

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

SCOTT CANARELLI, Beneficiary of The
Scott Lyle Graves Canarelli Irrevocable Trust,
dated February 24, 1998,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, in and for the County of Clark, State
of Nevada, and THE HONORABLE JUDGE
BELL, District Judge,

Respondents,

And

LAWRENCE and HEIDI CANARELLI, and
FRANK MARTIN, Special Administrator of
the Estate of Edward C. Lubbers, Former
Trustees,

Real Party in Interest.

Electronically Filed
Jan 08 2021 03:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.

District Court Case No.
P-13-078912-T

**PETITIONER'S
APPENDIX TO PETITION
FOR WRIT OF
MANDAMUS OR
PROHIBITION
(VOLUME 6 OF 7)**

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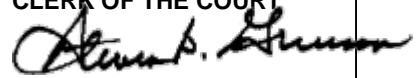
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11
12 **DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

15 In the Matter of

Case No.: P-13-078912-T
Dept. No.: XXVI/Probate

16 THE SCOTT LYLE GRAVES
17 CANARELLI IRREVOCABLE TRUST,
18 dated February 24, 1998.

Date of Hearing:
Time of Hearing:

19
20 **OPPOSITION TO RESPONDENTS' MOTION TO DISQUALIFY THE HONORABLE**
21 **GLORIA STURMAN and COUNTERMOTION FOR WAIVER OF ATTORNEY-CLIENT**
22 **PRIVILEGE DUE TO RECKLESS DISCLOSURE**

23 Petitioner Scott Canarelli ("Petitioner"), beneficiary of The Scott Lyle Graves Canarelli
24 Irrevocable Trust, dated February 24, 1998 (the "SCIT"), by and through his Counsel, the law firm
25 of Solomon Dwiggins & Freer, Ltd. ("SDF"), hereby submits this Opposition to Respondents
26 Motion to Disqualify the Honorable Judge Sturman ("Motion to Disqualify") and counter moves
27 for a declaration that Respondents waived the attorney-client privilege by recklessly disclosing
28 Bates Nos. RESP0013284-RESP0013288 ("Group 1 Documents") ("Counter-motion").

29 **I. INTRODUCTION**

30 Respondents seek Disqualification of the Honorable Judge Sturman – who has presided over
31 this matter for the last seven years – on the sole basis that her impartiality has purportedly been
32 compromised because she has been exposed to certain documents that were ultimately deemed
33 attorney-client privileged by the Nevada Supreme Court. Petitioner, however, contends that
34 Respondents waived the attorney client privilege. In such event, then Judge Sturman's exposure to
35 the purportedly privileged documents could not possibly warrant disqualification as such document
36 would become a key piece of evidence as opposed to one that purportedly results in judicial bias.

1 For this reason, Petitioner and Respondents agree that the Waiver Countermotion must be heard in
2 conjunction with or prior to the Motion to Disqualify the Honorable Judge Sturman.

3 As set forth in the Countermotion, the inadvertent disclosure of a privileged document may
4 be legally deemed an intentional act that warrants waiver where the disclosure was the product of
5 gross negligence.¹ Here, Respondent's disclosure of the Group 1 Documents was the result of gross
6 negligence because, among numerous other factors: (1) they were labeled as "handwritten notes;"
7 (2) the relevant portion of the same were produced a second time on the same day it was clawed
8 back and a full three weeks after Respondents purportedly became aware of the disclosure; (3)
9 Respondents relied on the same in responding to written discovery on two occasions; (4) 90
10 documents (totaling 271 pages) were also inadvertently disclosed demonstrating a lack of sufficient
11 pre-production review; and (5) two separate claw backs of documents (one of which was within
12 180 pages of the Group 1 Documents) failed to include the Group 1 Documents thereby
13 demonstrating the inadequacies of Respondent's post production review.

14 Moreover, even if the Group 1 Documents were to remain privileged, the disqualification
15 motion fails because: (1) the basis for disqualification under *Towbin Dodges*' application of Nevada
16 Rules of Judicial Conduct 2.11 must stem from a personal, extra-judicial source – not from what
17 the judge learned due to participation in the case; (2) Respondents have failed to allege sufficient
18 facts such that a reasonable person would question Judge Sturman's impartiality; and (3) Judges
19 sitting as the fact finder are legally presumed and trained to be able to disregard exposure to even
20 highly prejudicial information when making a ruling, which counteracts any claim of bias resulting
21 from Judge Sturman's limited exposure to the Group 1 Documents.

22 Based on the foregoing, Petitioner respectfully requests that the Motion be denied in its
23 entirety and that the court find the attorney-client privilege was waived as to the Group 1
24 Documents.

25 ¹ Notably, Petitioner contended that Respondents waived the attorney-client privilege before the Discovery
26 Commissioner. However, the Discovery Commissioner, despite strongly suggesting waiver may have occurred, never
27 ruled on the issue of waiver because she held that the documents were not privileged in the first place. Judge Sturman
28 also held that the documents were privileged and thus never opined as the waiver issue. However, the Nevada Supreme
Court, after ruling on two issues of first impression (i.e. when client note is deemed communicated to an attorney and
whether Nevada recognizes fiduciary exception to the attorney-client privilege), ultimately found that the documents
were privileged. Accordingly, Petitioners now renew their motion as to the waiver of privilege as it is no longer a moot
issue.

II. STATEMENT OF FACTS

1. Since the inception of the instant matter through June 2020, Respondents have repeatedly attempted to claw back documents that were “inadvertently produced.” In total Respondents have sought to claw back documents on eleven (11) occasions for a total of approximately 271 pages and approximately ninety (90) documents over 2 ½ years following the initial disclosures.² Multiple claw backs made by Respondents occurred only after SDF notified Respondents’ counsel of potentially privileged information disclosed to SDF.³

2. On November 2, 2017, Petitioner propounded written discovery to Edward Lubbers (“Lubber”) and provided Respondents an extension on responding to the First Request for Production of Documents to December 15, 2017; said discovery was responded to on December 15, 2017 pursuant to the parties’ agreement.⁴

3. On or about December 15, 2017, the Parties entered into an agreement concerning the disposition of electronically stored information (the “ESI Protocol”). *See* Decl. at **Exhibit 2**. In pertinent part, the ESI Protocol affirms that the producing party must provide a privilege log to the recipient party 120 days following the end of the document production. *Id.* at ¶8, **Exhibit 2**.

4. On or about December 15, 2017, Respondents filed and served Edward Lubbers, Lawrence Canarelli and Heidi Canarelli’s Initial Disclosures of Witnesses and Documents Pursuant to NRCP 16.1 (“Initial Disclosures” or “12/15/17 Disclosures”), identifying documents Bates labeled RESP0000001-0020082. *Id.* at **Exhibit 5**. Of these approximate 20,000 pages, the first 12,000 pages had been available to both parties for a couple of years prior to this document production. *Id.* at ¶ 13. Therefore, on December 15, 2017, Respondents counsel produced only approximately 8,000 new pages, many of which originated in Lubbers’ personal hard-file. *Id.* at ¶¶ 13-14. Despite the ESI Protocol, Respondents failed to provide a privilege log asserting attorney-client privilege over the Group 1 Documents within one hundred and twenty (120) days following the production of the Respondents’ Initial Disclosures. *Id.* at ¶ 14.

5. **The portion of the 12/15/17 Disclosures consisting of an attorney’s (i.e. Lubbers’) hard files expressly identifies bates labeled RESP0013284 – 13288 (the “Group 1**

² *See* Declaration of Dana A. Dwiggins (the “Dwiggins Declaration” or “Decl.”), attached hereto as **Exhibit A** at ¶ 11.

³ *See e.g.*, Dwiggins Decl. at ¶¶ 11, 28, 29, 31, 35, 37 and 38.

⁴ *See id.* at ¶ 15, excerpts which are attached to the Dwiggins Declaration as **Exhibit 6**.

1 Documents”) as “[h]andwritten notes.” *Id.* at ¶ 14; **Exhibit 5** at p. 18. Based upon such
2 designation, SDF presumed that the Group 1 Documents were intentionally disclosed, especially
3 since the documents, on their face, did not appear to be privileged. *Id.* at ¶ 14.

4 6. On or about December 15, 2017, Lubbers filed and served his Objections and
5 Responses to Scot Canarelli’s First Request for Production of Documents to Edward Lubbers (the
6 “Responses to First RPDs”), wherein Lubbers identified Bates Nos. RESP0012177 – 18799,
7 containing the Group 1 Documents (i.e. RESP0013284 – 13288), as responsive to Request Nos.: 1;
8 3; 8; 12; 13-17; 23 and 24. *Id.* at ¶ 14; **Exhibit 6**.

9 7. On or about January 19, 2018, Lubbers filed and served his Supplemental Objections
10 and Responses to Scott Canarelli’s First Request for Production of Documents to Edward Lubbers
11 (the “First Supplement to First RPDs” or “01/19/18 Production”), wherein Lubbers again
12 specifically identified and labeled documents responsive to Request No. 1 of the First RPDs. *Id.* at
13 ¶ 16; *see also* Decl. at **Exhibit 7**. Notably, Lubbers references “RESP0013247-13250 (Personal
14 Budget)” and “RESP0013289-13290 (5/20/13 notes)” in the First Supplement to First RPDs. *Id.*
15 As the final page of the **Group 1 Documents (i.e. RESP0013284 – 13288) immediately precedes**
16 **the first page of the “5/20/13 notes,”** there exists an implication that Lubbers’ counsel reviewed
17 those pages of documents between RESP0013247 and RESP0013290, inclusive of the Group 1
18 Documents, and did not claw back such documents. Lubbers’ choice to omit labeling the Group 1
19 Documents, thereby led Petitioner’s counsel to believe that such disclosure was intentional, rather
20 than unintentional. *Id.* at ¶ 16.

21 8. Respondents did not provide a privilege log within 120 days of the filing of the First
22 Supplement to First RPDs asserting attorney-client privilege over the Group 1 Documents impliedly
23 reviewed when preparing the First Supplement to First RPDs. *Id.*

24 9. On February 16, 2018, Respondents clawed back a single document, asserting
25 attorney-client privilege. *Id.* at ¶ 18; **Exhibit 8**. Such document was initially disclosed on February
26 2, 2018. *Id.* at **Exhibit 18**. The Group 1 Documents were not clawed back at such time. *Id.*

27 10. On this same day, Respondents served a privilege log and solely identified
28 documents involving communications with Daniel Gerety, CPA (“Gerety”). *Id.* at **Exhibit 18**.
Based upon information and belief, the privilege log was prepared in connection with an upcoming

1 hearing before the Discovery Commissioner relating to communications between Lubbers and
2 Gerety. *Id.* The privilege log did not include the Group 1 Documents. *Id.*

3 11. On February 19, 2018, Respondents thereafter clawed back an additional twenty-
4 four (24) documents, consisting of forty-two (42) pages. *Id.* at ¶ 20; *see also* Decl. at **Exhibit 10**.
5 The foregoing documents were initially disclosed on December 15, 2017 and February 2, 2018. *Id.*
6 at ¶ 20. The Group 1 Documents were not clawed back at such time. *Id.*

7 12. After Respondents had not clawed back the Group 1 Documents in the first claw
8 back on February 16, 2018 or the second claw back on February 19, 2018, SDF reasonably believed
9 that Respondents had reviewed the Group 1 Documents at least four times and determined the same
10 to be non-privileged. *Id.* at ¶ 21.

11 13. Contrary to Respondents' contention, the Group 1 documents on their face do not
12 appear privileged, especially in light of the fact that the Court has routinely applied the fiduciary
13 exception to the attorney-client privilege. *Id.* at ¶ 14. Indeed, the fiduciary exception was applied
14 in the instant case in March 2018, in the context of the accountant client privilege. The Discovery
15 Commissioner further stated during the August 29, 2018 hearing that nothing stood out on either
16 the Group 1 or Group 2 documents as being privileged.⁵

17 14. To summarize, SDF has reason to believe that Respondents' counsel had, or
18 reasonably should have, reviewed the Group 1 Documents at least four times as of February 19,
19 2018: (1) prior to the Respondents' submission of their Initial Disclosures and Responses to First
20 RPDs on December 15, 2017; (2) prior to the Respondents' filing the First Supplement to First
21 RPDs on January 19, 2018; (3) prior to Respondents' February 16, 2018 claw back; and (4) prior
22 to Respondents' February 19, 2018 claw back. Given that Respondents' assert that SDF knew or
23 should have known that the Group 1 Documents were privileged, it seems inconsistent that
24 Respondents' counsel, themselves, did not retain or claw back the Group 1 Documents after four
25 separate reviews.

26 ⁵ *Id.* at ¶ 23; *see also* Decl. at **Exhibit 11** at p. 47, l. 18-24 and p. 48, l. 7-10 ("But how could you fault her for
27 the other set of notes [Group 1, Typed Notes]? What about those would have stood out to her to call you?"); *id.* at p.
28 61, ll. 23-25 ("But I'm not sure it was clear on the other documents [Group 1] and I'm certainly not sure it was clear
on 899-899 through 900 [Group 2]."); *id.* p. 70, ll. 4 and 7, wherein the Discovery Commissioner states, "Well, how
would they know? . . . you've produced them."

1 15. On May 18, 2018, Petitioner filed his Supplement to Petition to Surcharge Trustee
2 and Former Trustees for Breach of Fiduciary Duties, Conspiracy and Aiding and Abetting; Petition
3 for Breach of Fiduciary Duty for Failure to Properly Account; and Petition for an Award of Attorney
4 Fees, Accountant Fees and Costs wherein Petitioner attached the Group 1 Documents. *Id.* at ¶ 23.

5 16. On June 5, 2018, more than six (6) months after production and almost three (3)
6 weeks after the filing of Supplemental Surcharge Petition, Respondents sought to claw back the
7 Group 1 documents. *Id.* at ¶ 24; **Exhibit 12.**

8 17. On June 5, 2018, Respondents served Respondents' Second Supplement to Initial
9 Disclosures (the "06/05/18 Production"), which disclosed an additional 3,588 pages of documents,
10 including Bates Labeled RESP0088954 – 88958 (the "Group 1A Documents") and identified the
11 same as "corr. note. memo.pdf" (Bates Labeled RESP0088918 - 0088969). *Id.* Notably, the Group
12 1A Documents contain pages identical to those found in the Group 1 Documents. *Id.* Based upon
13 such disclosure, SDF reasonably believed that the Respondents did not undertake any measures
14 following the filing of the Supplemental Surcharge Petition to ensure that the Group 1 Documents
15 were not produced again during the litigation. *Id.*

16 18. On June 12, 2018, Respondents served an updated privilege log identifying the
17 Group 1 Documents. *Id.* at ¶ 26; **Exhibit 14.** The privilege log was never updated anytime
18 thereafter and did not identify the Group 1A Documents. *Id.*

19 19. On June 13, 2018, Lubbers served his Sixth Supplemental Objections ("06/13/18
20 Production"), wherein Lubbers stated that "**RESP0088918-RESP0088969**," containing the Group
21 1A Documents (i.e. RESP0088954 – 88958), are responsive to Request No. 13 of the Petitioner's
22 First RPDs. *Id.* at ¶ 27; **Exhibit 15.**

23 20. On or about June 14, 2018, SDF became aware that documents Bates Labeled
24 RESP0078884–0078932 (49 pages) disclosed from the 04/06/18 Production were potentially
25 protected by attorney-client privilege. *Id.* at ¶ 28. At first glance, it appeared that these documents
26 were the notes of Respondents' counsel, J. Colby Williams, Esq., due to Mr. Williams' distinct
27 notepad paper. *Id.* SDF thereafter contacted Mr. Williams, who confirmed that those notes
28 primarily consisted of his personal attorney's notes and those notes of Hunter Campbell, Esq. *Id.*
Such bates range also included RESP78899-RESP78900 (the "Group 2 Documents") consisting of
Lubbers' notes taken during a meeting with counsel and Steven Nicolatus. *Id.*

21. As a result of the foregoing, Mr. Williams sent correspondence on June 18, 2018, asserting attorney-client privilege over Bates Labeled RESP0078884 – 0078932, including the Group 2 Documents. *Id.* at ¶ 29; **Exhibit 16**. In response, Petitioner’s counsel challenged the Group 2 Documents. *Id.* at ¶ 29; **Exhibit 17**.

22. On June 22, 2018, Respondents attempted to claw back an additional eighteen (18) documents, consisting of 127 pages. *Id.* at ¶ 30; **Exhibit 18**.

23. In letter dated June 25, 2018, SDF thereafter suggested that Mr. Williams review an additional twenty-seven (27) pages of documents (Bates Labeled RESP0089013 – 89039) to determine whether he intended to assert attorney-client privilege and claw back. *Id.* at ¶ 31. Mr. Williams ultimately clawed back two (2) documents from this Bates range. *Id.* at ¶ 31; **Exhibit 19**

24. On July 13, 2018, Petitioner filed his Motion for Determination of Privilege Designation of the Group 1 Documents and the Group 2 Documents, RESP013284-RESP013288 and RESP78899-RESP78900, respectively pursuant to the ESI Protocol. *Id.* at ¶ 32.

25. On August 29, 2018, Discovery Commissioner heard the Motion for Determination, and expressed her concern that appropriate steps were not undertaken by Respondents. Specifically, Commissioner Bulla stated during the hearing:

DISCOVERY COMMISSIONER:....because the problem is that the documents were out there. That’s why you have to claw back quickly and you have to have procedures in place. Once you do a huge document production, you go back through. Once they had a telephone call with you and some of the documents in this range were privileged, did you look again? Did you assert privilege? It wasn’t until they actually filed the petition with the attachment of the documents that red flag went up. **I think that might be too late.** Six months later from the initial production. *Id.* at ¶ 33; **Exhibit 11**.

DISCOVERY COMMISSIONER: What safeguards were in place when you produced these documents to make sure once you did a production there wasn’t an inadvertent disclosure, what did you do? *Id.* at p. 67:3-6.

26. In response, Respondents essentially admitted that no protocols were implemented to ensure privileged documents were not produced; rather, Respondents relied upon the ESI protocol, Rule 4.4(b) and *Merits Incentive, LLC. v. Eighth Jud. Dis. Ct.*, 127 Nev. 689 (2011). Dwiggins Decl. at ¶ 34. Specifically, Mr. Williams stated during the hearing:

. . . there’s an ESI protocol, there’s rule 4.4(b) and there’s merits incentives, all of which compel you to follow a certain process here. *Id.* **Exhibit 11** at p. 59:8-10.

* * *

DISCOVERY COMMISSIONER: That puts the burden on the other side. What would you do?

1 MR. WILLIAMS. Well, it – it – but there’s an important feature of that an – and
2 this was a negotiated document signed by both parties, agreed to by both parties . .
3 . And that’s why we put in the protocol that if there ends up being an inadvertent
production, you can’t argue that is the basis for waiver or why you get the
document. So I would start with that, Your Honor. *Id.* at p. 67:10-12; 67:18-21

* * *

4 MR. WILLIAMS. Yeah. But it’s not just the protocol. If you look at Rule 4.4(b),
5 which deal with what happens when you get an inadvertent disclosure. *Id.* at p.
67:10-12; 67:18-21

6 27. The ESI Protocol, however, does not relieve the parties from ethical obligations,
7 including Respondents’ counsel’s duty under RPC 1.6(c) to take reasonable efforts to prevent the
8 inadvertent or unauthorized disclosures of information relating to the client. *See id.* at ¶ 7; **Ex. 2.**

9 28. On November 2, 2018, SDF conducted a search in Relativity database containing
10 the word “acquiescence,” a unique word contained within the Group 1 Documents.⁶ It was during
11 this search that SDF located a second copy of the Group 1 Documents. *Id.* SDF thereafter contacted
12 Mr. Williams to notify him that the Group 1 Documents had been disclosed, **for the second time**,
13 in the 06/05/18 Production as RESPN0088954-0088958 (*i.e.* the Group 1A Documents)). *Id.* at ¶
14 35. During this conference, SDF further notified Mr. Williams that there were likely additional
15 privileged documents within RESP0088918-RESP0088969 and that he might want to review the
16 same to determine the necessity of an additional claw back. *Id.* Following the call, Mr. Williams
17 emailed Ms. Dwiggins to memorialize the telephone conversation and clawed back only
18 RESP0088955, which was copy of the Typed Notes included within the Group 1A Documents. *Id.*
19 at ¶ 35; **Exhibit 20.** The handwritten notes, however, that were part of the Group 1A Documents
20 were not clawed back at such time. *Id.* In the email Mr. Williams stated that “[w]e will also
21 undertake a further review of Respondents’ production to determine whether any other documents
(including those that are the subject of the pending privilege dispute) were included as part of this
22 or other productions.” *Id.*

23 29. Despite Mr. Williams’ assurances, Respondents did not claw back any additional
24 documents and, based upon information and belief, did not undertake any efforts to review such
25 documents at such time. *Id.* at ¶ 37.

