Non-Disclosure Agreement.***

The Court's Feb. 13 Order revoking the appointment of Mr. Lythcott as a representative of the Heirs appears based on the unilateral claim of Comerica Bank & Trust, N.A. (hereinafter "Comerica") that Mr. Lythcott violated his Non-Disclosure Agreement (hereinafter "NDA"). (See Feb. 13 Order (referencing February 8, 2019 letter from Comerica in opening paragraph).) However, for reasons also set forth in the correspondence to the Court by Mr. Lythcott's attorney, there was no violation of the NDA by Mr. Lythcott. (See C. Madel Ltr to Court dated February 22, 2019 (hereinafter "Madel Ltr").)

First, Mr. Lythcott's disclosure of certain information to representatives of Primary Wave and Goldman Sachs was allowed by the terms of the NDA. The second paragraph of the NDA restricts disclosure of Confidential Information to third-parties without written approval from Comerica with an important exception: the restriction doesn't apply to Mr. Lythcott's "employees, accountants, attorneys, and other professional advisors (each, a 'Representative')..." As described by Mr. Lythcott's attorney, Mr. Lythcott has been working to coordinate a transaction that would achieve a number of laudable objectives: discharging the estate tax lien, settling remaining claims between the parties, providing the Heirs with oversight, governance, and distributions; and ensuring sufficient assets for creditors and estate administrators. (Madel Ltr. at 2.) Mr. Lythcott was doing that work in collaboration with Justice Gilbert, Comerica and the Heirs, among others. (*Id.* at 3.) As part of that coordination, Mr. Lythcott shared financial information regarding the Estate's entertainment transaction with Mr. Lythcott's professional advisors at Goldman Sachs and Primary Wave. (*Id.* at 3.) As his professional advisors, these persons and entities were excepted from the NDA non-disclosure provisions and therefore there was no NDA violation.

Second, Mr. Lythcott's adherence to the NDA is further exemplified by his attention to the additional NDA provisions. Paragraph 2 of the NDA requires that to the extent confidential information is disclosed to a representative that they are made aware of the obligations of the NDA. In conformity therewith, Mr. Lythcott did just that in

asking Primary Wave to sign an additional non-disclosure agreement. (Madel Ltr. at 4, Ex. B.) If Mr. Lythcott were acting in contravention of the NDA, he would not have ensured adherence to its remaining provisions as he did with Primary Wave. This is further evidence that Mr. Lythcott did not violate the NDA, and the Court should grant the Motion to Amend to reinstate Mr. Lythcott as a representative of the Heirs.

Third, the Heirs themselves do not view Mr. Lythcott as having violated the Non-Disclosure Agreement. The Moving Heirs do not understand or believe that Mr. Lythcott violated the NDA; rather, their understanding is that he was acting within the terms of the NDA. (Baker Aff. ¶ 3.) The ultimate purpose of the NDA is invariably protection of the Heirs, as the beneficiaries of the Estate. That the Moving Heirs do not understand Mr. Lythcott's conduct to-date to have violated the NDA is further indication that there was no violation and the Court should grant the Motion to Amend reinstating Mr. Lythcott as a representative of the Heirs.

***B. Mr. Lythcott is a Valuable Advisor to the Moving Heirs.***

The revocation of the Court's appointment of Michael Lythcott as a representative to the Heirs leaves the Moving Heirs in a concerning and precarious position in terms of their ability to protect their interests.

The Moving Heirs heavily rely on the advice of Mr. Lythcott, which they find to be both helpful and insightful. (Baker Aff. ¶ 2.) The Court's revocation of its appointment of Mr. Lythcott as a representative of the Heirs causes real and significant concern as to

the Heirs' ability to freely consult with Mr. Lythcott in their effort to find a workable conclusion to the Estate. (*Id.*) Mr. Lythcott's ability to provide advice to the Moving Heirs and represent the Moving Heirs in communications and negotiations with third-parties is dependent on Mr. Lythcott's position as a representative of the Heirs. The ability of the Moving Heirs to be able to fully communicate and rely on a representative of their choice, particularly amidst a sea of parties who the Moving Heirs do not trust to represent their interests, is essential to ensure that the Moving Heirs interests are full and properly protected.