26
27 ⁶ See Declaration of Erin Hansen at ¶ 4 attached hereto as **Exhibit B.** Attached as **Exhibit 1** to the Hansen
28 Declaration is a copy of the search list *after* the Group 1 Documents were purged from the Relativity database; such
search demonstrates that Respondents could have easily also determined that there was a second copy of the Group 1
Documents produced.

1 30. On June 1, 2020, nearly seventeen (17) months after Ms. Dwiggins' conversation
2 with Mr. Williams on November 2, 2018 concerning the production of additional potentially
3 privileged documents, SDF again notified Respondents' counsel that the 06/05/18 Production might
4 still contain privileged documents. *Id.* at ¶ 37.

5 31. On June 19, 2019, Respondents thereafter clawed back two (2) additional
6 documents, namely Bates Labeled RESP0013263-RESP0013267 (portion thereof) and
7 RESP0013283. *Id.* at ¶ 36; **Exhibit 21**. In response, Ms. Dwiggins stated:

8 . . . I am a bit surprised that you are clawing back RESP0013283 when you initially
9 clawed back RESP0013824 over one (1) year ago and the document immediately
10 precedes the documents you previously clawed back. I am also surprised that, in
11 light of the numerous "inadvertent disclosures" that a comprehensive review of
12 Respondents' disclosures was not undertaken over one (1) year ago.

13 *Id.* at ¶ 36; Decl. at **Exhibit 22**. The foregoing documents clawed back were initially produced
14 almost eighteen (18) months earlier, on December 15, 2017. *Id.*

15 32. On June 1, 2020, SDF again notified Respondents' counsel that there remained
16 additional documents discussed in the November 2018 conference with Mr. Williams that were
17 potentially protected and had not been clawed back. Respondents' counsel thereafter clawed back
18 17 additional documents that had initially been disclosed on June 5, 2018. *Id.* at ¶ 38; **Ex. 24**.

19 33. On June 15, 2020, SDF once again notified Respondents' counsel of additional
20 documents involving communications with Lubbers and his legal counsel in 2013, Charlene
21 Renwick, Esq., that might be privileged. *Id.* ¶ 28, **Exhibit 24**. SDF came across these documents
22 when reviewing its database to confirm that the Group 1 Documents and the Group 2 Documents
23 had been purged from its system. The documents were discovered by conducting a simple search
24 involving the term "Renwick." *See* Hansen Decl. at ¶ 5, **Exhibit 2**. On June 16, 2020, Respondents'
25 counsel thereafter clawed back several documents. *See* Dwiggins Decl. at **Exhibit 25**.

26 34. On June 19, 2020, Respondents attempted to claw back an additional document as
27 being duplicative of a document previously asserted to be protected by the attorney-client privilege.
28 *Id.* at ¶ 39, **Exhibit 26**. After reviewing the document and counsel correcting the Bates label
provided, it was discovered by SDF that the document was never, in fact, produced. Mr. Erwin was
thereafter notified of the same. *Id.* at ¶ 39.

 35. The foregoing has resulted in Petitioner unnecessarily incurring thousands and
thousands of dollars in attorney's fees and costs. *Id.* at ¶ 40. Each time Respondents attempt to



1 claw back documents, SDF was forced to review the documents and thereafter make a
2 determination of whether the designation was agreed to or challenged. *Id.* Correspondence was
3 thereafter exchanged with opposing counsel, sometimes multiple times. *Id.* In addition, SDF
4 brought to Respondents' attention potentially privileged documents, which, again, resulted in
5 SDF's review and notification to opposing counsel and the exchange of multiple correspondence
6 with counsel. *Id.* Additional cost has been incurred in purging the documents from Relativity. *Id.*

7 **III. COUNTERMOTION FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE DUE**
8 **TO RECKLESS DISCLOSURE OF THE GROUP 1 DOCUMENTS**

9 Nevada precedent does not address when a purportedly "inadvertent disclosure" results in
10 the waiver of the attorney-client privilege. Absent controlling guidance, Petitioner turns to federal
11 precedent. Prior to the enactment of Fed. R. Evid. 502,⁷ federal courts adopted one of three tests to
12 determine waiver in relation to the unintentional disclosure of privileged information: (1) that an
13 unintentional disclosure *always* constitutes a waiver; (2) that an unintentional disclosure *never*
14 constitutes waiver; and (3) that a totality-of-circumstances approach is necessary to determine if a
15 waiver occurred, sometimes called the "middle approach."⁸ The Ninth Circuit, along with the
16 majority of jurisdictions, has adopted the "middle approach," wherein "the inadvertent production
17 of privileged documents is neither a necessary nor a sufficient condition for finding that privilege
18 was waived."⁹ The Federal District Court of New Jersey adeptly explains as follows:

19 [t]he third approach takes the middle of the road, and focuses upon the reasonableness of
20 the steps taken to preserve the confidentiality of privileged documents. This approach
21 considers inadvertent disclosure to be a form of waiver. In general, a waiver must be a
22 knowing and intentional act to be effective. **While an inadvertent disclosure is, by**
23 **definition, an unintentional act, if such a disclosure results from gross negligence,**
24 **courts following the third approach will deem the disclosure to be intentional, thus**
25 **constituting a waiver of the privilege.**¹⁰

26 ⁷ In 2008, Congress passed Fed. R. Evid. 502, wherein Fed. R. Evid. 502(b) delineate how an "inadvertent"
27 disclosure is waived. Nevada, however, has yet to enact a counterpart to Fed. R. Evid. 502; accordingly, a review of
28 federal precedent prior to 2008 is necessary to determine whether a disclosure is "inadvertent" with retained privilege,
or deemed to be intentional due to gross negligence, with its privilege status waived.

⁸ See *U.S. ex. rel. Bagley v. TRW, Inc.*, 204 F.R.D. 170, 176 (C.D.Cal. 2001); see also, *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404, 410-11 (D.N.J. 1995).

⁹ *U.S. ex. rel. Bagley v. TRW, Inc.*, 204 F.R.D. 170, 177 (C.D.Cal. 2001); see also, *U.S. v. SDI Future Health, Inc.*, 464 F.Supp.2d 1027, 1045 (D. Nev. 2006); *In re Sause Bros. Ocean Towing*, 144 F.R.D. at 114-15 (D. Or. 1991).

¹⁰ *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404, 411 (D.N.J. 1995) ((emphasis added); see also *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479, 482 (E.D.Va. 1991) (citation omitted) ("[i]nadvertent disclosures are, by definition, unintentional acts, but disclosures may occur under circumstances of such extreme or gross negligence as to warrant deeming the act of disclosure to be intentional. Put another way, **it is not**

In sum, an unintentional/inadvertent disclosure may be deemed an intentional act resulting in the waiver of privilege where the disclosure was the product of gross negligence. The disclosing party bears the burden of demonstrating that such disclosure was inadvertent and not the product of gross negligence.¹¹ To determine whether a disclosure was not grossly negligent to be deemed an intentional waiver, the federal courts review the following factors: “(1) the reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of the document production; (2) the number of inadvertent disclosures; (3) the extent of the disclosure; (4) any delay and measures taken to rectify the disclosure; and (5) whether the overriding interests of justice would or would not be served by relieving the party of its error.”¹² An analysis of the foregoing factors demonstrates that Respondents’ inadvertent disclosure of the Group 1 Documents, the Group 1A, and the Group 2 Documents was done with such recklessness and gross negligence that the disclosures ought to be deemed intentional and, therefore, any privilege waived.

1. **Reasonableness of Precautions Taken to Prevent Disclosure.**

Respondents’ failure to take any reasonable precautions to prevent the unintentional disclosure of privileged documents warrants waiver of the attorney-client privilege. “The reasonableness of precautions taken to avoid inadvertent disclosures is the **primary factor** to take into account and will vary according to the circumstances presented.”¹³ Courts often review the following factors when determining whether the precautions taken by the disclosing party were reasonable: (a) the protocol employed when conducting pre-production review;¹⁴ (b) the number of

too much to insist that if a client wishes to preserve the privilege under such circumstances, he must take some affirmative action to preserve confidentiality.... Taking or failing to take precautions may be considered as bearing on intent.” (emphasis added).

¹¹ See *Eden Isle Marina, Inc. v. U.S.*, 89 Fed.Cl. 480, 503 (Fed.Cl. 2009) (citing *In re Keeper of the Records (XYZ Corp.)*, 348 F.3d 16, 22 (1st Cir. 2003)); see also, *Harmony Gold U.S.A., Inc. v. FASA Corp.*, 169 F.R.D. 113, 116 (N.D. Ill. 1996) (citing *Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Co., Inc.*, 132 F.R.D. 204, 207 (N.D. Ind. 1990)).

¹² *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404, 411 (D.N.J. 1995) (citing *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479 (E.D.Va. 1991)); see also, *Bud Antle, Inc. v. Grow-Tech Inc.*, 131 F.R.D. 179, 183 (N.D. Cal. 1990) (citing *Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 332 (N.D. Cal. 1985)).

¹³ *Scott v. Glickman*, 199 F.R.D. 174, 178 (E.D. N.C. 2001) (emphasis added).

¹⁴ See e.g., *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 104 F.R.D. 103, 105 (S.D. N.Y. 1985); *Figueras v. Puerto Rico Elec. Power Authority*, 250 F.R.D. 94, 97 (D. P.R. 2008); *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 262 (D. Md. 2008); *Bensel v. Air Line Pilots Ass’n*, 248 F.R.D. 177, 180 (D. N.J. 2008); *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*, 116 F.R.D. 46, 48 (M.D. N.C. 1987); *Local 851 of Intern. Broth. of Teamsters v. Kuehne & Nagel Air Freight, Inc.*, 36 F.Supp.2d 127, 132 (E.D. N.Y. 1998); *Draus v. Healthtrust, Incorporated-The Hosp. Co.*, 172 F.R.D. 384, 388 (S.D. Ind. 1997).

documents involved in the discovery request;¹⁵ (c) how often unintentional disclosure occurred;¹⁶ (d) whether the disclosing party produced a privilege log contemporaneous with each disclosure;¹⁷ and (e) the time constraints affecting the disclosure.¹⁸ Moreover, conclusory statements that the disclosing party took reasonable precautions to avoid unintentional disclosure is insufficient to meet the disclosing party's burden.¹⁹

a. Respondents Admitted that No Pre-Production Review Was Implemented.

The disclosing party's failure to employ adequate pre-production review of produced disclosures warrants waiver. It is axiomatic of an attorney's duty of diligence and confidentiality²⁰ to protect a client's privileged information from inadvertent disclosure.²¹ These duties, particularly an attorney's duty of confidentiality, compel the attorney to conduct a reasonable pre-production review to cull privileged information from disclosure.²² As the court stated in *Marine Midland, supra*:

¹⁵ See *Scott v. Glickman*, 199 F.R.D. 174, 178 (E.D. N.C. 2001); see also, *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479 (E.D. Va. 1991).

¹⁶ See, e.g. *In re Sause Bros. Ocean Towing*, 144 F.R.D. 111, 115 (D. Or. 1991) (disclosing identical privileged material twice considered unreasonable precautions warranting waiver); *Bud Antle, Inc. v. Grow-Tech Inc.*, 131 F.R.D. 179, 183 (N.D. Cal. 1990) (same); *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479 (E.D. Va. 1991) (waiver where multiple copies of the same privileged letter disclosed in different productions); *Eden Isle Marina, Inc. v. U.S.*, 89 Fed.Cl. 480, 520 (Fed.Cl. 2009) ("the multiple disclosures of some of the documents suggest that defendant's screening procedures were inadequate."); *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404 (D. N.J. 1995); *Eigenheim Bank v. Halpern*, 598 F.Supp. 988, 991-92 (S.D. N.Y. 1984).

¹⁷ See *In re Sause Bros. Ocean Towing*, 144 F.R.D. 111, 115 (D. Or. 1991) ("[f]ailure to provide the [privilege log] after the disclosure rendered it less likely that [recipient party] would realize the disclosed documents were privileged."); see also, *Eden Isle Marina, Inc. v. U.S.*, 89 Fed.Cl. 480, 520 (Fed.Cl. 2009) ("[a]t the earliest, it placed the documents at issue on its privilege log almost seven months after discovery of their disclosure, with some documents not added to the privilege log for nearly nine-and-one-half months and others not added to the privilege log at all. ").

¹⁸ See e.g., *Transamerica Computer Co., Inc. v. International Business Machines, Corp.*, 573 F.2d 646, 651-52 (9th Cir. 1978); *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404 (D. N.J. 1995) (lack of time constraints due to self-imposed time constraints favored waiver); *Peterson v. Bernardi*, 262 F.R.D. 424, 430 (D. N.J. 2009) (same); *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*, 116 F.R.D. 46, 48 (M.D.N.C. 1987) (no severe time constraint factor that provided counsel additional time to insist on additional review); *Fidelity and Deposit Co. of Maryland v. McCulloch*, 168 F.R.D. 516, 523 (E.D. Pa. 1996) (waiver as to second unintentional waiver, in part, because of lack of time pressures that existed under non-waived initial unintentional disclosure).

¹⁹ See *Williams v. District of Columbia*, 806 F.Supp.2d 44, 49-50 (D.C. 2011).

²⁰ NRPC 1.3 and 1.6, respectively.

²¹ In relevant part, NRPC 1.6(c) states: "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

²² See e.g., *Ciba-Geigy Corp. v. Sandoz, Ltd.*, 916 F.Supp. 404, 412 (D. N.J. 1995) (expressly rejecting defendant's argument that it could assert a claim of privilege without having first conducted a privilege review); *irth Solutions, LLC v. Windstream Communications, LLC*, 2018 WL 575911, at *5 (S.D. Ohio Jan. 26, 2018) (rejecting approach that a " cursory clawback agreement requires the return of inadvertently produced documents, regardless of the care taken by the disclosing party," because "[t]o find otherwise would undermine the lawyer's responsibility to protect the sanctity of the attorney-client privilege.") (citations omitted); *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479, 482 (E.D. Va. 1991) ("[i]t is not too much to insist that if a client wishes to

1 “[i]t is not too much to insist that if a client wishes to preserve the privilege under
2 such circumstances, **he must take some affirmative action to preserve confidentiality**.... Taking or failing to take precautions may be considered as
3 bearing on intent.”²³

4 In *Ciba-Geigy Corp. v. Sandoz Ltd.*, a party produced, on two separate occasions, an internal
5 memorandum that conveyed legal advice to the producing party’s employee.²⁴ After determining
6 that the memorandum was protected by attorney-client privilege, the court held that the party’s
7 failure to conduct **any** pre-production review of the privileged memorandum was a factor
8 warranting waiver, specifically:

9 [t]he relatively small size of the document production at issue, the lack of time
10 constraints, **combined with the defendants’ own admissions that they failed, on**
11 **two occasions, to conduct any privilege review prior to producing copies of the**
12 **[memorandum]**, compel a finding of waiver in this case.²⁵

13 Courts often determine precautions unreasonable where a disclosing party fails to provide any
14 information as to pre-production review protocol.²⁶

15 In addition, federal courts have regularly found that, even where a pre-production review
16 occurs, it must be sufficiently reasonable, otherwise waiver is still warranted.²⁷ For example, *Victor Stanley, Inc. v. Creative Pipe, Inc.*, the court held that the use of discovery software is not, by itself,
17 sufficient and that, to avoid waiver, parties must take care to select appropriate search terms,
18 develop appropriate search methodology and should test such methodology for quality assurance.²⁸

19 Finally, parties may only waive the requirement of a pre-production review where a claw
20 back agreement clearly reflects that the disclosing party has no obligation to conduct a pre-
21 production review.²⁹ In *irth Solutions, LLC v. Windstream Communications, LLC*, the federal

22 preserve the privilege under such circumstances, he must take some affirmative action to preserve confidentiality...”
(citation omitted).

23 ²³ *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479, 482 (E.D.Va. 1991) (citation
24 omitted) (Emphasis added).

25 ²⁴ 916 F.Supp. 404, 406 (D. N.J. 1995).

26 ²⁵ *Id.* at 412 (emphasis added).

27 ²⁶ *See, e.g. Figueras v. Puerto Rico Elec. Power Authority*, 250 F.R.D. 94, 97 (D. P.R. 2008); *Bensel v. Air Line*
28 *Pilots Ass’n*, 248 F.R.D. 177, 180 (D. N.J. 2008).

29 ²⁷ *See, e.g. Draus v. Healthtrust, Incorporated-The Hosp. Co.*, 172 F.R.D. 384 (S.D. Ind. 1997); *Victor Stanley,*
30 *Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 262 (D. Md. 2008); *Koch Materials Co. v. Shore Slurry Seal, Inc.*, 208
31 F.R.D. 109, 119 (D. N.J. 2002); *Draus v. Healthtrust, Incorporated-The Hosp. Co.*, 172 F.R.D. 384, 388 (S.D. Ind. 1997) (find
32 that precautions were unreasonable despite an attorney and paralegal having had conducted a pre-production review).

33 ²⁸ 250 F.R.D. 251, 262 (D. Md. 2008) (finding that defendant “failed to demonstrate that the keyword search
34 they performed on the text-searchable ESI was reasonable”).

35 ²⁹ *See irth Solutions, LLC v. Windstream Communications*, 2018 WL 575911, at *4-5 (S.D. Ohio Jan. 26, 2018);
36 *see also, U.S. v. Sensient Colors, Inc.*, 2009 WL 2905474, at *2 (D. N.J. Sept. 9, 2009); *see also, Koch Materials Co.*
37 *v. Shore Slurry Seal, Inc.*, 208 F.R.D. 109, 118 (D. N.J. 2002) (blanket inadvertent disclosure agreements disapproved

1 district court held that parties may stipulate to claw back agreements affecting a disclosing party's
2 obligation to conduct a pre-production review but that the parties "must draft them with care."³⁰
3 The court upheld a disclosing party's obligation to conduct a reasonable pre-production review
4 because "the clawback agreement...lacked any language to support a finding that the parties came
5 to an understanding that there would be no pre-production review." *Id.* at *5.

6 In the instant case, based upon Respondents' oral arguments before the Discovery
7 Commissioner, Respondents admitted to having conducted no pre-production review of the
8 documents. Specifically, the Discovery Commissioner asked Respondents repeatedly what efforts
9 they made to ensure that privileged documents were not inadvertently disclosed. In response,
10 Respondents merely cited to the ESI Protocol, Rule 4.4(b) and *Merits Incentive*, rather than their
11 own document review, to prevent privileged disclosure.³¹ The Discovery Commissioner noted that
12 such efforts improperly placed the burden on Petitioner and SDF to notify Respondents of any
13 inadvertent disclosures. *Id.* Although the Discovery Commissioner repeated her question multiple
14 times, at no time did Respondents state that *any* pre-production efforts or protocol were
15 implemented to ensure against inadvertent disclosures. *Id.*

16 As explained by the court in *Marine Midland*, Respondents' counsel is obligated to take
17 affirmative action to protect the confidentiality of privileged information.³² In fact, the ESI Protocol
18 requires the producing party to conduct a pre-production review and Respondents breached the
19 protocol by failing to undertake such review. Specifically, Section 21 of the ESI Protocol states,
20 "[n]othing herein shall relieve counsel from abiding by applicable ethical rules regarding
21 inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected
22 material." In turn, Rule 1.6(c) states, "[a] lawyer shall make reasonable efforts to prevent the
23 inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the
24

25 because "such blanket provisions, essentially immunizing attorneys from negligent handling of documents, could lead
26 to sloppy attorney review and improper disclosure which could jeopardize clients' cases.")

27 ³⁰ See *irth Solutions, LLC v. Windstream Communications*, 2018 WL 575911, at *4 (S.D. Ohio Jan. 26, 2018).

28 ³¹ See Dwiggins Decl. at ¶¶ 27-28.

³² 138 F.R.D. 479, 482 (E.D.Va. 1991).

1 representation of a client.” Reasonable efforts undoubtedly include a pre-production review.³³
2 Similar to the disclosing party in *Ciba-Geigy*, Respondents’ counsel failed to set forth **any** evidence
3 that they conducted a pre-production review. Respondents have further failed to provide an
4 affidavit or declaration from counsel attesting to the pre-production review protocol it should have
5 conducted prior to disclosure. For these reasons, Respondents have failed to demonstrate that they
6 followed adequate review protocol to survive waiver.

7 Notwithstanding the foregoing, even if Respondents undertook a pre-production review,
8 such review was so unreasonable so as to render it non-existent. This is apparent based upon the
9 fact that, to date, Respondents have attempted to clawback approximately ninety (90) documents,
10 or 271 pages, over the course of 11 separate and distinct instances and have not otherwise produced
11 a full privilege log.³⁴ These eleven (11) separate and distinct claw backs have incurred over the
12 course of twenty-eight (28) months. Even after the filing of the instant Motion to Disqualify, as
13 late as June 19, 2020, Respondents have been notified and/or otherwise attempted to claw back
14 approximately twenty-three (23) documents (mostly emails) on three (3) separate occasions. *See*
15 *Dwiggins Decl.* at ¶¶ 37-39. Therefore, even if Respondents did follow a review protocol,
16 Respondents’ repeated disclosure of identical privileged information demonstrates that such
17 protocol is inadequate to cull privileged information. As such, Respondents failure to employ
18 adequate pre-production review of produced disclosures warrants a finding of waiver by this Court.

19 **b. The Care Implemented by Respondents Did Not Correlate to the Size of**
20 **the Production.**

21 As the size of a document production increases, courts require the producing party to
22 increase the care undertaken when reviewing documents in-kind due to the greater risk of an
23 inadvertent disclosure. *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D.
24 479, 483 (E.D. Va. 1991) (“[w]hether the documents numbered 15,000 or 50,000, it cannot be
25 doubted that this was a large document production carrying with it a substantial risk that privileged

26 ³³ *See irth Solutions, supra*, *12 (“Rule 502(b)(2) provides an important safeguard of the attorney- client
27 privilege and that if the parties wish to remove that safeguard, their agreement must reflect such an understanding”;
28 finding that clawback agreement lacked language eliminating a preproduction review.).

³⁴ *See Dwiggins Decl.* at ¶ 11. Indeed, to date, Respondents have not simultaneous submitted a privilege log
with each production or within 120 days thereafter.

documents might be inadvertently disclosed unless a substantial screening effort was undertaken.”).
A failure to increase efforts as the size of the production increased warrants waiver. *Id.*

In the instant case, Respondents’ counsel has disclosed approximately 11,800 documents, or a total of approximately 113,000 pages to date.³⁵ The production, therefore, necessitated “substantial screening effort[s]” by Respondents’ counsel to prevent inadvertent disclosures. Notwithstanding, as mentioned above, Respondents’ counsel has not demonstrated that they made *any* screening efforts, let alone increased efforts. Instead, Respondents’ counsel opted to subject their disclosures to substantial risk by relying on the ESI Protocol’s claw-back protocol, RPC 4.4 and *Merits Incentive* in an effort to impermissibly shift their duty to protect their attorney-client privileged documents to Petitioner or SDF.³⁶ In so contending, Respondents ignore their own ethical obligations to undertake reasonable efforts to prevent inadvertent disclosures, as required not only by Rule 1.6(c) but also the ESI Protocol. As a result, this factor strongly weighs in favor of waiver.

Moreover and as set forth in the Dwiggins Declaration, both parties utilized the same Relativity database and a simple search of key words pulled up several of the documents at issue.³⁷ Yet, Respondents apparently failed to perform such search, which resulted in not only the inadvertent disclosure but also: (1) multiple inadvertent disclosures; (2) duplicate inadvertent disclosures; (3) an unreasonable lapse of time in attempting to claw back the documents; and (4) SDF notifying Respondents of the inadvertent disclosures. Clawing back documents 2 ½ years after the Initial Disclosures demonstrates, unequivocally, that Respondents did not implement sufficient care in light of the size of the production. Accordingly, Respondents’ conduct constitutes gross negligence and should result in this Court finding a waiver.

c. Respondents’ Precautions Were So Lax That it Resulted in Multiple Disclosures, Including Multiple Duplicates.

A party also fails to take reasonable precautions where its lax review causes multiple inadvertent disclosures, especially where they involve identical copies of previously disclosed

³⁵ See Dwiggins Decl. at ¶ 11.

³⁶ *Id.* at Exhibit 11, Discovery Commissioner Transcript, at p. 59:8-10; see also *supra* at ¶¶ 26-27.

³⁷ See Hansen Decl. at ¶¶ 4-5.

documents.³⁸ Indeed, Courts have held that a second inadvertent disclosure of the same privileged documents is even less excusable where the party had multiple opportunities to review the documents between the period of time between the first and second inadvertent disclosure.³⁹ Whereas a first inadvertent disclosure may warrant a finding of inadvertence, “[a] second bite of the apple, however, defendants cannot have.”⁴⁰ For example, in *Ciba-Geigy, supra*, the disclosing party asserted that it unintentionally disclosed identical privileged information on two separate occasions within a one month period.⁴¹ The court admonished the defendant’s “inexcusable neglect” in disclosing the privileged material a second time, stating that the “second failure to conduct a privilege review is even less excusable than the first...”⁴²

Furthermore, a disclosing party on notice of an unintentionally disclosed document bears an obligation to conduct a post-production review to ensure that further unintentional disclosures do not occur.⁴³ In *Marine Midland, supra*, the court held that a party on notice of deficient disclosure must take reasonable steps to prevent further unintentional disclosure, specifically:

³⁸ See e.g., *In re Sause Bros. Ocean Towing*, 144 F.R.D. 111, 115 (D. Or. 1991) (disclosing identical privileged material twice considered unreasonable precautions warranting waiver); *Bud Antle, Inc. v. Grow-Tech Inc.*, 131 F.R.D. 179, 183 (N.D. Cal. 1990) (same); *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479 (E.D.Va. 1991) (waiver where multiple copies of the same privileged letter disclosed in different productions); *Eden Isle Marina, Inc. v. U.S.*, 89 Fed.Cl. 480, 520 (Fed.Cl. 2009) (“the multiple disclosures of some of the documents suggest that defendant’s screening procedures were inadequate.”); *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404 (D. N.J. 1995); *Eigenheim Bank v. Halpern*, 598 F.Supp. 988, 991-92 (S.D. N.Y. 1984).

³⁹ *Fidelity and Deposit Co. of Maryland v. McCulloch*, 168 F.R.D. 516, 523 (E.D. Pa. 1996) (where the plaintiff inadvertently disclosed privileged material on two separate occasions, the court held that the second disclosure warranted waiver because the plaintiff had reviewed the privileged content at least twice before disclosing for the second time).

⁴⁰ *Eigenheim Bank v. Halpern*, 598 F.Supp. 988, 989-90 (S.D. N.Y. 1984) (holding that, where a document was unintentionally produced and first identified as privileged in a prior and substantially similar suit in response to a discovery request, the defendants’ procedure for maintaining the document’s confidentiality was “so lax, careless, inadequate or indifferent to consequences’ as to constitute a waiver.” The court further noted that while the first production in the prior litigation may warrant a finding of inadvertence, “[a] second bite of the apple, however, defendants cannot have.”).

⁴¹ 916 F.Supp. 404 (D. N.J. 1995).

⁴² *Id.* at 413.

⁴³ See *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.*, 138 F.R.D. 479, 483 (E.D.Va. 1991); see also, *In re Sause Bros. Ocean Towing*, 144 F.R.D. 111, 115 (D. Or. 1991); see also, *U.S. v. Sensient Colors, Inc.*, 2009 WL 2905474, at *6 (D. N.J. Sept. 9, 2009) (a producing party has a duty to conduct a post-production review when on notice of unintentionally disclosed document(s)); see also, *Preferred Care partners Holding Corp. v. Humana, Inc.*, 258 F.R.D. 684, 700 (S.D. Fla. 2009).

1 [b]ut [the disclosing party] was far less diligent in making any effort to prevent the
2 problem from recurring. He took no steps to ascertain whether additional
3 disclosures might occur. Given that one privileged document had been
4 inadvertently disclosed, a prudent party would have reviewed the documents
5 produced once again to ensure that other privileged documents were not
6 overlooked... Had it done so, it might well have discovered the other previously
7 overlooked copies of the letter. In that event, it is unlikely that a waiver could be
8 deemed to have occurred. In fact, however, [the disclosing party's] failure to
9 conduct a check of the produced documents led to the inadvertent production
10 of two more versions of the letter... [the disclosing party's] inadequate efforts to
11 rectify the error of the inadvertent disclosure supports the conclusion of waiver.⁴⁴

12 Here, the Group 1 Documents were contained in the initial disclosures dated December 15,
13 2017. On June 5, 2018, more than six (6) months after production and almost three (3) weeks after
14 SDF filed the Supplemental Petition referencing the same, Respondents sought to claw back the
15 Group 1 documents.⁴⁵ That same day, as part of the comparatively minimal 06/05/18 Production
16 of only 281 documents, Respondent inexcusably disclosed the Group 1 Documents again. In other
17 words, **the same day Respondents clawed back the Group 1 Documents they disclosed them a**
18 **second time.**

19 This is true even though Respondents were on notice that the Group 1 Documents had been
20 purportedly inadvertently disclosed when SDF reference the same in a pleading dated May 8, 2018.
21 Pursuant to *Marine Midland*, at such time, Respondents became obligated to ensure that their
22 pending disclosure did not contain the Group 1 Documents in order to avoid the second inadvertent
23 disclosure of such document. Like *Marine Midland*, but for Respondents failure to do so, the Group
24 1 Documents would not have been disclosed the second time. This is the epitomic of gross
25 negligence.

26 To make matters worse, as in *McCulloch*, Respondents had numerous opportunities to flag
27 the Group 1 Documents prior the second disclosure thereof. For example, Respondents' Responses
28 to First RPDs generally identified Lubbers' hard-file bates range, inclusive of the Group 1
Documents, as responsive to numerous requests for production made by Petitioner; namely,
Request Nos. 1, 3, 8, 12, 13-17, 23 and 24. In order to adequately attest to the responsiveness of
documents, Respondents **must** have reviewed Group 1 Documents. Moreover, Respondents
clawed back documents on two separate occasions in the time between the first and second

⁴⁴ 138 F.R.D. 479, 483 (E.D.Va. 1991) (emphasis added).

⁴⁵ *Id.* at ¶ 24; *see also* Decl. at Exhibit 12.

disclosure of the Group 1 Documents and yet never clawed back the Group 1 Documents. Based on the foregoing, Respondents should not be given a second bite at the apple to claim privilege; instead, it should be deemed waived.

d. Respondents Failed To Produce A Privilege Log Following Each Production.

Courts have further determined that a failure to produce a privilege log contemporaneous with the disclosure (or within 120 days following the production pursuant to the ESI Protocol), or producing a privilege log long after the production, is a factor warranting waiver. In the matter of *In re Sause Bros. Ocean Towing*, a party had employed a paralegal service to review the production and prepare a privilege log but did not provide the recipient party the privilege log until several months after producing the documents containing the unintentional disclosure.⁴⁶ The court held that the failure to provide a privilege log alongside the production decreased the likelihood that recipient counsel would realize that the disclosed documents were privileged. *Id.*

There is no question that Respondents did not produce a privilege log following each production, despite the fact that the ESI Protocol required the producing party withholding documents on the grounds of privilege to produce a privilege log within 120 days of such production.⁴⁷ Rather, Respondents only produced a privilege log on February 16, 2018, in connection with a motion to compel pending before the Discovery Commissioner. *Id.* at ¶ 19. Even still, however, the privilege log was limited to those communications between Lubbers and Gerety. *Id.* In other words, it was only prepared in connection with a discovery motion; otherwise, Respondents have not prepared a privilege log identifying any documents withheld on the basis of privilege or documents clawed back by Respondents.⁴⁸ Consequently, Respondents violated the ESI Protocol by failing issue a privilege log within 120 days of the initial production.

e. Respondents Were Not Under A Constraining Deadline When they Produced the Privileged Documents.

Unintentional disclosures made without the pressure of a constraining deadline also warrants waiver. In *McCulloch, supra*, the court found waiver as to a subsequent unintentional

⁴⁶ 144 F.R.D. 111, 115 (D. Or. 1991).

⁴⁷ See Dwiggins Declaration at ¶ 8, **Exhibit 2** at Section 17.

⁴⁸ The only update to the privilege log was on June 12, 2018, at which time Respondents updated the privilege log to include the Group 1 Documents. See Dwiggins Decl. at ¶ 26.

1 disclosure because such discovery deadlines had since been eased.⁴⁹ Lack of time constraints
2 constituted a significant factor warranting waiver in *Parkway Galley Furniture, Inc. v.*
3 *Kittinger/Pennsylvania House Group, Inc.*, where the court found that, absent any looming
4 discovery deadlines, counsel “could have insisted on an additional review...”⁵⁰ Finally, self-
5 imposed deadlines are not adequate excuses for unintentional production.⁵¹

6 The Group 1 documents were disclosed in the Initial Disclosures and Objections to Requests
7 on December 15, 2017. Such deadline for the Initial Disclosures was agreed to by Respondents
8 and, therefore, self-imposed. As to the Objections to Requests, Petitioner had granted Respondents
9 a two-week extension based upon their request. As such, the deadline was not unreasonable and
10 did not otherwise constitute a time crunch. Respondents had ample opportunity to review their
11 Initial Disclosures, which were made almost six (6) months after the litigation was initiated. As
12 such, Respondents were not under time constraints at the time the Group 1 documents were initially
13 produced; thus, warranting a waiver.

14 Several of the other inadvertent disclosures were produced in connection with supplements
15 Respondents filed to the Initial Disclosures. As there were not deadlines associated with the same,
16 there were no time constraints that would somehow excuse Respondents reckless and grossly
17 negligent conduct.

18 **2. The Proportion of Unintentionally Disclosed Documents Is Large as Compared**
19 **to the Size of the Production.**

20 Under the middle approach, waiver of unintentionally disclosed documents is more likely
21 where the number of privileged disclosures is large relative to the size of the production.⁵² For
22 example, in *Cunningham v. Connecticut Mut. Life Ins.*, this factor warranted waiver where a single
23 four-page, handwritten letter was unintentionally disclosed amid only four boxes of documents (*i.e.*
24 **a 1/4 document per box ratio**).⁵³ Indeed, the use of modern discovery tools makes simple the

25 ⁴⁹ 168 F.R.D. 516, 521 (E.D. Pa. 1996).

26 ⁵⁰ 116 F.R.D. 46, 48 (M.D.N.C. 1987).

27 ⁵¹ See *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404 (D. N.J. 1995) (lack of time constraints due to self-
28 imposed time constraints favored waiver); see also, *Peterson v. Bernardi*, 262 F.R.D. 424, 430 (D. N.J. 2009) (same).

⁵² See e.g., *Cunningham v. Connecticut Mut. Life Ins.*, 845 F.Supp. 1403, 1409 (S.D. Cal. 1994); *Figueras v.*
Puerto Rico Elec. Power Authority, 250 F.R.D. 94, 98 (D. P.R. 2008) (third factor warranted waiver where 5,000
documents reviewed); *Harmony Gold U.S.A., Inc. v. FASA Corp.*, 169 F.R.D. 113, 117 (N.D. Ill. 1996) (failure to
review a single box of documents warranted waiver).

⁵³ 845 F.Supp. 1403, 1409 (S.D. Cal. 1994).

1 review of otherwise onerous discovery such that there is less of an excuse for any inadvertent
2 disclosure.⁵⁴

3 In the instant case, Respondents' total of ninety (90) purportedly inadvertent disclosures for
4 a total of 271 pages over the course of 2 ½ years warrants waiver. With respect to the Group 1
5 Documents, in the 12/15/17 Disclosures, Respondents produced only approximately 8,000 new
6 pages to Petitioner which constituted Lubbers' hard-file and contained the Group 1 Documents. In
7 or about the Spring of 2018, Respondents' counsel informed SDF that such documents filled
8 approximately eight (8) banker's boxes.⁵⁵ To date, Respondents have attempted to claw back eight
9 (8) documents from this initial production representing a **one (1) document per box ratio** – over
10 four times that of *Cunningham. Id.* at **Exhibit A**.

11 To make matters worse, Respondents had the benefit of Relativity, one of the best ESI
12 database programs available, and, if needed, the assistance of the team of ESI experts at Holo
13 Discovery. With such tools, eight (8) documents in only eight (8) boxes of documents should never
14 have fallen through the cracks, particularly when Respondents claim that one of those Documents,
15 the Group 1 Documents, was "clearly privileged" in an effort to contend that SDF failed to notify
16 Respondents under RPC 4.4. Respondents, not Petitioner, must bear the consequences of the
17 disclosure of the Group 1 Documents because the size of the initial production was not onerous
18 when compared with the number of documents unintentionally disclosed. Accordingly, this factor
19 warrants waiver as to the Group 1 Documents.

20 **3. Respondent's Counsel Completed the Disclosures of the Group 1 Documents.**

21 The third factor, the extent of the unintentional disclosure, warrants waiver where the
22 contents of the disclosure were fully disclosed or completed.⁵⁶ Here, the Group 1 Documents were
23 fully and formally disclosed via Respondent's initial disclosures. As such this nominal factor
24 weighs in favor of disclosure.

25 **4. Respondents' Significant Delay and Error Riddled Attempts to Rectify Their**
26 **Disclosure Warrants Waiver of the Privilege.**

27 ⁵⁴ See *Figueras v. Puerto Rico Elec. Power Authority*, 250 F.R.D. 94, 98 (D. P.R. 2008).

⁵⁵ See Dwiggins Declaration, at ¶ 11.

28 ⁵⁶ See *Bud Antle, Inc. v. Grow-Tech, Inc.*, 131 F.R.D. 179, 183 (N.D. Cal. 1990); see also, *Ciba-Geigy Corp. v. Sandoz Ltd.*, 916 F.Supp. 404, 414 (D. N.J. 1995).

1 The middle approach's fourth factor also warrants waiver of the Group 1 Documents'
2 privilege because it took Respondents nearly **six months** to claw back the Group 1 Documents.
3 Federal courts have held that this factor warrants waiver where it took the disclosing party **six weeks**
4 to claw back the unintentional disclosure following the improper production.⁵⁷ Moreover, where
5 the receiving party notifies the producing party of a potential unintentional disclosure, courts have
6 held that the length of delay in seeking recovery or claw back is much shorter. Indeed, one
7 particular court held that a **five day** delay between production and attempts to recover warranted
8 waiver where the recipient party had to inform the disclosing party of the unintentional disclosure.⁵⁸

9 Here, Respondents had more than **six months** to review the Group 1 Documents contained
10 within their Initial Disclosures and to claw them back but failed to do so. Indeed, it was not until
11 **three (3) weeks** after Petitioner made affirmative use of the Group 1 Documents in the
12 Supplemental Surcharge Petition on May 18, 2018 that Respondents made their first claim that the
13 Group 1 Documents were protected by attorney-client privilege. To make matter worse, from
14 December 15, 2017 to June 5, 2018, Respondents had at least **four different opportunities** to
15 review the initial disclosures containing the Group 1 Documents. Accordingly, Respondents knew,
16 or should have known, of the unintentional disclosure of the Group 1 Documents and yet failed to
17 claw them back after each such review. Moreover, as discussed above, Respondents again produced
18 the Group 1 Documents the same day they were clawed back. With respect to the same, SDF
19 notified Respondents' counsel of the disclosure of the Group 1A Documents; however, it took
20 Respondents almost seventeen (17) months to finally claw back the complete set of the Group 1A
21 Documents (e.g. the handwritten notes of the Group 1A Documents). Ultimately, Respondents
22 failure to take action for 6 months, including for three (3) weeks after SDF referenced the Group 1
23 Documents in the Supplemental Petition, constitutes inexcusable delay warranting waiver.

24 More telling is the fact that even after SDF notified Respondents of the second disclosure
25 in November 2018, Respondents only clawed back a *portion of* the Group 1A documents, or the
26 Typed Notes. *Id.* at ¶ 35. Respondents did not claw back the handwritten notes, despite stating that
27 it would conduct a thorough review. *Id.* at ¶¶ 35, 37. Rather, it was eighteen (18) months later that

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⁵⁷ See *Bud Antle, Inc. v. Grow-Tech, Inc.*, 131 F.R.D. 179, 183 (N.D. Cal. 1990); see also, *Figueras v. Puerto Rico Elec. Power Authority*, 250 F.R.D. 94, 98 (D. P.R. 2008).

⁵⁸ See *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 190 F.R.D. 287, 292-93 (D. Mass. 2000).

SDF notified Respondents during its review of the Relativity Database of the Group 1 documents that Respondents *finally* clawed back the handwritten notes and other documents. *Id.* at ¶ 37. Respondents' repeated failure to identify the Group 1 Documents demonstrates the carelessness and recklessness with which Respondents' counsel conducted their pre-production and post-production review, if any.

5. The Overriding Interests of Fairness and Justice Warrant Waiver.

The final factor the Court examine is whether the overriding interest of justice would be served by finding waiver occurred. In *Ciba-Geigy, supra*, the court found that "the interests of justice would be served by a finding of waiver, where, as here, a party's negligence has resulted in the inadvertent production of a privileged [sic] document." 916 F.Supp. 404, 414 (D. N.J. 1995).