The Moving Heirs' reliance on Mr. Lythcott, and their plea via this motion that he be reinstated as a representative of the Heirs, calls for amendment of the Feb. 13 Order and reinstatement of Mr. Lythcott as a representative of the Heirs.

**II. THE COURT SHOULD AMEND THE FEB. 13 ORDER TO RESTRICT REVIEW OF THE INFORMATION PROVIDED IN RESPONSE TO THE FIRST PARAGRAPH OF THE FEB. 13 ORDER.**

Presumably in relation to the unilateral claim of Comerica that Mr. Lythcott violated the NDA, the Feb. 13 Order requires that Mr. Lythcott and Mr. Walker provide counsel for Comerica with all communications and related documents with any third-parties, including: communications and documents related to a "pitch book" and an access log for a data site (hereinafter the "Ordered Information"). Because Mr. Lythcott did not violate the NDA for the reasons set forth in the first section of this memorandum, there is no reason for the Court to require that Mr. Lythcott produce the requested

information and the Court should amend the Feb. 13 Order accordingly. However, if the Court is going to require that the information be produced, the Moving Heirs request that the dissemination of the produced information be disseminated in the most restricted manner possible while accomplishing the goals of the Court.

First, the Moving Heirs request that information which is provided by non-parties Mr. Lythcott and Mr. Walker in response to the Feb. 13 Order be restricted to be viewable only by the Court and by the attorneys of Fredrikson & Byron, outside attorneys for Comerica. The Court has requested production of the information presumably for determining whether a violation of the NDA was committed. Fredrikson & Byron, on behalf of Comerica, raised the specter of that allegation in correspondence to the Court and therefore they should be able to evaluate the information for purposes of weighing in on such a determination without disclosure to others. The information that the Court has ordered to be disclosed contains sensitive information of non-parties, such as Primary Wave—itsself subject to a separate non-disclosure agreement. Whether a violation of the NDA occurred can be ultimately determined without wider dissemination of the information.

Second, the Moving Heirs request that the Court amend the Feb. 13 Order to restrict use of any information produced in response to the Court's Feb. 13 Order to determination of whether Mr. Lythcott or Mr. Walker violated the NDA. There is no basis for the information to be otherwise disseminated, particularly considering its

sensitive nature. In the least, the Court should require that in the event any person or entity wishes to use the information produced in response to the Feb. 13 order for any other purpose, the Heirs and Mr. Lythcott be provided with notice and an opportunity to be heard regarding any increased scope of such use.

### CONCLUSION

The Court should grant the Moving Heirs' Motion to Amend. The Feb. 13 Order is temporary by its own terms and appropriately invites amendment. The Moving Heirs have set out the reasons that it is appropriate to reinstate Mr. Lythcott as a representative of the Heirs, including that he did not violate the NDA and that Mr. Lythcott is relied upon by the Moving Heirs for consultation in the entertainment industry.

Since there was no violation of the NDA, the Court should amend the Feb. 13 Order to not require information from Mr. Lythcott. If such information is going to be required, its dissemination should be limited to the Court and Comerica's outside counsel, and its use limited to the issue of the alleged NDA violation.

Respectfully submitted,

**CHESTNUT CAMBRONNE PA**

Dated: February 26, 2019

By: /s/ Francis J. Rondoni

Francis J. Rondoni (#121903)

Jill M. Sauber (#0395198)

17 Washington Avenue North, Suite 300

Minneapolis, MN 55401-2048

Telephone: (612) 339-7300

frondoni@chestnutcambronne.com

jsauber@chestnutcambronne.com

***ATTORNEYS FOR ALFRED JACKSON  
AND OMARR BAKER***