"A determination of 'overreaching issues of fairness' involving the protection of any attorney client privileged communication, 'must be judged against the care or negligence with which the privilege is guarded with care and diligence or negligence and indifference.'" ⁵⁹ "[W]hen disclosing counsel is so 'negligent in their failure to protect privilege * * * fairness mandates that * * * [a] court not look the other way.'" ⁶⁰

Finally, the overriding interests of fairness and justice also dictate the recognition of a waiver of the privileges. **While the Court is sensitive to the fact that Hoechst may be disadvantaged by the carelessness of its attorneys, it would be unjust to reward such gross negligence by providing relief from waiver.** In fact, if the Court does not hold that a waiver has occurred under the egregious circumstances here presented, it might as well adopt the "never waived" rule and preclude such a holding in all cases." ⁶¹

Disclosure of the Group 1 Documents further warrants waiver due to the "overriding interests of justice and fairness." The interests of justice would be served with a finding of waiver because it would be grossly inequitable for Respondents to wallow in their reckless gross negligence and then used such disclosure as an excuse to disqualify Petitioner's legal counsel of eight (8) years. *See*

⁵⁹ *Figueras v. Puerto Rico Elec. Power Auth.*, 250 F.R.D. 94, 98 (D. P.R. 2008).

⁶⁰ *Universal City Dev. Partn., Ltd. v. Ride & Show Eng'g, Inc.* (M.D.Fla.2005), 230 F.R.D. 688, 694. *See, also*, *Edwards v. Whitaker* (M.D.Tenn.1994), 868 F.Supp. 226, 229 (finding "[i]t * * * unfair to reward * * * carelessness," by granting the disclosing party a protective order); *Fed. Deposit Ins. Corp. v. Marine Midland Realty Credit Corp.* (E.D.Va.1991), 138 F.R.D. 479, 483 (finding it would have been, "fundamentally unfair * * * to reward [the disclosing party] with a protective order"). Furthermore, the "overriding interests of justice * * * would not be served by relieving the [disclosing party] of its error." *Id.*

⁶¹ *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 190 F.R.D. 287, 293 (D. Mass. 2000); *see also*, *U.S. Fidelity & Guar. Co. v. Liberty Surplus Ins. Corp.*, 630 F.Supp.2d 1332, 1341 (M.D. Fla. 2007) (final factor warranting waiver where production was grossly negligent).

1 Motion to Disqualify SDF. To hold otherwise would allow a party to “inadvertently” disclose a
2 document then seek to disqualify opposing counsel at any time.⁶² As set forth herein, Respondents
3 cannot meet the burden of establishing that the disclosure of the Group 1 Documents was truly
4 inadvertent. Rather, the disclosure of the Group 1 Documents amounted to gross negligence and
5 recklessness, thereby constituted an intentional disclosure. As a result of the same, it would be
6 inequitable and against the interests of justice and fairness to allow Respondents to seek
7 disqualification of SDF based upon its own conduct.⁶³

8 **IV. OPPOSITION TO MOTION TO DISQUALIFY JUDGE STURMAN**

9 **(A) The Application of *Towbin Dodge* is Improper Because Judge Sturman Did Not 10 Breach any Ethical Duty Imposed by the Nevada Code of Judicial Conduct 11 When She Viewed the Group 1 Documents In Camera.**

12 Respondents acknowledge that NRS 1.230 and NRS 1.235 do not apply due to timing
13 restraints. Motion, at 10:3-12. Instead, in seeking Judge Sturman’s disqualification, Respondents
14 rely *exclusively* on *Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. County of*
15 *Clark*, 121 Nev. 251, 260, 112 P.3d 1063, 1069 (Nev. 2005), which permits Nevada Code of
16 Judicial Conduct (“NCJC”) Rule 2.11(A) to act as a basis for disqualification of a judge where the
17 time under NRS 1.235(1) has passed. In turn, NCJC Rule 2.11(A) explains that “[a] judge shall
18 disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably
19 be questioned” and set forth a list of circumstances.

20 Importantly, however, *Towbin Dodge* extends judicial disqualification only to situations,
21 like those expressly listed in NCJC 2.11(A), that involve the **personal** – as opposed to **judicial** –
22 biases of a judge. Indeed, *Towbin Dodge*, citing *Lindsey v. City of Beaufort*, 911 F.Supp. 962
(D.S.C. 1995), specifically states that “the federal courts follow a procedure whereby a party may
23 move to disqualify a federal judge **based on the grounds listed in § 455**” (the federal equivalent

24 ⁶² See *State Compensation Ins. Fund v. WPS, Inc.*, 70 CalApp.4th 644, 657, 82 CalRptr.2d 799, 808 (1999)
25 (“We note that whenever a lawyer seeks to hold another lawyer accountable for misuse of inadvertently received
26 confidential materials, the burden must rest on the complaining lawyer to persuasively demonstrate inadvertence.
27 Otherwise, a lawyer might attempt to gain an advantage over his or her opponent by intentionally sending confidential
28 material and then bringing a motion to disqualify the receiving lawyer.”).

⁶³ Moreover, Lubbers, the author of the Group 1 Documents, is now deceased. Petitioner is now precluded from
deposing him. Respondents’ reckless conduct coupled with the loss of a material witness warrants waiver of the Group
1 Documents in the interests of justice and fairness. Consequently, this Court should find a waiver of the attorney-
client privilege status of the Group 1 Documents and Group 1A Documents.

1 to NCJC 2.11(A)).⁶⁴ *Towbin Dodge* then adopts such federal procedure as a “convenient method
2 for enforcing [NCJC 2.11] in situations when NRS 1.235 does not apply.” 121 Nev. 251, 260, 112
3 P.3d 1063, 1069. In turn, *Lindsey* explains that under the federal procedure adopted in Nevada:

4 **The alleged bias must be “personal” as distinguished from judicial in nature.**
5 **The bias ‘must stem from an extra judicial source and result in an opinion on**
6 **the merits on some basis other than what the judge learned from participation**
7 **in the case.** The motion to recuse may not be predicated on the judge's rulings in
the instant case or in related cases, nor on a demonstrated tendency to rule any
particular way, nor on a particular judicial leaning or attitude derived from his or
her experience on the bench.

8 *Id.*, at 967-968 (citations omitted).⁶⁵

9 Here, Respondents fatally do not even allege, nor could they, that any of the situations listed
10 in NCJC 2.11(A) are applicable to this proceeding. Instead, they claim Judge Sturman is biased as
11 a result of reviewing the Group 1 Documents as part of an *in camera* review conducted in her
12 *judicial* capacity. Stated differently, Respondents claim that Judge Sturman’s purported bias stems
13 from what she “learned from participation in the case.” *Towbin Dodge* does not recognize the same
14 as a basis for judicial disqualification since the bias is not **personal**. 121 Nev. 251, 260, 112 P.3d
15 1063, 1069. Moreover, such situation is not remotely similar to any of the situations listed in NCJC
16 2.11(A) as required under the “associated words” canon. Based on the foregoing, Respondents
17 have failed to identify any permissibly legal basis to disqualify Judge Sturman, and, therefore, this
18 Court should deny the Motion in its entirety as a matter of law.

19 (B) **Respondents Have Otherwise Failed to Meet Their Burden of Establishing**
20 **Sufficient Facts Warranting Disqualification and No Reasonable Third-Party**
21 **Would Reasonably Question Judge Sturman’s Impartiality.**

22
23 ⁶⁴ 121 Nev., at 259, 112 P.2d, at 1069.

24 ⁶⁵ Such case law is consistent with a proper construction of NCJC 2.11 under the *noscitur a sociis* canon
25 recognized by Nevada Supreme Court which instructs that when a statute contains a list, the “[a]ssociated words bear
26 on one another's meaning.” *Scott v. First Jud. Dist. Ct.*, 131 Nev. 1015, 1026, 363 P.3d 1159, 1167 (2015) (citations
27 omitted) (“...all five verbs are associated in a common list, so the canon of construction *noscitur a sociis* (‘it is known
28 by its associates’) should be considered; *see also Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. 78, 85, 294 P.3d 1228,
1234 (2013) (“The doctrine of *noscitur a sociis* teaches that “words are known by - acquire meaning from - the company
they keep.”). Here, even a cursory review of the situations meriting disqualification listed in NCJC 2.11(A) reveals that
they each describe a **judge’s extrajudicial personal biases or interests**. Thus, any purported bias obtained as part of
a judge’s professional duties (e.g. *in camera* reviews) would fall outside the scope of NCJC 2.11.



Even if *Towbin Dodge* were to be improperly extended to apply to an *in camera* review by a judge, such opinion explained that a motion to disqualify a judge “**must** set forth facts and reasons sufficient to cause a reasonable person to question the judge’s impartiality.”⁶⁶ “[T]he test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.”⁶⁷ With respect to the “reasonable person,” the Ninth Circuit Court of Appeals, in *U.S. v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008), held that “[t]he ‘reasonable person’ is not someone who is ‘hypersensitive or unduly suspicious,’ but rather is a ‘well-informed, thoughtful observer.’ The standard must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.”⁶⁸ The Nevada Supreme Court has further held that, “this standard would be set on end if a party could simply file a motion requesting judges to review potentially disqualifying circumstances” and then move to disqualify them upon such review.⁶⁹ Nevada law firmly places the burden on the party seeking disqualification⁷⁰ to show that it is “**factually necessary and not based on mere speculation**.” *PETA*, 111 Nev., at 437 (citing *United States v. Cooley*, 1 F.3d 985, 933 (10th Cir. 1993)) (emphasis added). Where “a party [seeking disqualification] fails to allege sufficient facts, summary dismissal of the motion has been deemed appropriate.”⁷¹

Here, Respondents have failed to meet their burden to establish sufficient facts demonstrating that disqualification of Judge Sturman is necessary and instead rely on mere

⁶⁶ *Id.* at 260, 112 P.3d at 1070.

⁶⁷ *PETA*, 111 Nev. at 436 (citing the Commentary to Canon 2A of the NCJC).

⁶⁸ As set forth in Section IV.A, the facts supporting disqualification must allege personal biases. Respondents have not even alleged Judge Sturman is personally biased and, thus, *Towbin Dodge* does not apply. Notwithstanding, Respondents have not even set forth sufficient facts to demonstrate that a judicially procured “bias” was created, despite the fact that the same cannot serve as a basis for disqualification under NCJC 2.11.

⁶⁹ *Hogan*, 112 Nev. at 560, 916 P.2d at 809.; *see also Id.* at 808 (“the purpose of the Code [of Judicial Conduct] would be subverted if the Code were invoked by lawyers for mere tactical advantages in a proceeding.”) (citing the preamble of the NCJC);

⁷⁰ *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 431, 437, 894 P.2d 337, 340 (Nev. 1995) (overruled on other grounds) (“a judge is presumed not to be biased, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.” (emphasis added); *Hogan v. Warden, Ely State Prison*, 112 Nev. 553, 560, 916 P.2d 805, 809 (Nev. 1996) (“With regard to judicial disqualification, the *party* has the burden of setting forth sufficient facts that demonstrate bias or the appearance thereof (italics in original, emphasis added); *Goldman v. Bryan*, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988), *quoted in In re Petition to Recall Dunleavy*, 104 Nev. 784, 788, 769 P.2d 1271, 1273 (1988).

⁷¹ *Hogan*, 112 Nev. at 560, 916 P.2d at 809.

speculation. A reasonable third party could not possibly question Judge Sturman's impartiality because Respondents have offered only conclusory and speculative suggestion that Judge Sturman is somehow "tainted" by reviewing the Group 1 Documents, without citation or reference to any facts supporting such a hollow contention.⁷² Indeed, Respondents have not cited to any comment, ruling, or other portion of the record evidencing that Judge Sturman's view of the case has in any way, shape, or form been "tainted" over almost the last two (2) years since viewing the Group 1 Documents.

Moreover, Respondents have failed to even articulate how Judge Sturman's review of Group 1 Documents creates a bias or perception of bias; rather, they rest their argument on speculation on how Judge Sturman "*may* view the case..." after reviewing the same.⁷³ In reality, however, as set forth in detail at Section IV.C below, judges are legally presumed to be able to come into contact with even highly prejudicial information and disregard it for purpose of making a ruling (*i.e.* not be biased by it). Thus, Respondents sole reliance on the fact Judge Sturman has seen the Group 1 Documents is demonstrably deficient. Indeed, the foregoing legal presumption confirms why the *Towbin Dodge* disqualification standard is designed to disqualify judges for personal biases only where facts regarding the judges personal relationships or financial interest could be presented. This is simply not applicable here.

Respondents have further failed to establish that a well-informed individual who knows and understands all of the relevant facts and has examined the record would believe that Judge Sturman, who is trained to be able to disregard inadmissible evidence, would not remain impartial towards all parties after a review of the Group 1 Documents. At the end of day, the Motion to Disqualify is no more than an obvious attempt to stall the ongoing litigation and create issues where none exists. Respondents have once again resorted to gamesmanship and pursuing any avenue they deem fits their agenda to delay the advancement of this litigation and increase its costs in order to win a war of attrition. Accordingly, the Motion should be denied in its entirety.

(C) **The Fact that Judge Sturman Viewed the Group 1 Documents Containing Lubbers' "Beliefs" is Inconsequential Because Judges, Sitting as Trier-of-Fact,**

⁷² See, Motion, at p. 12:18-19 (It "is undeniable that Judge Sturman's review of the notes raises serious questions about her impartiality...").

⁷³ See, Motion, at p. 12:21.

1 **Routinely Disregard Inadmissible Evidence and Base Their Findings and**
2 **Orders on Other Admissible Evidence.**

3 Respondents rest their entire basis for disqualification of Judge Sturman on the fact that she
4 has reviewed the Group 1 Documents. However, the Nevada Supreme Court has long since
5 recognized and applied the well-established principal that a judge, sitting as the trier of fact, is
6 presumed to disregard inadmissible evidence notwithstanding exposure to the same. Specifically,
7 the Nevada Supreme Court “held that ‘where inadmissible evidence has been received by the court,
8 sitting without a jury, and there is other substantial evidence upon which the court based its findings,
9 the court will be presumed to have disregarded the improper evidence.’”⁷⁴

10 This principal is widely acknowledged in American jurisprudence. For example, the
11 United States Supreme Court recognized, “trial judges often have access to inadmissible and highly
12 prejudicial information and are presumed to be able to discount or disregard it.”⁷⁵ Indeed, as one
13 court adeptly explained:

14 **[E]xposure to inadmissible evidence in the course of pretrial proceedings**
15 **generally does not require disqualification even where the judge is to serve as**
16 **the factfinder.** A judge sitting as the factfinder is certainly capable of sorting
17 through admissible and inadmissible evidence without resultant detriment to the
18 decision-making process. Trained judges have the ability to exclude from their
19 consideration irrelevant or improper evidence and materials which have come to
20 their attention.⁷⁶

21 See also, *State v. Read*, 147 Wash.2d 238, 242, 53 P.3d 26, 29 (Wash. 2002) (en banc) (recognizing
22 that there is a presumption that “a judge in a bench trial does not consider inadmissible evidence in
23 rendering a verdict.”); *State v. Pickering*, 473 S.W.3d 698, 703 (Mo. Ct. App. 2015) (stating that
24 “in a judge tried case, we presume that the trial judge was not prejudiced by inadmissible evidence
25 and was not influenced by it in reaching a judgment unless it is clear from the record that the trial
26 judge considered and relied upon the inadmissible evidence.”) (internal quotations and citation
27 omitted); *C.W. v. State*, 793 So.2d 74, 75 (Fla. Dist. Ct. App. 2001) (stating that, in comparison to

28

⁷⁴ *McMonigle v. McMonigle*, 110 Nev. 1407, 1409, 887 P.2d 742, 744 (Nev. 1994) *overruled on other grounds*
 (quoting *Dept. of Highways v. Campbell*, 80 Nev. 23, 33, 388 P.2d 733, 738 (Nev. 1964)); see also, *Donnelly v. Jarman*,
 131 Nev. 1273, 2015 WL 3936797, *2 (Nev. 1973) (unpublished disposition).

⁷⁵ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1077, 111 S.Ct. 2720, 2746, 115 L.E.2d 888 (1991).

⁷⁶ *State v. Medina*, 349 N.J.Super 108, 130, 739 A.2d 68, 80 (N.J. Super. Ct. App. Div 2002) (internal quotations
 and citations omitted).

1 inadmissible evidence being presented to a jury, “[c]learly, judges are in a better position to discard
2 contested evidence.”) (citation omitted). While Respondents attempt to make it seem as though
3 disqualification is warranted any time a judge sitting as the trier of fact reviews inadmissible
4 evidence, Respondents ignore the foregoing long-standing case in Nevada and other states to the
5 contrary.

6 Moreover, the cases upon which Respondents rely are completely distinguishable. First, in
7 *Lund v. Myers*, 305 P.3d 374, 305 P.3d 374 (Ariz. 2013), although the court did state that a “trial
8 judge *should consider* whether another judicial officer should conduct the review,”⁷⁷ such court did
9 not mandate a steadfast rule that *requires* another judge to review documents subject to a dispute
10 regarding their privileged nature or admissibility.⁷⁸

11 Second, Respondents’ reliance on *United States v. Zolin*, 491 U.S. 554, 109 S.Ct. 2619, 105
12 L.Ed.2d 469 (1989) is equally misplaced.⁷⁹ Third, likewise, Respondents reliance upon *In re*
13 *Marriage of Decker*, 606 N.E.2d 1094 (Ill. 1992) (crime-fraud exception) and *In re St. Johnsbury*
14 *Trucking Co., Inc.*, 184 B.R. 446 (Bankr.D.Vt. 1995)⁸⁰ are not determinative or helpful in assisting
15 with the adjudication of the instant Motion. Indeed, neither *Decker* nor *St. Johnsbury* set forth a

17 ⁷⁷ *Lund*, 232 Ariz., at 313.

18 ⁷⁸ In fact, importantly, the *Lund* court stated that the trial court may conduct a review (whether *in camera* or not),
19 “if the receiving party makes a factual showing to support a reasonable, good faith belief that the document is not
20 privileged.” *Id.* at 312. Here, Judge Sturman would have been correct to assume that Petitioner’s had already proven
21 facts supporting a reasonable belief that the Group 1 Documents were not privileged because the Discovery
22 Commissioner had previously found that such documents were not privileged. Moreover, the Group 1 Documents were
23 not clearly privileged because: (1) they were not marked attorney client privileged despite the drafter being an attorney
24 with over thirty years of experience; (2) it was not self-evident that the they were ever communicated to an attorney;
25 (3) they were relied upon by Respondents; (4) disclosed on two (2) occasions; and (5) there was a strong argument that
26 the fiduciary exception, which had already been applied in this case, also applied to such documents. If Respondents
27 contend the documents were clearly privileged, then this confirms that the disclosure of the same was reckless and that
28 waiver is warranted as set forth above.

29 ⁷⁹ *Zolin* dealt with an Internal Revenue Service (“IRS”) investigation of tax returns for L. Ron Hubbard and
30 “whether the applicability of the crime-fraud exception must be established by ‘independent evidence’ (*i.e.* without
31 reference to the content of the contested communications themselves), or, alternatively, whether the applicability of
32 that exception can be resolved by *in camera* inspection of the alleged privileged material.” *Id.*, 491 U.S., at 557. The
33 *Zolin* Court, citing *United States v. Reynolds*, 345 U.S. 1, 10, 73 S.Ct. 528, 533, 97 L.Ed. 727 (1953), noted that in
34 “some cases,” such as in *Reynolds* concerning the disclosure of military secrets, even in chambers review may
35 “jeopardize the security which the privilege is meant to protect.” *Zolin*, 491 U.S., at 570, 109 S.Ct., at 2630.
36 Undoubtedly, however, this matter has nothing to do with the crime-fraud exception to the attorney-client privilege or
37 the disclosure of military secrets, and, therefore, *Zolin* does not support Respondents’ request for the disqualification
38 of Judge Sturman.

⁸⁰ (utilizing analysis of crime-fraud exception to “fraud upon the court” resulting from the disclosure of
privileged documents evidencing the frivolous nature of a counter claim filed),

1 rule requiring the presiding judge to have another judge determine whether a document is privileged
2 or not, or face disqualification.

3 As fully set forth above, the rule in Nevada is that a judge is presumed to be impartial and,
4 even when sitting as the trier of fact, is presumed to discard inadmissible evidence when rendering
5 its rulings and orders. Indeed, as long as Judge Sturman does not consider the Group 1 Documents
6 in rendering her ultimate decision regarding the claims and defenses asserted herein (to the extent
7 they are no waived as to privilege), but rather relies upon other admissible evidence, Respondents
8 are not prejudiced in any manner whatsoever. This is particularly true given that it does not matter
9 what Lubbers' "beliefs" are when Judge Sturman is weighing the admissible evidence in rendering
10 her decisions. Indeed, Respondents have not even argued or asserted that Judge Sturman has used
11 the Group 1 Documents or Lubbers' "beliefs" when ruling upon any pretrial matters before her in
12 this matter.

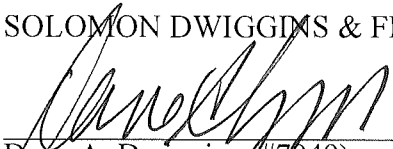
13 Moreover, Respondents' attempt to convince this Court that Judge Sturman must have used
14 another judge to review the Group 1 Documents to determine their privileged nature is misleading
15 or misplaced, at best. Respondents are unable to point to a single Nevada case supporting their
16 erroneous contention that a judge presiding over a bench trial must transfer the review of disputed
17 documents to another judge or face disqualification. Rather, the law suggests that depending upon
18 the nature of such documents, it *may* be advisable to do so. Judge Sturman's exercise of her
19 discretion to review the privileged nature of the Group 1 Documents after the Commissioner
20 determined they were not privileged did not create any prejudice whatsoever to Respondents (and
21 Respondents have not cited any), and she is clearly capable of disregarding the inadmissible
22 documents as this matter proceeds. As such, the Motion should be denied.

23 **IV. Conclusion.**

24 Based upon the foregoing, Respondents' Motion should be denied in its entirety and the
25 Countermotion should be granted.

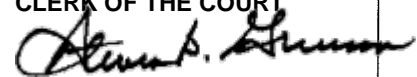
26 DATED this 29th day of June 2020.

SOLOMON DWIGGINS & FREER, LTD.


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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE TRUST,
dated February 24, 1998.

Case No.: P-13-078912-T
Dept. No.: XXVI/Probate

Date of Hearing:
Time of Hearing:

**APPENDIX OF EXHIBITS TO OPPOSITION TO RESPONDENTS' MOTION TO
DISQUALIFY THE HONORABLE GLORIA STURMAN and COUNTERMOTION FOR
WAIVER OF ATTORNEY-CLIENT PRIVILEGE DUE TO RECKLESS DISCLOSURE**

Petitioner Scott Canarelli ("Petitioner"), beneficiary of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998, by and through his Counsel, the law firm of Solomon Dwiggins & Freer, Ltd., hereby submits this APPENDIX OF EXHIBITS TO OPPOSITION TO RESPONDENTS' MOTION TO DISQUALIFY THE HONORABLE GLORIA STURMAN and COUNTERMOTION FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE DUE TO RECKLESS DISCLOSURE OF THE GROUP 1 DOCUMENTS filed concurrently herewith.

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE RANGE</u>
A	Declaration of Dana A. Dwiggins	001-014
1	September 2016 Confidentiality Agreement	015-020
2	December 15, 2017 ESI Protocol	021-034
3	Spreadsheet Showing Requests to Claw Back Documents	035-039
4	Timeline of Events	040-043

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1	5	December 15, 2017 Excerpts from Respondents Initial Disclosures of Witnesses and Documents Pursuant to NRCP 16.1	044-050
2			
3	6	December 15, 2017 Excerpts from Objections to Scott Canarelli's First Request for Production of Documents to Edward Lubbers	051-065
4			
5	7	January 19, 2018 Excerpts from Supplemental Objections and Responses to Scott Canarelli's First Request for Production of Documents to Edward Lubbers	066-072
6			
7	8	February 16, 2018 Correspondence from Joel Schwarz to Dana Dwiggins re Respondents request to claw back documents Bates labeled RESP0045293	073-074
8			
9	9	February 16, 2018 Privilege Log	075-085
10	10	February 19, 2018 Correspondence from Joel Schwarz to Dana Dwiggins re Respondents' request to claw back various documents	086-087
11	11	August 29, 2018 Hearing Transcript re Motion for Determination	088-100
12	12	June 5, 2018 Correspondence from Elizabeth Brickfield to Dana Dwiggins re request to claw back RESP0013284-13288	101-103
13			
14	13	June 5, 2018 Excerpts from Respondents' Second Supplement to Initial Disclosures of Witnesses and Documents Pursuant to NRCP 16.1	104-107
15			
16	14	June 12, 2018 Privilege Log	108-120
17	15	June 13, 2018 Excerpts Sixth Supplemental Objections and Responses to Scott Canarelli's First Request for Production of Documents to Edward Lubbers	121-125
18			
19	16	June 18, 2018 Correspondence from Colby Williams to Dana Dwiggins re claw back of RESP0078884-78932	126-128
20			
21	17	June 19, 2018 Correspondence from Dana Dwiggins to Colby Williams re RESP0078884-78932	129-131
22	18	June 22, 2018 Correspondence from Colby Williams to Dana Dwiggins re claw back	132-134
23	19	July 5, 2018 Email from Colby Williams to Dana Dwiggins re claw back of documents	135-140
24	20	November 2, 2018 Email from Colby Williams to Dana Dwiggins confirming claw back	141-143
25	21	June 19, 2019 Correspondence from Colby Williams to Dana Dwiggins re claw back	144-145
26	22	June 20, 2019 Correspondence from Dana Dwiggins to Colby Williams re inadvertent disclosure	146-147
27			
28	23	June 2, 2020 Email from Phil Erwin re claw back of RESP0088918-88969	148-151

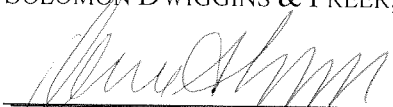
APP000999



24	June 15, 2020 Correspondence from Dana Dwiggin to Colby Williams re additional privileged documents	152-153
25	June 16, 2020 Email from Phil Erwin re claw back of various additional documents	154-157
26	June 22, 2020 Email from Phil Erwin re claw back	158-165
B	Declaration of Erin L. Hansen	166-168
1	Search Term "Acquiescence"	169-177
2	Search re Renwick	178-183

Dated this 29th day of June, 2020.

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CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on June 29th, 2020, I served a true and correct copy of the **APPENDIX OF EXHIBITS TO OPPOSITION TO RESPONDENTS' MOTION TO DISQUALIFY THE HONORABLE GLORIA STURMAN and COUNTERMOTION FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE DUE TO RECKLESS DISCLOSURE** to the following in the manner set forth below:

Via:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid, to the parties identified below
- ☐ Certified Mail, Receipt No.: _____
- ☐ Return Receipt Request
- ☒ E-Service through the Odyssey eFileNV/Nevada E-File and Serve System, as follows:

J. Colby Williams, Esq.
Campbell & Williams
700 S. Seventh Street
Las Vegas, NV 89101
Email: jcw@campbellandwilliams.com

Naylor & Braster
Jennifer Braster
1050 Indigo Dr #112,
Las Vegas, NV 89145
Email: jbraster@naylorandbrasterlaw.com
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Hayes - Wakayama
Liane Wakayama, Esq.
10001 Park Run Drive
Las Vegas, NV 89145
Email: lkw@hwlawnv.com

/s/ Terrie Maxfield
An employee of SOLOMON DWIGGINS & FREER, LTD.

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EXHIBIT A

DECLARATION OF DANA A. DWIGGINS

I, DANA A. DWIGGINS, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18, am mentally competent, have personal knowledge of the facts in this matter, except where stated as based upon information and belief, and if called upon to testify, could and would do so.

2. I have been a licensed attorney in the State of Nevada since 1999. I am a partner of SOLOMON DWIGGINS & FREER, LTD., which maintains an office at 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129.

3. I serve as counsel to Scott Canarelli *In the Matter of* the Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998, Eighth Judicial District Court Case No.: P-13-078912-T (the "Probate Court Proceedings"), pending in Dept. No. XXVI/PROBATE, before the Hon. Judge Gloria Sturman (the "Probate Court").

4. In June 2012, Solomon Dwiggins & Freer, Ltd. ("SDF") commenced representation of Scott Canarelli in relation to his beneficial interests under the Scott Lyle Graves Canarelli Irrevocable Trust ("Irrevocable Trust" or "SCIT").

5. The instant Declaration is submitted in support of the Opposition to Motion to Disqualify the Honorable Judge Sturman ("Motion to Disqualify") and the Countermotion for Waiver of Attorney Client Privilege Due to Reckless Disclosure ("Countermotion").

6. In September 2016, before the initiation of the instant litigation, the parties entered into a Confidentiality Agreement. A true and correct copy of the Confidentiality Agreement is attached hereto as **Exhibit 1**. Thereafter, on September 19, 2018, the Confidentiality Agreement was modified by the Court on September 19, 2018, to specifically only protect financial information of the Purchase Entities post January 1, 2014, and personal financial information of Larry Canarelli, the Siblings Trust and the Siblings.

7. The Parties entered into an ESI Protocol on this matter on or about December 15, 2017 ("ESI"), a true and correct copy of which is attached hereto as **Exhibit 2**.

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1 8. Section 17 of the ESI Protocol requires the producing party to produce a privilege
2 log within 120 days after the completion of its document production. As set forth herein, with the
3 exception of a limited situation, Respondents never produced a privilege log within 120 days of any
4 of its various productions and supplemental productions.

5 9. Section 21 of the ESI Protocol governs inadvertent disclosures and requires, in part,
6 any party objecting to a privilege designation to file with the Court, within ten (10) days following
7 a meet and confer a Motion for Determination.

8 10. At no time did I understand that the ESI Protocol relieved the parties of their
9 respective obligations to conduct a pre-production review, nor does the ESI Protocol expressly
10 relieve Respondents of its obligation to do so. In fact, the ESI Protocol expressly states that
11 “[n]othing herein shall relieve counsel from abiding by applicable ethical rules regarding
12 inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected
13 material.” See ESI Protocol, Section 21. In turn, Rule 1.6(c) states, “[a] lawyer shall make
14 reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access
15 to, information relating to the representation of a client.” Therefore, I understood that Respondents
16 were required to conduct a preproduction review.

17 A. **“Inadvertent Disclosures” By Respondents.**

18 11. Throughout the inception of this case, including through June 2020, Respondents
19 have repeatedly attempted to claw back documents that were “inadvertently produced.” In total,
20 Respondents sought to claw back documents on 11 occasions for a total of approximately 271 pages
21 and approximately 90 documents. On multiple of these occasions, I notified Respondents of the
22 potential inadvertence. Attached hereto as **Exhibit 3** is a true and correct copy of a spreadsheet
23 setting forth a summary of the following disclosures and which identifies: (1) the bates label range
24 of the pages/documents clawbacked; (2) the date of the disclosure was made; (3) the date of the
25 clawback; and (4) the privilege asserted. Attached as **Exhibit 4** is a timeline of each disclosure and
26 the Bates label range of the documents produced by Respondents, as well as other pertinent dates.
27 In total, Respondents have disclosed approximately 11,800 documents, or a total of approximately
28

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1 113,000 pages, to date.

2 12. SDF has utilized Relativity as its database to manage the electronic discovery in this
3 case. Mr. Williams has communicated to me that his firm, likewise, is utilizing Relativity to
4 manage the electronic discovery in this case. In fact, in or about May or June 2018, Mr. Williams
5 informed me that his partner, Philip Erwin, Esq., was the firm's resident expert in electronic
6 discovery and was brought into the case in order to assist in the management of the electronic
7 discovery.

8 13. On December 15, 2017, Respondents produced their Initial Disclosures, Bates
9 labeled RESP0000001 – RESP0020082 ("12/15/17 Disclosures or "Initial Disclosures"). A true
10 and correct copy of the excerpts from the Initial Disclosures are attached hereto as **Exhibit 5**.
11 Approximately 12,000 of the Initial Disclosures included "Dropbox files" that were previously
12 made available to the parties in 2014. These Dropbox files included mostly accounting documents
13 relating to the Irrevocable Trust and valuation documents relating to the Purchase Agreement.¹
14 Therefore, only approximately 8,000 pages of the disclosures were documents that had not
15 previously been produced; although there were many duplicates contained therein of documents
16 from the Dropbox files. It was subsequently represented to SDF that many of the 8,000 pages of
17 disclosures constituted the hard file of Edward Lubbers ("Lubbers"). It was represented to SDF in
18 or about the Spring 2018 that Lubbers' hard file consisted of eight (8) banker's boxes.

19 14. Included in the 12/15/17 Disclosures were documents, Bates labeled RESP0013284-
20 134288 (the "Group 1 Documents"). These documents included one (1) typed page of notes and
21 three (3) pages of handwritten notes. The Group 1 Documents were ultimately determined by the
22 Nevada Supreme Court to be protected by the attorney client privilege in May 2020. No author of
23 the Group 1 Documents was identified on the documents. The Group 1 Documents were further
24 identified on the 12/15/17 Disclosures as "handwritten notes". See **Ex. 5** at p. 18. Based upon such
25 identification, I presumed that the Group 1 Documents were intentionally disclosed. Despite the

26
27 ¹ The Purchase Agreement relates to that certain agreement entered into by the then Former
28 Trustees, whereby the Irrevocable Trust's interest in several entities ("Purchased Entities") was sold
to Scott's three (3) siblings through their respective irrevocable trusts and SJA Acquisitions, LLC.



ESI Protocol, no privilege log was produced within 120 days following the production, asserting attorney-client privilege over the Group 1 Documents. Nor did Respondents attempt to claw back the Group 1 Documents within 30 days thereafter. Moreover, and contrary to Respondents' contention, the Group 1 documents on their face do not appear privileged, especially in light of the fact that the Discovery Commissioner and Judge Sturman, at a minimum, have routinely applied the fiduciary exception to the attorney-client privilege.²

15. On December 15, 2017, Lubbers further served his Objections to Scott Canarelli's First Request for Production of Documents to Edward Lubbers ("Objections to Requests"). A true and correct copy of the excerpts from the Objections to Requests are attached hereto as **Exhibit 6**. In Response to Request for Production No. 1, requesting Lubbers to produce his entire file on the Scott Lyle Graves Canarelli Irrevocable Trust ("SCIT" or "Irrevocable Trust"), Lubbers expressly referenced documents Bates labeled RESP0012177-18799. Included in such range were the Group 1 Documents. Lubber similarly referenced these documents as responsive to Request Nos. 3, 8, 12, 13-17, 23 and 24. I presumed in identifying such Bates label range that Respondents reviewed and intentionally determined that such documents were responsive to the discovery requests, including the Group 1 Documents. No privilege log was provided with the Objections to the Requests.

16. On January 19, 2018, Lubbers served a Supplement to the Objections to Requests ("Supplement to the Objections to Requests" or "01/19/18 Production"). A true and correct copy of the excerpts from the supplement to Objections to Requests are attached hereto as **Exhibit 7**. In such supplement, Lubbers expressly supplemented with specific Bates labeled documents responsive to Request No. 1 pertaining to his entire file on the SCIT and referenced various Bates labeled documents. Included within such supplement were Bates labeled documents RESP0013247-13250 (personal budget) and RESP0013289-13290 (5/20/13 notes). **Group 1**

² The prior Discovery Commissioner, Bonnie Bulla, and the Probate Judge have applied the fiduciary exception in the following cases in which I was personally involved as litigation counsel: *In the Matter of the Testamentary Trust of George A. Steiner*, Case No. P041337-E and *In the Matter of Charles E. and Dorothy L. Cook 1995 Trust*, dated November 3, 1995, Case No. P-11-071394-T.

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1 **Documents, Bates labeled RESP0013284-134288, immediately proceeded the 5/20/13 notes**
2 and, therefore, my belief was reiterated that the Group 1 Documents were intentionally produced.
3 Again, no privilege log was provided with the Supplement.

4 17. On February 2, 2018, Respondents supplemented the Initial Disclosures with Bates
5 labeled RESP0037927-0045337 ("2/2/18 Disclosures").

6 18. On February 16, 2018, Respondents clawed back document Bates Labeled
7 RESP0045293 asserting attorney-client privilege. A true and correct copy of the correspondence
8 reflecting such claw back is attached hereto as **Exhibit 8**. The Group 1 Documents were not clawed
9 back at such time. The foregoing document attempted to be claw backed was included within the
10 2/02/18 Disclosures.

11 19. On this same day, Respondents served a privilege log and solely identified
12 documents involving communications with Daniel Gerety, CPA. A true and correct copy of the
13 privilege log produced by Respondents is attached hereto as **Exhibit 9**. Based upon information
14 and belief, the privilege log was prepared in connection with an upcoming hearing before the
15 Discovery Commissioner relating to communications between Lubbers, one of the Former Trustees
16 of the Irrevocable Trust, and Daniel T. Gerety, CPA. The privilege log did not include the Group
17 1 Documents.

18 20. On February 19, 2018, Respondents thereafter requested clawback of documents
19 Bates Labeled RESP013471-13473, RESP019380-RESP019382, RESP019383, RESP019335-
20 RESP019336, RESP019337-RESP019338, RESP045260-RESP045261, RESP045263,
21 RESP045264, RESP045265, RESP045266, RESP045267, RESP045268, RESP045269,
22 RESP045270-RESP045271, RESP045272, RESP045276, RESP045277, RESP045280-
23 RESP045281, RESP045282-RESP045284, RESP045288-RESP045292, RESP045293,
24 RESP045311, RESP045312-RESP045316 asserting attorney-client privilege. A true and correct
25 copy of the correspondence reflecting such claw back is attached hereto as **Exhibit 10**. The
26 foregoing documents were initially disclosed in the 12/15/17 Disclosures and 02/2/18 Disclosures.
27 The Group 1 Documents were still not clawed back at such time.

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21. At the time of the second clawback, I assumed that, in light of the Supplement to the Objections to Requests and the first clawback, Respondents had gone back and thoroughly reviewed the entire production on the Initial Disclosures and supplemental productions, thereby resulting in the second clawback. Indeed, had my firm been negligent in performing a preproduction review, my firm would have followed such protocol to ensure that no other documents asserted to be protected by the attorney-client privilege were inadvertently produced.

22. On April 6, 2018, Respondents disclosed RESP0074210-0088522 (“4/6/18 Production”). Certain documents labeled RESP0078899-0078900 were included in the production (“Group 2 Documents”). The Group 2 Documents were ultimately determined by the Nevada Supreme Court to be protected by the attorney client privilege.

23. On May 18, 2018, Petitioner filed a Supplement to Petition to Surcharge Trustee and Former Trustees for Breach of Fiduciary Duties, Conspiracy and Aiding and Abetting; Petition for Breach of Fiduciary Duty for Failure to Properly Account; and Petition for an Award of Attorney Fees, Accountant Fees and Costs (“Supplemental Surcharge Petition”). A copy of the Supplemental Surcharge Petition is attached to the Motion to Disqualify as Exhibit 3. The Supplemental Surcharge Petition referenced, in part, the Group 1 Documents. At the time of the documents use, I did not believe that it was subject to the attorney-client privilege or inadvertently disclosed. Rather, I, in part, believed it was intentionally disclosed and further discoverable based upon the fiduciary exception, which the Discovery Commissioner had applied in this case on March 2, 2018, in connection with a motion to compel communications between Lubbers and Daniel Gerety, CPA. The Group 1 Documents, on their face, did not appear privileged and the Discovery Commissioner recognized the same.³

24. On June 5, 2018, almost six (6) months after the production of the Group 1

³ A true and correct copy of the excerpts of the transcript from the hearing before the Discovery Commissioner on the Motion for Determination is attached hereto as **Exhibit 11**. See Transcript at p. 47, l. 18-24 and p. 48, l. 7-10 (“But how could you fault her for the other set of notes [Group 1, Typed Notes]? What about those would have stood out to her to call you?”); *id.* at p. 61, ll. 23-25 (“But I’m not sure it was clear on the other documents [Group 1] and I’m certainly not sure it was clear on 899-899 through 900 [Group 2].”); *id.* p. 70, ll. 4 and 7, wherein the Discovery Commissioner states, “Well, how would they know? . . . you’ve produced them.”

Documents and almost three (3) weeks after the filing of Supplement Surcharge Petition, Respondents sought to claw back the Group 1 Documents. Petitioner disputed such designation but segregated the documents pursuant to the ESI protocol. A true and correct copy of the June 5 correspondence from Respondents' counsel is attached hereto as **Exhibit 12**.

25. **This same exact day, Respondents disclosed the Group 1 Documents a second time** in Respondents Second Supplement to Initial Disclosures of Witnesses and Documents Pursuant to NRCP 16.1 ("06/05/18 Production") as documents Bates labeled RESP0088954 – 88958 ("Group 1A Documents"), which was identified as "corr. note. memo.pdf" (Bates Labeled RESP0088918 - 0088969). A true and correct copy of excerpts from the 06/05/18 Production are attached hereto as **Exhibit 13**. The 06/05/18 Production consisted of only 281 documents, or 3,522 pages. Notably, the Group 1A Documents contain pages identical to those found in the Group 1 Documents. Based upon this fact, I am informed and believe that Respondents did not undertake any measures following the filing of the Supplemental Surcharge Petition to ensure that the Group 1 Documents were not produced again during the litigation. Indeed, based upon the Declaration of Erin Hansen, a simple search of the word "acquiescence," a unique word contained within the Group 1 Documents would have revealed the Group 1A Documents.

26. On June 12, 2018, Respondents served an updated privilege log identifying the Group 1 Documents referenced as only Bates labeled RESP0013284-13288 from the 12/15/17 Disclosures. The Group 1A Documents were not referenced thereon. A copy of the privilege log is attached hereto as **Exhibit 14**. This privilege log was never updated thereafter.

27. On June 13, 2018, six (6) months after serving the Initial Disclosures, Lubbers served his Sixth Supplement to the Objections and Responses to Scott Canarelli's First Request for Production of Documents to Edward Lubbers. A true and correct copy of the excerpts of such supplement are attached hereto as **Exhibit 15**. Referenced therein in Response to Request No. 13 were the Bates labeled documents RESP0088918-88969, or fifty-two (52) pages. **Group 1A Documents were bates labeled RESP0088954-0088958 and were included within such responsive documents.**

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28. On or about June 14, 2018, documents Bates labeled RESP0078884-0078932 (49 pages from the 4/6/18 Production) were brought to my attention as potentially being protected by the attorney-client privilege. At first glance in reviewing the documents, I noticed that the notes might have been those of Colby Williams, Esq., counsel for Respondents in the instant matter. My belief was based upon the notepad that was utilized, as I previously observed Mr. Williams utilizing a distinct notepad paper. I thereafter contacted Mr. Williams to inform him of the potential privileged nature of the documents. He informed me at such time that the notes consisted mostly of his personal attorney notes and those of Hunter Campbell, Esq., one of his partners. This production consisted of multiple notes of both Mr. Williams and/or Mr. Campbell in this matter since 2013. The Bates labeled range documents further included Lubbers' notes taken during a meeting with the parties' counsel and the valuation expert, Steven Nicolatus ("Group 2 Documents").

29. As a result of the foregoing, Mr. Williams sent me correspondence dated June 18, 2018, asserting attorney-client privilege and requesting compliance pursuant to the ESI Protocol. A copy of Mr. Williams correspondence is attached hereto as **Exhibit 16**. In response, I sent Mr. Williams correspondence on June 19, 2018, challenging the designation of two (2) pages from the 49-page document, or the Group 2 Documents. The forty-seven (47) pages were thereafter purged from our database. A copy of my correspondence is attached hereto as **Exhibit 17**.

30. On June 22, 2018, **Respondents thereafter requested to clawback an additional eighteen (18) documents** with the following Bates labeled: RESP0742390-74262, RESP074366-74368, RESP0074369-74370, RESP0074371, RESP0074372-0074373, RESP0074374, RESP0074375, RESP0074376-74377, RESP0074378-74434, RESP0074435, RESP0077186, RESP0077894, RESP0078275-78278, RESP0078559, RESP0078720, RESP84283-84284, RESP0084310-84313 and RESP87604-87626. A true and correct copy of Respondents' counsels correspondence is attached hereto as **Exhibit 18**. These documents were initially produced on April 6, 2018.

31. On or about June 25, 2018, I notified Mr. Williams by letter of additional documents

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1 that he might want to review to determine whether he intended to claw back on the basis of attorney-
2 client privilege. These documents were Bates labeled RESP0089013-89039. Mr. Williams
3 ultimately clawed back two (2) documents from such Bates label range. A true and correct copy of
4 Mr. Williams' July 5, 2018 response is attached hereto as **Exhibit 19**.

5 32. On July 13 2018, my firm filed a Motion for Determination of Privilege Designation
6 of the Group 1 and Group 2 Documents, RESP013284-RESP013288 and RESP78899-RESP78900,
7 respectively, pursuant to the ESI Protocol. Respondents sought sanctions against SDF for all
8 attorney's fees incurred in connection with such motion, the objection to the report and
9 recommendation and the writ; however, SDF was required to file the motion pursuant to the ESI
10 Protocol.

11 33. On August 29, 2018, the Discovery Commissioner heard the Motion for
12 Determination of Privilege Designation of RESP013284-RESP013288 (Group 1 Documents) and
13 RESP78899-RESP78900 (Group 2 Documents) and determined, in part, that portions of the Typed
14 Notes were not protected. During this hearing, the Discovery Commissioner specifically inquired
15 of Mr. Williams as to what steps Respondents undertook to ensure against the production of
16 potentially attorney client privileged documents. *See Exhibit 11*. Specifically, the Discovery
17 Commissioner stated:

18 a. "What safeguards were in place when you produced these documents to
19 make sure once you did a production there wasn't an inadvertent disclosure, what did you do?"⁴

20 b. "because the problem is that the documents were out there. That's why you
21 have to claw back quickly and you have to have procedures in place. Once you do a huge document
22 production, you go back through. Once they had a telephone call with you and some of the
23 documents in this range were privileged, did you look again? Did you assert privilege? It wasn't
24 until they actually filed the petition with the attachment of the documents that red flag went up. I
25 think that might be too late. Six months later from the initial production."⁵

26
27 ⁴ See **Exhibit 11**, Transcript at p. 67, ll. 3-6.

28 ⁵ See **Exhibit 11**, Transcript at p. 56, l. 25 to p. 57, l. 8.

1 c. "... There – to have the benefit of a claw back provision to get the benefit
2 of it, you have to act promptly You have to have procedures in place to ensure that you are
3 constantly reviewing your materials and you're clawing back inadvertent productions. Because
4 they don't know whether it's inadvertent or not."⁶

5 d. "And – and then the issue, then we get back to full circle on the inadvertent
6 disclosure and what efforts were made to ensure that the documents were not, in fact, produced. I
7 understand you have ESI protocol, but you also have responsibility with a clawback provision to
8 make sure you're timely reviewing to make sure that things have not been rushed, you know,
9 within 30 days."⁷

10 34. In response, Mr. Williams relied solely upon the ESI Protocol, Rule 4.4(b) and
11 *Merits Incentive*. *Id.* at p. 47, l. 18-24; p. 48, ll. 7-10; p. 59, ll. 8-10; p. 67, ll. 10-12, 18-21; and p.
12 69, ll. 20-22.

13 35. On November 2, 2018, after it was brought to my attention that another copy of the
14 Group 1 Documents had previously been produced a second time on June 5, 2018 and Bates labeled
15 RESP0088954-RESP0088958 (the Group 1A Documents), I contacted Mr. Williams to notify him
16 in accordance with the ESI Protocol. During such call, I notified him that there were likely
17 additional documents within Bates range RESP0088918-RESP0088969 that were likely privileged
18 and that he might want to review them and determine whether to claw back additional documents.
19 In response, Mr. Williams emailed me on November 2, 2018, memorializing our telephone
20 conversation and only clawing back RESP0088955, which was copy of the Typed Notes included
21 within the Group 1A Documents. The handwritten notes, however, that were part of the Group 1A
22 Documents were not clawed back at such time. A true and correct copy of Mr. Williams' email
23 and my response thereto agreeing to his summary is attached hereto as **Exhibit 20**. Mr. Williams
24 specifically stated "[w]e will also undertake a further review of Respondents' production to
25 determine whether any other documents (including those that are the subject of the pending

26
27 ⁶ See **Exhibit 11**, Transcript at p. 61, ll. 14-18.

28 ⁷ See **Exhibit 11**, Transcript at p. 81, ll. 1-7.

1 privilege dispute) were included as part of this or other productions.” *Id.*

2 36. On June 19, 2019, Respondents requested to clawback additional documents,
3 namely those Bates labeled RESP0013263-RESP0013267 (portion thereof) and RESP0013283. A
4 true and correct copy of correspondence from Mr. Williams is attached hereto as **Exhibit 21**.
5 These documents were purged from our computer system; however, I responded to Mr. Williams
6 by stating, in part, as follows:

7 . . . I am a bit surprised that you are clawing back RESP0013283 when you initially
8 clawed back RESP0013824 over one (1) year ago and the document immediately
9 precedes the documents you previously clawed back. I am also surprised that, in light
10 of the numerous “inadvertent disclosures” that a comprehensive review of Respondents’
disclosures was not undertaken over one (1) year ago.

11 See a true and correct copy of correspondence from me date June 20, 2019 attached hereto as
12 **Exhibit 22**. Notwithstanding my foregoing statements, I agreed to the clawback of the documents.
13 The foregoing documents were initially with the 12/15/17 Disclosures.

14 37. As referenced above, despite me notifying Mr. Williams on November 2, 2018 of
15 the production of additional potentially privileged documents and Mr. Williams’ agreement to
16 review such documents, on June 1, 2020 I notified Respondents’ counsel that they did not claw
17 back any additional documents. Based upon information and belief, Respondents also did not
18 undertake any efforts to review such documents at such time or any other time until I notified
19 Respondents’ counsel in June, 2020. Based upon further information and belief, Respondents
20 further did not undertake any efforts to review any other productions to determine whether
21 additional privileged documents were “inadvertently produced.” Indeed, it was not until I notified
22 Phillip Erwin, Esq., Mr. Williams’ partner, almost seventeen (17) months later on June 1, 2020,
23 that this particular range of documents might still contain documents in which they might assert the
24 attorney-client privilege. A true and correct copy of my email to Mr. Erwin, dated June 2, 2020 is
25 attached hereto as **Exhibit 23**. As a result thereof, Respondents clawed back a large portion of
26 RESP0088918-RESP0088969, consisting of approximately seventeen (17) documents. These
27 documents were brought to my attention by my paralegal and discovered by her as a result of
28 confirming that the Group 1 and Group 2 documents were purged from our files as a result of the
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1 Nevada Supreme Court decision.

2 38. On June 15, 2020, I, again, notified Respondents' counsel of additional documents
3 that may be privileged based upon the fact that such documents involved communications with
4 Lubbers and his legal counsel in 2013, Charlene Renwick, Esq. These documents Bates labeled
5 RESP0087490 – 87594 (105 pages) were discovered as we were reviewing our database to confirm
6 that the Group 1 and Group 2 documents had been purged from our system. Specifically, the
7 documents were discovered by conducting a simple search involving the term "Renwick." A true
8 and correct copy of my correspondence is attached hereto as **Exhibit 24**. This demonstrates that
9 even as of the date of my correspondence Respondents still had not conducted a comprehensive
10 search of their database to confirm that no further attorney client privilege documents were
11 produced. These documents were initially included in the 04/06/18 Disclosures. On June 16, 2020,
12 Respondents' counsel thereafter clawbacked several documents. A true and correct copy of Phil
13 Erwin's email is attached hereto as **Exhibit 25**.

14 39. On June 19, 2020, Respondents attempted to claw back an additional document as
15 being duplicative of a document previously asserted to be protected by the attorney client privilege.
16 A true and correct copy an email from Phil Erwin is attached hereto as **Exhibit 26**. After reviewing
17 the document and counsel correcting the Bates label provided, it was discovered by my firm (and
18 not Respondents) that the document was never, in fact, produced. I notified Mr. Erwin of the same.

19 40. Respondents failure to conduct a preproduction review or other undertaken
20 reasonable precautions against inadvertent disclosures, as well as their failure to conduct a timely
21 and comprehensive postproduction clawback review, has resulted in Petitioner unnecessarily
22 incurring thousands and thousands of dollars in attorney's fees and costs. Each time Respondents
23 attempt to claw back documents, my paralegal and I are forced to review the documents and I
24 thereafter make a determination of whether I agree with such designation or whether I chose to
25 challenge it. Correspondence is thereafter exchanged with opposing counsel, sometimes multiple
26 times. In addition, my paralegal has brought to my attention potentially privileged documents,
27 which, again, results in my review and notification of opposing counsel and the exchange of
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1 multiple correspondence with counsel. Additional cost is incurred in purging the documents from
2 Relativity.

3 41. I declare under penalty of perjury under the laws of the State of Nevada that the
4 foregoing is true and correct.

5 Executed this 29th day of June, 2020.

6
7 
8 DANA A. DWIGGINS

EXHIBIT 1

CONFIDENTIALITY AGREEMENT

Respondents, Heidi Canarelli, Lawrence Canarelli and Edward Lubbers, trustee and former trustees of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 ("Trust"), by and through their counsel, J. Colby Williams and Hunter Campbell of the law firm Campbell and Williams and Elizabeth Brickfield of the law firm Dickinson Wright PLLC, and Petitioner, Scott L. Canarelli, as Grantor, Beneficiary and custodial parent of Gage, Degon, Scottlyn Canarelli, by and through their counsel of record, Mark A. Solomon and Dana A. Dwiggins of the law firm Solomon Dwiggins & Freer, Ltd. and (together with Respondents, the "Parties"), stipulate that discourse and discovery activity in the matter known as In the Matter of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, (the "Action") are likely to involve the production of confidential, proprietary, or private information for which special protection from public disclosure and use for any purpose other than prosecuting this litigation would be warranted.

Accordingly, the Parties agree to the following Confidentiality and Protective Agreement ("Agreement"). The Parties acknowledge that this Agreement does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential and protected.

The Parties hereby STIPULATE as follows:

1. This Agreement shall be applicable to and govern all depositions, documents, financial information or things produced by a party or non-party ("Disclosing Party") in connection with this litigation voluntarily or in response to court orders, requests for production of documents, requests for inspection of things, answers to interrogatories, responses to requests for admissions, answers to deposition questions and all other discovery taken pursuant to the Nevada Rules Of Civil Procedure, (hereafter "Discovery Material") that the Disclosing Party designates as "Confidential."

2. In addition, any and all financial information not previously disclosed concerning the entities owned, in whole or in part by any and all of the parties in any capacity shall be deemed "Confidential" without the need to be designated as such; provided, however, that any assets solely owned by the Trust shall not be designated Confidential.

3. The Parties agree that it is the best interest of the Parties, all members of the Canarelli family, their trusts and any and all business enterprises owned in whole or in part by any members of the Canarelli family for information relating to the financial affairs of any of the above to be kept from the public record.

4. The Parties may make any and all financial information available as necessary to themselves, counsel to the Parties in this Action, including, associate attorneys, paralegals, secretarial staff, and other regular employees, as well as their accountants and expert witnesses, provided that no Discovery Material designated as "Confidential" and no financial information shall be disclosed to any expert witness other than an accountant unless and until such person has executed a Declaration of Compliance to be developed by the parties and their counsel.

5. Unless otherwise permitted by statute, rule or prior Court order, papers filed with the Court including Confidential Information shall be accompanied by a contemporaneous motion for leave to file those documents under seal.

6. It is the present intention of the Parties that the provisions of this Agreement shall govern disclosures and discovery in this Action and, if the Parties are unable to resolve their differences, shall be entitled to seek modification of this Agreement. This Agreement, however, may not be modified by the Parties hereto in any attempt to use the "Confidential" Discovery Material other than for purposes of this specific Action only.

7. The provisions of this Agreement shall, absent written permission of the Parties, continue to be binding throughout and after the conclusion of this Action, including without limitation any appeals in this Action. Within thirty (30) days after receiving notice of the entry of an order, judgment, or decree finally disposing of this Action, including the exhaustion of all permissible appeals, all persons and entities having received "Confidential" Discovery Material, shall either make a good faith effort to return such material and all copies thereof (including summaries and excerpts) to counsel for the Designating Party or destroy all such "Confidential" Discovery Material and copies thereof (including summaries and excerpts) and certify that fact to counsel for the Designating Party; provided, however, that Scott Canarelli and/or his attorneys or accountant(s) shall be entitled to retain a copy of any and all information relating to the assets of the Trust, value thereof, or information necessary to the reporting of tax information to the Internal Revenue Service or other governmental agency. Outside counsel for the Parties shall be entitled to retain all filings, court papers, deposition and trial transcripts, deposition and trial

exhibits, and attorney work product (regardless of whether such materials contain or reference Discovery Materials designated as "Confidential" by any Designating Party), provided that such outside counsel, and employees and agents of such outside counsel, shall not disclose any Confidential Information contained or referenced in such materials to any person except pursuant to court order, agreement with the Designating Party, or any governmental agency, including the Internal Revenue Service. All materials, if any, returned to the Parties or their counsel by the Court likewise shall be disposed of in accordance with this Paragraph.

8. If any person receiving Discovery Material covered by this Agreement is subpoenaed, served with a demand in another action to which he or she is a party, or served with any other legal process (the "Receiving Person") by one not a Party to this Action, the legal process of which seeks disclosure or production of Discovery Material that was produced or designated as "Confidential" by someone other than the Receiving Person, the Receiving Person shall give actual written notice, by hand or facsimile transmission, within five (5) business days of receipt of such subpoena, demand, or legal process, to the Designating Party. The Receiving Person shall not produce any of the Designating Party's "Confidential" Discovery Material, until the Designating Party gives notice to the Receiving Person that the Designating Party consents to production, or opposes production of, its "Confidential" Discovery Material, and has had a reasonable opportunity to object to the production. The Designating Party shall be solely responsible for asserting any objection to the requested production and shall further be solely responsible for any attorney's fees or costs incurred by the Trust or Petitioner, including timely reimbursing the Trust and/or Petitioner for any such fees or costs. Nothing in this Paragraph shall be construed as requiring the Receiving Person or anyone else covered by this Agreement to challenge or appeal any order requiring production of "Confidential" Discovery Material covered by this Protective Order; nor shall this Paragraph be construed to subject such person to any penalties for non-compliance with any legal process or order, the filing of any tax returns, or as precluding such person from seeking any relief from any Court.

9. Nothing contained herein shall be construed or otherwise deemed to prohibit or limit the introduction of confidential or financial information into evidence at any trial or hearing of the within Action. If a Party wishes to place Confidential or financial information into evidence on the public record, such party must timely file a motion seeking such relief. Any otherwise Confidential or financial Information that is received into evidence on the public

record shall not be treated as Confidential Information in any appeal from any order or judgment entered by the District Court in the within Action.

10. This Agreement may be executed in counterparts, each of which shall constitute one and the same agreement.

Dated this 18 day of September, 2016

CAMPBELL & WILLIAMS



J. COLBY WILLIAMS, ESQ.

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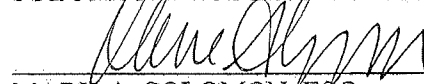
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Dated this 7 day of September, 2016

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Dated this day of September, 2016

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Telephone: (702) 550-4400

Facsimile: (702) 382-1661

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Dated this ___ day of September, 2016

CAMPBELL & WILLIAMS

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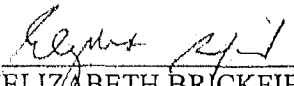
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Dated this 22 day of September, 2016

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EXHIBIT 2

ESI PROTOCOL

Scott Lyle Graves Canarelli, by and through his attorneys, the law firm of Solomon Dwiggins & Freer, Ltd., and Lawrence Canarelli and Heidi Canarelli, former trustees of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust"), and Edward Lubbers, former trustee of the Trust, by and through their attorneys, the law firm of Campbell & Williams and the law firm of Dickinson Wright, hereby stipulate to the following protocol as set forth for the production of Discoverable Documents and Electronically Stored Information ("ESI"). As used in this document, the term "Discoverable Documents and Electronically Stored Information" means discoverable documents and data existing in electronic form consistent with Nevada Rule of Civil Procedure 34(a), including by way of example and not by way of limitation (where relevant and not privileged) e-mail, calendars, word processing documents, spreadsheets, electronic slide presentations, databases, and other reasonably accessible electronically stored information relevant to the subject matter of this case pursuant to NRCP 26(b)(1).

Any party, any person or non-party producing or disclosing ESI pursuant to the terms set forth below is referred to as the "Producing Party," and the party or any person or non-party receiving or being given access to ESI is referred to as the "Receiving Party."

1. **Electronic Discovery.** Discovery of electronically stored information shall proceed in the following sequenced fashion:

(a) After receiving requests for document production, the Producing Party shall conduct a reasonable and good faith search for responsive documents and electronically stored information. A Producing Party will disclose to a Requesting Party the existence of those sources of electronically stored information that it believes contain responsive information and that are not reasonably accessible, and, to the extent necessary, the Parties will meet and confer concerning such information that has been identified as not reasonably accessible, but a Producing Party shall not have an obligation initially to search or produce from sources of electronically stored information that it identifies as not reasonably accessible because of undue

burden or cost in accordance with NRCP 26(b)(2) and no such obligation will exist unless and until a showing of good cause is made by the Requesting Party that such searches and production are necessary pursuant to NRCP 26(b)(2);

(b) The Producing Party retains its right to argue that certain sources of electronically stored information are not reasonably accessible because of undue burden or cost and further retain its right to seek cost shifting, as appropriate, in the event a Requesting Party demands and shows good cause supporting production from sources that were deemed by the Producing Party as not reasonably accessible; and

(c) On-site inspections of electronic media under NRCP 34(a) shall not be permitted, unless (i) otherwise agreed to by the parties; or (ii) absent exceptional circumstances where good cause and specific need have been demonstrated and it is so ordered by the Court.

2. **General Format of Production.** Subject to the provisions of paragraph 4, documents that originally existed in electronic form that are produced in these proceedings shall be produced in electronic image form (described below) in the manner provided herein. Documents that originally existed in paper form may be produced in an electronic image form in the manner provided herein, produced in a paper form or made available for initial examination as outlined in paragraph 3. Notwithstanding the foregoing provisions of this paragraph, the Producing Party reserves the right to request that an alternative format or method of production be used for certain documents and, in that event, the parties will meet and confer to discuss alternative production requirements, concerns, formats, methods and costs associated with same.

3. **Initial Examination of Records.** The Producing Party reserves the right to make certain sets of documents available for initial examination by the Requesting Party. The Requesting Party will select those documents it wishes to have produced. The Producing Party reserves the right to review and screen for privilege or protection any document that is selected for production. The Producing Party may withhold from that production any privileged document and identify the privileged document on a privilege log as outlined in paragraph 17 herein. The parties agree that the Producing Party is not waiving, and the Requesting Party will

not argue that the Producing Party has waived, any claims of attorney-client privilege, attorney work product protection, or any other privilege or protection, including protections enumerated in the Stipulated Confidentiality Agreement and Protective Order, by making documents available for examination. In the event the Producing Party becomes aware of an inadvertent disclosure/production of privileged information or a privileged document, the Stipulated Confidentiality Agreement and Protective Order (entered into concurrently herewith) shall govern.

4. **Document Image Format.** The Producing Party shall make good faith efforts to conform to the specifications in this section based on the party's technological capabilities. Document images produced in electronic form will be produced in single- or multi-page Tagged Image File Format ("TIFFs" or ".tiff format"). All images generated from hard copy documents shall be scanned as black and white images at-least 300 d.p.i. resolution and shall be saved and produced in a Group 4 compression single- or multi-page "TIFF" format and reflect the full and complete information contained on the original document. All images generated from native electronic documents shall be saved electronically (or "printed") in a Group 4 compression single-or multi-page "TIFF" image that reflects the full and complete information contained on the original document. All images generated from short message service (SMS) and multimedia messaging service (MMS) shall be produced in searchable .txt files or saved electronically (or "printed") in a Group 4 compression single-or multi-page "TIFF" image that reflects the full and complete information contained in the SMS or MMS. Documents that present imaging or other formatting problems shall be promptly identified and the parties shall meet and confer to attempt to resolve the problems.

Meta-data for documents generated from native electronic documents shall be provided as set forth in paragraph 11. The parties shall meet and confer to the extent reasonably necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software (such as Relativity or Concordance).

Notwithstanding the foregoing provisions of this paragraph, the parties recognize that as the case progresses it may be appropriate to allow the parties to produce certain files (e.g., Excel, Lotus 123, or other spreadsheets; e-mails; reports from databases) in either (i) native electronic form or (ii) in a Group 4 compression single-or multi-page "TIFF" image, due to undue burden or cost for a Producing Party. Thus, the parties agree to meet and confer in such circumstances in order to reach a reasonable, alternative form of production.

5. **Document Unitization.** If hard copy documents are scanned into an electronic form, the unitization of the document and any attachments shall be maintained to the extent possible as it existed in the original when creating the image file. For documents that contain affixed notes, the pages will be scanned both with and without the notes and those pages will be treated as part of the same document. The relationship of documents in a document collection (e.g., cover letter and enclosures, e-mail and attachments, binder containing multiple documents, or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process.

6. **Color.** If an original document contains color, the Producing Party shall honor reasonable requests for either the production of an original document for inspection and copying or production of a color image of the document. The Requesting Party agrees to pay for reasonable costs associated with the color scanning and production of color images of documents already produced.

7. **Duplicates.** Where a party has more than one identical copy of an electronic document (i.e., the documents are visually the same and contain the same electronic text), the Producing Party need only produce a single copy of that document. Furthermore, the parties are not required to produce multiple instances of an electronic message sent to multiple recipients, provided that all of the recipients (including "blind carbon copy" recipients) can be identified from documents or electronically stored information produced pursuant to this protocol and, as described in the remainder of this paragraph, and no information is missing from the electronic message. However, the foregoing is without prejudice to a party's ability to seek production of

multiple instances of an electronic message sent to one or multiple recipients where relevant Attachments to e-mail shall be produced pursuant to this ESI Protocol.

8. **Bates Numbering.** Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not unreasonably obliterate, conceal, or interfere with any information from the source document. No other legend or stamp will be placed on the document image other than a confidentiality legend (where applicable), redactions, the Bates Number identified above, and any other internal tracking number that the Producing Party may choose to use. The confidential legend shall be "burned" onto the document's image at a location that does not unreasonably obliterate or obscure any information from the source document.

9. **File Naming Conventions.** Each page image file shall be named with the unique Bates Number of the page of document, followed by the extension ".TIF" when available. In the event the Bates Number contains a symbol and/or character that cannot be included in a file name, the symbol and/or character will be omitted from the file name. Each native file shall retain its original file name, followed by the document-type extension (*e.g.*, ".DOC", ".PDF", ".XLS", ".HTM", etc.)

10. **Production Media.** A Producing Party shall produce documents that it produces in an electronic image form pursuant to paragraph 2 on CD-ROM, DVD, external hard drive, File Transfer Protocol ("FTP") or such other readily accessible computer or electronic media as the parties may hereafter agree upon (the "Production Media"). Information that shall be identified on the physical Production Media shall include: (1) a reference to this case number, (2) the Producing Party's name, and (3) the production date. The Bates Number range(s) of the materials on the Production Media shall also be contained on the Production Media, and where not practicable to do so may be provided in an accompanying letter. If the Producing Party encrypts or "locks" the production, the Producing Party shall include with the production an explanation of how to decrypt the files.

The Producing Party agrees to produce the electronic discovery in TIFF format per

paragraph 4, with OCR text files and the appropriate document breaks contained in a Relativity or Concordance .dat load file. Additionally, all pages will be scanned from paper using the standard Group IV, 2-Dimension single page Tagged Image File Format (TIFF), or JPEG when necessary for color photographs, or black and white pages requiring grey scale.

11. **Meta-Data.** To the extent a Producing Party extracts any of the below metadata fields associated with its production, the Producing Party will produce those metadata fields to the Requesting Party with a load file with each production:

- (a) Subject line
- (b) Sent date
- (c) From
- (d) Recipients(s)/To
- (e) Copyee(s)/CC
- (f) Blind copyee(s)/BCC
- (g) File Name
- (h) Author
- (i) Document Date
- (j) Document Type
- (k) File Extension
- (l) Last Modified Date
- (m) Track Changes
- (n) Starting Bates (Beginning document Bates number);
- (o) Ending Bates (Ending document Bates number);
- (p) Begin Attach (Beginning Bates number for any attachment or range of attachments);
- (q) End Attach (Ending Bates number for any attachment or range of attachments); and
- (r) Source (custodian/location from which document was collected).

Alternatively, a Producing Party can satisfy its obligations under subparagraphs p. and q. above by providing information sufficient to identify any attachments to the documents produced. The meta-data listed above shall be labeled and produced on Production Media and shall be provided in a manner suitable for importing the information in a commercially available document management or litigation support software such as Relativity or Concordance.

For avoidance of doubt, the obligation to produce metadata pursuant to this paragraph is triggered only where such metadata information is available and extraction would not constitute an undue burden or expense. Where such metadata information is not available and/or not capable of extraction without undue burden/expense, this paragraph shall not impose any obligations on any Producing Party.

12. **Search Terms and Custodians.** The parties shall meet and confer on search terms to be used for electronic documents to identify electronic documents that will be reviewed for possible production pursuant to this Document Production Protocol. The parties shall also meet and confer on custodians for electronic documents to identify electronic documents that will be reviewed for possible production pursuant to this Document Production Protocol.

13. **Databases.** To the extent a response to discovery requires production of discoverable electronic information contained in a database, the parties shall meet and confer about the extent of the Producing Party's obligations in relation to the same.

14. **Production of Other Electronic Documents.** This Order only applies to the production of the following categories of electronic documents: databases, e-mails (and any associated attachments), word processing documents, spreadsheets, presentations, and imaged documents (in any format). The parties shall meet and confer to agree on the form of any production of electronic documents other than the foregoing.

15. **Exceptions to Protocol.** If the forms of production allowed by this protocol present an undue burden or cost for a Producing Party, the parties shall meet and confer to agree on a reasonable, alternative form of production. Any party may file a motion to seek individual relief from this protocol.

16. **Use of Documents.** When documents produced in accordance with this Order are used in any Proceeding herein, including depositions, hearings, or trial, the image copy of documents as described in Paragraph 4 shall be the copy used. Extracted text shall not be used in any Proceeding as a substitute for the image of any document.

17. **Privilege Logs.** The Producing Parties will produce privilege logs in Excel, Word, or a similar electronic format that allows text searching and organization of data. A Producing Party will produce a privilege log within 120 days after the completion of its document production. The production of a privilege log for a custodian will be not less than 30 days prior to a custodian's deposition. The parties may modify the deadlines for production of privilege logs by agreement.

When there is a chain of privileged e-mails, the Producing Party must log each e-mail contained within the chain separately. Distinct claims of privilege within an email chain must be separately identified, and parties shall be required to produce any non-privileged emails or information contained within the chain. To the extent available, the privilege log will contain the following metadata fields: the custodian, document type (*e.g.*, email, Word document, Excel spreadsheet, etc.), date last modified or sent, file name, and, if an email or email chain, the sender(s) and the recipient(s) (to, cc, and bcc). The Producing Party will also include on the log control number, privilege description, and privilege assertion. If a party redacts a responsive document, that party will provide a redaction log identifying each document that contains a redaction and the reason for the redaction. The production of a privilege log for a custodian will be not less than ten (10) days prior to a custodian's deposition. The parties may modify the deadlines for production of privilege logs by agreement.

18. **Costs of Production.** The parties reserve the right to seek cost shifting as appropriate at a later time.

19. **Discovery and Admissibility.** Nothing in this Order shall be construed to affect the discoverability or admissibility of any document or data. All objections to the discoverability or admissibility of any document or data are preserved and may be asserted at any time.

20. **Confidentiality.** The confidentiality of ESI produced in accordance with the instant Document Production Protocol is governed by the Stipulated Confidentiality Agreement and Protective Order, entered into concurrently herewith.

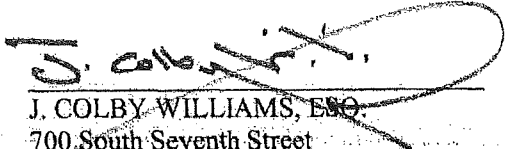
21. **Effect of Disclosure of Privileged Information.** The Receiving Party hereby agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced by Disclosing or Producing Party upon request by Disclosing or Producing Party regardless of whether the Receiving Party disputes the designation of Privileged Information. The Receiving Party may sequester (rather than return or destroy) such Privileged Information only if it contends that the information itself is not privileged or otherwise protected and it challenges the privilege designation, in which case it may only sequester the information until the claim of privilege or other protection is resolved. If any party disputes the privilege claim ("Objecting Party"), that Objecting Party shall object in writing by notifying the Producing Party of the dispute and the basis therefore. The parties thereafter shall meet and confer in good faith regarding the disputed claim within seven (7) court days after service of the written objection. In the event that the parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of whether a privilege applies within ten (10) court days of the meet and confer session, but may only contest the asserted privileges on ground other than the inadvertent production of such document(s). In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected material. The failure of any party to provide notice or instructions under this Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Disclosing or Producing Party would be entitled in this action.

22. **Inadvertent Production of Non-Discoverable Documents.** If a Producing Party inadvertently produces a document that contains no discoverable information, the Producing

Party may request in writing that the Receiving Party return the document, and the Receiving Party will return the document. A Producing Party may not request the return of a document pursuant to this section if the document contains any discoverable information.

Dated this 15th day of December, 2017

CAMPBELL & WILLIAMS


J. COLBY WILLIAMS, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Dated this ___ day of December, 2017

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*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

Dated this ___ day of December, 2017

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Attorneys for Petitioner, Scott Canarelli

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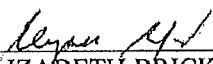
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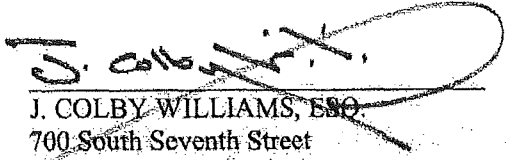
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*Attorneys for Edward Lubbers and Lawrence
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*Attorneys for Edward Lubbers and Lawrence
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Dated this 29 day of December, 2017

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Dated this 18 day of December, 2017

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Attorneys for Petitioner, Scott Canarelli

*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

EXHIBIT 3

IN THE MATTER OF THE SCOTT LYLE GRAVES CANARELLI IRREVOCABLE TRUST
REQUEST TO CLAW BACK DOCUMENTS
June 29, 2020

<u>Bates Range</u>	<u>Date Produced</u>	<u>Date Requested To Claw Back Documents</u>	<u>Privilege Claimed</u>
RESP0045293	02/02/18	02/16/18 02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0013471-13473	12/15/17	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0019380-19382	12/15/17	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0019383	12/15/17	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0019335-9336	12/15/17	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0019337-19338	12/15/17	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045260-RESP045261	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045263	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045264	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045265	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045266	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045267	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045268	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045269	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045270-45271	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045272	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045276	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045277	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned
RESP0045280-45281	02/02/18	02/19/18	Attorney-Client and/or Accountant- Client Privilege - Abandoned

<u>Bates Range</u>	<u>Date Produced</u>	<u>Date Requested To Claw Back Documents</u>	<u>Privilege Claimed</u>
RESP0045282-45284	02/02/18	02/19/18	Attorney-Client and/or Accountant-Client Privilege - Abandoned
RESP0045288-45292	02/02/18	02/19/18	Attorney-Client and/or Accountant-Client Privilege - Abandoned
RESP0045311	02/02/18	02/19/18	Attorney-Client and/or Accountant-Client Privilege - Abandoned
RESP0045312-45316	02/02/18	02/19/18	Attorney-Client and/or Accountant-Client Privilege - Abandoned
RESP0013284-13288	12/15/17	06/05/18	Attorney-Client Privilege and Work Product Doctrine
Group 1 – Lubbers’ Memo RESP0078884-78932	04/06/18	06/18/18	Attorney-Client Privilege and Work Product Doctrine
Group 2 - attorney notes RESP0078899-8900			
RESP0074239-74262	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074366-74368	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074369-74370	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074371	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074372-74373	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074374	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074375	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074376-74377	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074378-74434	04/06/18	06/22/18	Attorney-Client Privilege
RESP0074435	04/06/18	06/22/18	Attorney-Client Privilege
RESP0077186	04/06/18	06/22/18	Attorney-Client Privilege

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<u>Bates Range</u>	<u>Date Produced</u>	<u>Date Requested To Claw Back Documents</u>	<u>Privilege Claimed</u>
RESP0077894	04/06/18	06/22/18	Attorney-Client Privilege
RESP0078275-78278	04/06/18	06/22/18	Attorney-Client Privilege
RESP0078559	04/06/18	06/22/18	Attorney-Client Privilege
RESP0078720	04/06/18	06/22/18	Attorney-Client Privilege
RESP0084283-84284	04/06/18	06/22/18	Attorney-Client Privilege
RESP0084306-84309	04/06/18	06/22/18	Attorney-Client Privilege
RESP0084310-84313	04/06/18	06/22/18	Attorney-Client Privilege
RESP0084314-84317	04/06/18	06/22/18	Attorney-Client Privilege
RESP0087604-87606	04/06/18	06/22/18	Attorney-Client Privilege
RESP0087607-87626	04/06/18	06/22/18	Attorney-Client Privilege
RESP0089013-89039 RESP0089014-89015 RESP0089029-89030	06/05/18	07/05/18	Attorney-Client Privilege and Work Product Doctrine
RESP0088918-88969 Group 1A - Lubbers typewritten memo. Duplicate page from Group 1. RESP0088955	06/05/18	11/02/18 – via email	Attorney-Client Privilege
RESP0013263-64	12/15/17	06/19/19	Attorney-Client Privilege
RESP0013283	12/15/17	06/19/19	Attorney-Client Privilege
RESP0088918-969 Clawed back pages (total of approximately 19 documents): RESP0088920-23 RESP0088926 RESP0088928-39 RESP0088941-49 RESP0088952-53 RESP0088954 (Handwritten Notes from Group 1) RESP0088956-58 (Handwritten Notes from Group 1) RESP0088959-60	06/05/18	06/02/20	Attorney-Client Privilege

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<u>Bates Range</u>	<u>Date Produced</u>	<u>Date Requested To Claw Back Documents</u>	<u>Privilege Claimed</u>
RESP0087490-87594 Clawed back - The ranges below include approximately 22 communications between Lubbers and Renwick: RESP0087499-RESP0087500; RESP0087506-RESP0087507; RESP0087514-RESP0087518; RESP0087521-RESP0087536; RESP0087556-RESP0087562; RESP0087565-RESP0087575; RESP0087581-RESP0087582; RESP0087588- RESP0087590	04/06/18	06/16/20	Attorney-Client Privilege
RESP0078865	04/06/18	06/22/20	Attorney-Client Privilege and Work Product Doctrine

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EXHIBIT 4

**IN THE MATTER OF THE SCOTT LYLE GRAVES CANARELLI IRREVOCABLE
TRUST**

TIMELINE OF EVENTS

<u>Date</u>	<u>Event</u>
06/00/12	SDF began representing Petitioner.
05/31/13	Sale of all SCIT Assets.
07/17/12	SDF sent a letter to Edward Lubbers re distributions and budget.
07/24/12	SDF sent a letter to Edward Lubbers re distributions and budget.
08/02/12	Lubbers sent an email re distributions.
09/30/13	Petition to Assume Jurisdiction Over the Scott Lyle Graves Canarelli Irrevocable Trust; to Confirm Edward C. Lubbers as Family and Independent Trustee; For an Inventory and Accounting; to Compel an Independent Valuation of the Trust Assets Subject to the Purchase Agreement, Dated May 31, 2013; and to Authorize and Direct the Trustee and Former Trustees to Provide Settlor/Beneficiary with any and all Information and Documents Concerning the Sale of the Trust's Assets Under Such Purchase Agreement was filed.
09/00/16	Confidentiality Agreement was entered into by the parties.
12/15/17	ESI Protocol entered into by the parties.
12/15/17	Respondents served Initial Disclosures, including documents Bates labelled RESP0000001-20622.
12/15/17	Respondents produced documents Bates labeled RESP0013284-13288 (the "Group 1 Documents").
12/15/17	Ed Lubbers served Objections to Scott Canarelli's First Request for Production of Documents to Edward Lubbers.
01/19/18	Ed Lubbers served a Supplement to the Objections to Requests for Production of Documents to Edward Lubbers.
02/02/18	Respondents served supplemental documents Bates labeled RESP00037927-45337
02/16/18	Respondents clawed back document Bates labeled RESP0045293.
02/16/18	Respondents served their first Privilege Log
02/19/18	Respondents clawed back documents Bates labeled RESP013471-13473, RESP019380-RESP019382, RESP019383, RESP019335-RESP019336, RESP019337-RESP019338, RESP045260-RESP045261, RESP045263, RESP045264, RESP045265, RESP045266, RESP045267, RESP045268, RESP045269, RESP045270-RESP045271, RESP045272, RESP045276, RESP045277, RESP045280-RESP045281, RESP045282-RESP045284, RESP045288-RESP045292, RESP045293, RESP045311, RESP045312-RESP045316.
04/06/18	Respondents disclosed a First Supplement to Initial Disclosures, including documents Bates labelled RESP0074210-88522
05/18/18	Petitioner filed a Supplement to Petition to Surcharge Trustee and Former Trustees for Breach of Fiduciary Duties, Conspiracy and Aiding and Abetting; Petition for Breach of Fiduciary Duty for Failure to Properly Account; and Petition for an Award of Attorney Fees, Accountant Fees and Costs.

06/05/18	Respondents sought to claw back the Group 1 Documents and Petitioner disputed such designation, but segregated the documents.
06/05/18	Respondents served Second Supplement to Initial Disclosures, including documents Bates labelled RESP0088527-92110.
06/05/18	Respondents produced a second copy of the Group 1 Documents, Bates labeled RESP0088954-88958.
06/12/18	Respondents served an updated privilege log identifying the Group 1 Documents.
06/13/18	Lubbers served his Sixth Supplement to the Objections to Scott Canarelli's First Request for Production of Documents to Edward Lubbers.
06/14/18	Dana Dwiggins notified Colby Williams of documents which may be privileged. These documents were Bates labeled RESP0078884-0078932.
06/18/18	Respondents clawed back documents Bates labeled RESP0078884-0078932.
06/19/18	Petitioner challenged two pages (RESP0078899-8900) from documents Bates labeled RESP0078884-0078932.
06/22/18	Respondents clawed back an additional eighteen (18) documents with the following Bates labels: RESP0742390-74262, RESP074366-74368, RESP0074369-74370, RESP0074371, RESP0074372-0074373, RESP0074374, RESP0074375, RESP0074376-74377, RESP0074378-74434, RESP0074435, RESP0077186, RESP0077894, RESP0078275-78278, RESP0078559, RESP0078720, RESP84283-84284, RESP0084310-84313 and RESP87604-87626.
06/25/18	Dana Dwiggins notified Colby Williams of additional documents that may be privileged. These documents were Bates labeled RESP0089013-89039.
06/29/18	Respondents filed a Motion to Dismiss the Supplemental Surcharge Petition.
07/05/18	Respondents clawed back two documents from the group Bates labeled RESP0089013-89039.
07/13/18	Petitioner filed a Motion for Determination of Privilege Designation of the Group 1 and Group 2 documents, RESP013284-RESP013288 and RESP78899-RESP78900.
08/29/18	Hearing held before the Discovery Commission on the Motion for Determination
09/19/18	Confidentiality Agreement was modified by the parties.
09/26/18	Stipulation and Order to Seal Documents Previously filed with the Court was entered.
11/02/18	Dana Dwiggins notified Colby Williams that a copy of the Group 1 Documents was disclosed again as Bates label RESP0088954-RESP0088958 (the "Group 3 Documents"). Ms. Dwiggins also suggested to Mr. Williams that he review all of the documents within Bates RESP0088918-88969 as there may be additional privileged documents.
11/02/18	Respondents clawed back RESP0088955, which was a copy of the Typed Notes included within the Group 1 Documents. The handwritten notes were not clawed back at such time
01/22/19	Discovery Commissioner's Report and Recommendations on (1) The Motion for Deamination of Privilege Designation, (2) The Supplemental Briefing on Appreciation Damages was entered.
06/19/19	Respondents clawed back Bates labeled RESP0013263-RESP0013267 (portion thereof) and RESP0013283.
06/20/19	Petitioner agreed to the clawback of documents Bates labeled labeled RESP0013263-RESP0013267 (portion thereof) and RESP0013283.

06/01/20	Dana Dwiggins notified Phil Erwin that RESP0088918-88969 may still contain privileged documents.
06/02/20	Respondents clawed back approximately 17 documents from RESP0088918-88969, including the handwritten notes that were from the Group 1 Documents.
06/15/20	Dana Dwiggins <u>again</u> notified Colby Williams that documents Bates labeled RESP0087490–87594 may be privileged.
06/16/20	Respondents clawed back approximately 22 documents from Bates range RESP0087490–87594.
06/19/20	Phil Erwin attempts to claw back document Bates labeled RESP0078865. This document was never produced to Petitioner and therefore was not clawed back.

EXHIBIT 5

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20 *Counsel for Respondents*

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 In the Matter of:

Case No: P-13-078912-T
Dept. No: 26

24 SCOTT LYLE GRAVES CANARELLI
25 IRREVOCABLE TRUST, dated February
26 24, 1998.

27 **EDWARD LUBBERS, LAWRENCE CANARELLI, AND HEIDI CANARELLI'S INITIAL**
28 **DISCLOSURES OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1**

Edward C. Lubbers, Individually and in his Representative Capacity as former Family Trustee and/or the Independent Trustee ("Lubbers") of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, and Lawrence Canarelli ("Larry") and Heidi Canarelli ("Heidi," and together with Larry, the "Canarellis") former Family Trustees of the Scott Lyle Graves Canarelli Irrevocable Trust Dated February 24, 1998 (the "Trust"), (collectively, "Respondents"), by and through their counsel, the law firms of Campbell & Williams and Dickinson Wright PLLC, hereby provide the following Initial Disclosures pursuant to NRCP 16.1.

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The NRCP 30(B)(6) Designee for Western Valuation Appraisers will testify as to his/her/their knowledge of the facts and circumstances at issue in the instant litigation and any other information which is relevant to this action that may be elicited by counsel at deposition, arbitration or trial

10. Any and all witnesses identified by Petitioner's and/or other parties to this action.

11. Any and all witnesses necessary for rebuttal and/or impeachment.

12. Any and all witnesses whose identity is discovered through the course of discovery in this action.

13. Any experts who have not yet been retained to testify.

Discovery is ongoing, and Respondents reserve the right to supplement, amend, correct, or otherwise supplement their list of witnesses as additional witnesses may be discovered through the close of discovery and up to and including the time of trial.

II. DOCUMENTS, DATA, AND OTHER TANGIBLE EVIDENCE

Based upon the information currently available, Respondents identify and produce the following documents¹:

	Description	Bates Range
1.	Volume Drive List	RESP0000001-11
2.	5/31/13 Agreement (Sale Agreement at issue)	RESP0000012-30
3.	LLC and CORP Notes, Payment Guaranty	RESP0000031-40
4.	McGladrey Valuation Report for AWH 3/31/93	RESP0000041-80
5.	1993 Gift Tax Ret - McGladrey Val Rep 5% AWH Stock - The S.L.G. Canarelli 1993 Retained Annuity Trust (Stacia); The J.L.G. Canarelli 1993 Retained Annuity Trust (Jeff); The A.L.G. Canarelli 1993 Retained Annuity Trust (Aly)	RESP0000081-138
6.	1993 Gift Tax Ret - McGladrey Val Rep 5% AWH Stock - The Stacia Leigh Graves Canarelli 1993 Retained Annuity Trust; The Jeffrey Lawrence Graves Canarelli 1993 Retained Annuity Trust; The Alyssa Lawren Graves Canarelli 1993 Retained Annuity Trust	RESP0000139-196
7.	Scott Trust Net Worth Values 1998-2013	RESP0000197-198
8.	SCIT 12/31/01 Audited Financials (Duplicate RESP0000930-938)	RESP0000199-207
9.	12/31/02 Reconciliation of SCIT Financial Stmt to Trial Balance	RESP0000208
10.	Sept. 2002 Historical General Ledger	RESP0000209
11.	2002 Trial Balance	RESP0000210
12.	SCIT 12/31/02 Audited Financials (Duplicate RESP0000939-949)	RESP0000211-221

¹ Descriptions for documents in Bates ranges RESP0016069-16236 and RESP0017227 will be supplemented.

1	445.	Independent Contractor Agreement	RESP0013184-13191
2	446.	Independent Contractor Agreement	RESP0013192-13196
3	447.	Independent Contractor Agreement	RESP0013197-13208
4	448.	Brokerage Disclosure Agreement	RESP0013209-13214
5	449.	Brokerage Disclosure Agreement	RESP0013215-13229
6	450.	Lead Paint Disclosure	RESP0013230-13231
7	451.	Acknowledgement, Consent, Release and Indemnification Agreement	RESP0013232-13235
8	452.	Letter	RESP0013236-13237
9	453.	Indoor Soccer field brochure	RESP0013238-13239
10	454.	cover sheet	RESP0013240-13240
11	455.	Delinquent Debt Verification Notice	RESP0013241-13246
12	456.	Personal Budget Scott Canarelli Family	RESP0013247-13250
13	457.	Personal Budget Scott Canarelli Family	RESP0013251-13254
14	458.	Personal Budget Scott Canarelli Family	RESP0013255-13258
15	459.	cover sheet	RESP0013259-13259
16	460.	Change of Salary form	RESP0013260-13261
17	461.	cover sheet	RESP0013262-13262
18	462.	Email	RESP0013263-13267
19	463.	Parts of a court document	RESP0013268-13269
20	464.	Letter	RESP0013270-13277
21	465.	Handwritten notes	RESP0013278-13278
22	466.	Scott Lyle Graves Canarelli Irrevocable Trust and the Scott Canarelli Protection Trust Financial Information Documents	RESP0013279-13280
23	467.	Financials	RESP0013281-13283
24	468.	Handwritten notes	RESP0013284-13288
25	469.	Handwritten notes	RESP0013289-13293
26	470.	Attorney Invoice	RESP0013294-13295
27	471.	Canarelli Outstanding Obligations	RESP0013296-13299
28	472.	cover sheet	RESP0013300-13300
	473.	Attorney Invoice	RESP0013301-13303
	474.	cover sheet	RESP0013304-13304
	475.	Copy of outside of envelope	RESP0013305-13305
	476.	Scott Lyle Graves Irrevocable Trust Second Accounting of Successor Trustee December 31, 2014	RESP0013306-13322
	477.	Email	RESP0013323-13331
	478.	cover sheet	RESP0013332-13332
	479.	Settlement Note Amortization Table	RESP0013333-13334
	480.	The Cankids Investments, LLC Balance Sheet 2016	RESP0013335-13343
	481.	The Cankids Investments, LLC Balance Sheet 2017	RESP0013344-13352
	482.	Corporate Structure sheet	RESP0013353-13354
	483.	Scott Canarelli Irr Trust Settlement Payments	RESP0013355-13357
	484.	Scott Canarelli Settlement	RESP0013358-13359
	485.	Letter	RESP0013360-13408
	486.	Letter	RESP0013409-13411
	487.	Bullet Points/Memo	RESP0013412-13414

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1	3199.	WF_IRRV_TRST-oct-2015.pdf	RESP0020046-20051
2	3200.	WF_IRRV_TRST-oct-2016.pdf	RESP0020052-20057
3	3201.	WF_IRRV_TRST-oct-2017.pdf	RESP0020058-20063
4	3202.	WF_IRRV_TRST-sep-2015.pdf	RESP0020064-20069
5	3203.	WF_IRRV_TRST-sept-2016.pdf	RESP0020070-20075
6	3204.	WF_IRRV_TRST-sept-2017.pdf	RESP0020076-20082

Discovery is ongoing, and Respondents reserve the right to supplement, amend, correct, or otherwise modify this document and this list of documents as additional documents are identified and obtained through discovery. Further, Respondents reserve the right to use as exhibits any and all documents listed by other parties related to this matter.

III. CALCULATION OF DAMAGES

Respondents reserve their right to supplement, amend, correct, or otherwise modify this information at a later date.

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1 **IV. INSURANCE AGREEMENTS**

2 Not applicable.

3 DATED this 15th day of December 2017.

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EXHIBIT 6

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21 *Counsel for Respondents*

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 In the Matter of:

25 Case No: P-13-078912-T

26 Department No: 26

27 SCOTT LYLE GRAVES

28 CANARELLI IRREVOCABLE

TRUST, dated February 24, 1998.

**OBJECTIONS AND RESPONSES TO SCOTT CANARELLI'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO EDWARD LUBBERS**

Edward Lubbers ("Lubbers"), individually and as former Family Trustee and former Independent Trustee of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, by and through his counsel, the law firms of Campbell & Williams and Dickinson Wright PLLC, hereby submits his responses to Scott Canarelli's ("Scott") First Set of Request for Production of Documents (the "Requests") as follows:

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1 **REQUEST FOR PRODUCTION NO. 1:**

2 Please produce Your entire file on the SCIT.

3 **RESPONSE:**

4 Lubbers objects to this Request to the extent: (a) certain terms, including “your entire file on
5 the SCIT” are overly broad, vague, and ambiguous; (b) this Request seeks to impose obligations
6 upon Lubbers beyond those required by the Rules; (c) based upon Scott’s definition of “You,”
7 which includes agents, employees, and representatives of Lubbers, this Request calls for the
8 production of attorney-client privileged communications and attorney work product in requesting
9 “Your entire file”; (d) the Request seeks information that is not relevant and is not reasonably
10 calculated to lead to the discovery of admissible evidence regarding the limited issues remaining in
11 this matter, and any marginal relevance is heavily outweighed by the prejudice to Lubbers; and (f)
12 this Request is unreasonably cumulative and duplicative, overly burdensome, and harassing in
13 requesting documents already disclosed to and/or in Scott’s possession, custody or control (*see*
14 General Objection No. 11).

15 Subject to and without waiving said objections or the General Objections, Lubbers is
16 informed and believes, and thereupon states that documents constituting the “file on the SCIT”
17 already have been disclosed to Scott. *See also* RESP0012177-18799, produced concurrently
18 herewith as maintained in the ordinary course of business.

19 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
20 his possession, custody, or control responsive to this Request if such documents are located and it is
21 determined that such documents have not also already been disclosed to Scott and/or are not already
22 in Scott’s possession, custody, or control.

23 **REQUEST FOR PRODUCTION NO. 2:**

24 Please produce any and all correspondence, notes, memoranda, contracts, agreements,
25 invoices and documents of any kind from, to, by and/or between You and Scott Canarelli from
26 January 1, 2012 to present relating directly or indirectly to the SCIT, Scott Canarelli’s employment
27 with the American West Entities, Scott Canarelli’s decision to resign from his employment with the
28 American West Entities and/or Scott Canarelli’s decisions to raise his children.

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1 **REQUEST FOR PRODUCTION NO. 3:**

2 Please produce any and all correspondence, notes, memoranda, contracts, agreements,
3 invoices and documents of any kind from, to, by and/or between You and Lawrence and/or Heidi
4 Canarelli relating to the SCIT, Scott Canarelli, or any trust in which Scott Canarelli is a beneficiary,
5 from January 1, 2012 to present.

6 **RESPONSE:**

7 Lubbers objects to this Request to the extent: (a) certain terms, including “correspondence,
8 notes, memoranda, contracts, agreements. invoices and documents of any kind,” and “relating to the
9 SCIT, Scott Canarelli, or any trust in which Scott Canarelli is a beneficiary” are overly broad,
10 vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond those
11 required by the Rules; (c) this Request calls for the production of attorney-client privileged
12 communications and attorney work product; (d) the Request seeks information that is not relevant
13 and is not reasonably calculated to lead to the discovery of admissible evidence regarding the
14 limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
15 prejudice to Lubbers; and (e) this Request is unreasonably cumulative and duplicative, overly
16 burdensome, and harassing in requesting documents already disclosed to and/or in Scott’s
17 possession, custody or control (*see* General Objection No. 11).

18 Subject to and without waiving said objections or the General Objections, Lubbers is
19 informed and believes, and thereupon states that documents responsive to this Request already have
20 been disclosed to Scott and/or are already in Scott’s possession, custody, or control. *See also*
21 RESP000001-0012179.

22 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
23 his possession, custody, or control responsive to this Request if such documents are located and it is
24 determined that such documents have not also already been disclosed to Scott and/or are not already
25 in Scott’s possession, custody, or control.

1 Request seeks information that is not relevant and is not reasonably calculated to lead to the
2 discovery of admissible evidence regarding the limited issues remaining in this matter, and any
3 marginal relevance is heavily outweighed by the prejudice to Lubbers; and (e) this Request is
4 unreasonably cumulative and duplicative, overly burdensome, and harassing in requesting
5 documents already disclosed to and/or in Scott's possession, custody or control (*see* General
6 Objection No. 11).

7 Subject to and without waiving said objections or the General Objections, Lubbers is
8 informed and believes, and thereupon states that any documents responsive to this Request already
9 have been disclosed to Scott. Discovery is ongoing, and Lubbers will produce any additional non-
10 privileged documents in his possession, custody, or control responsive to this Request if such
11 documents are located and it is determined that such documents have not also already been
12 disclosed to Scott and/or are not already in Scott's possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 8:**

14 Please produce the SCIT's tax returns, including Federal and State returns, from 2005 to the
15 present.

16 **RESPONSE:**

17 Lubbers objects to this Request to the extent: (a) this Request seeks to impose obligations
18 upon Lubbers beyond those required by the Rules; (b) the Request seeks information that is not
19 relevant and is not reasonably calculated to lead to the discovery of admissible evidence regarding
20 the limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
21 prejudice to Lubbers; and (c) this Request is unreasonably cumulative and duplicative, overly
22 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
23 possession, custody or control (*see* General Objection No. 11).

24 Subject to and without waiving said objections or the General Objections, Lubbers is
25 informed and believes, and thereupon states that documents responsive to this Request, namely tax
26 returns from 2005 through 2012, RESP 003726-4957, already have been disclosed to Scott and/or
27 are already in Scott's possession, custody, or control. *See also* RESP0012177-18799 produced
28 concurrently herewith.

1 **RESPONSE:**

2 Lubbers objects to this Request to the extent: (a) certain terms, including “correspondence,
3 notes, memoranda and documents . . . relating to the administration of the SCIT” are overly broad,
4 vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond those
5 required by the Rules; (c) this Request calls for the production of attorney-client privileged
6 communications and attorney work product; (d) the Request seeks information that is not relevant
7 and is not reasonably calculated to lead to the discovery of admissible evidence regarding the
8 limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
9 prejudice to Lubbers; and (e) this Request is unreasonably cumulative and duplicative, overly
10 burdensome, and harassing in requesting documents already disclosed to and/or in Scott’s
11 possession, custody or control (*see* General Objection No. 11).

12 Subject to and without waiving said objections or the General Objections, Lubbers is
13 informed and believes, and thereupon states that any documents responsive to this Request already
14 have been disclosed to Scott. Discovery is ongoing, and Lubbers will produce any additional non-
15 privileged documents in his possession, custody, or control responsive to this Request if such
16 documents are located and it is determined that such documents have not also already been
17 disclosed to Scott and/or are not already in Scott’s possession, custody, or control.

18 **REQUEST FOR PRODUCTION NO. 12:**

19 Please produce any and all correspondence, notes, memoranda and documents from, to, by
20 and/or between You and Daniel Gerety, CPA, as it relates to the SCIT, including, but not limited to
21 the preparation of the accountings from January 1, 2014 to present.

22 **RESPONSE:**

23 Lubbers objects to this Request to the extent: (a) certain terms certain terms, including
24 “correspondence, notes, memoranda and documents” and “as it relates to the SCIT” are overly
25 broad, vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond
26 those required by the Rules; (c) this Request calls for the production of attorney-client privileged
27 communications and attorney work product; (d) the Request seeks information that is not relevant
28 and is not reasonably calculated to lead to the discovery of admissible evidence regarding the

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1 limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
2 prejudice to Lubbers; and (e) this Request is unreasonably cumulative and duplicative, overly
3 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
4 possession, custody or control (*see* General Objection No. 11).

5 Subject to and without waiving said objections or the General Objections, Lubbers is
6 informed and believes, and thereupon states that documents responsive to this Request already have
7 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
8 RESP0012177-18799 produced concurrently herewith.

9 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
10 his possession, custody, or control responsive to this Request if such documents are located and it is
11 determined that such documents have not also already been disclosed to Scott and/or are not already
12 in Scott's possession, custody, or control.

13 **REQUEST FOR PRODUCTION NO. 13:**

14 Please produce any and all records of all checking and/or savings accounts, credit union
15 accounts, certificates of deposit and/or brokerage accounts maintained by You in Your capacity as a
16 trustee of the SCIT (regardless of whether or not the account or accounts have been closed) from
17 January 1, 2012 to present, including, but not limited to, monthly bank statements, checkbooks,
18 cancelled checks, check registers, deposit slips, check requests, passbooks, statements relating to
19 savings accounts or certificates of savings deposit.

20 **RESPONSE:**

21 Lubbers objects to this Request to the extent: (a) this Request seeks to impose obligations
22 upon Lubbers beyond those required by the Rules; (b) the Request seeks information that is not
23 relevant and is not reasonably calculated to lead to the discovery of admissible evidence regarding
24 the limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
25 prejudice to Lubbers; and (c) this Request is unreasonably cumulative and duplicative, overly
26 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
27 possession, custody or control (*see* General Objection No. 11).

1 Subject to and without waiving said objections or the General Objections, Lubbers is
2 informed and believes, and thereupon states that documents responsive to this Request already have
3 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
4 RESP0012177-18799 produced concurrently herewith.

5 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
6 his possession, custody, or control responsive to this Request if such documents are located and it is
7 determined that such documents have not also already been disclosed to Scott and/or are not already
8 in Scott's possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 14:**

10 Please produce any and all correspondence, notes, memoranda and documents relating to
11 any demand or request by Scott Canarelli for distributions or additional payments from the SCIT
12 from January 1, 2008 to present.

13 **RESPONSE:**

14 Lubbers objects to this Request to the extent: (a) certain terms, including "correspondence,
15 notes, memoranda and documents relating to any demand or request by Scott Canarelli for
16 distributions or additional payments from the SCIT" are overly broad, vague, and ambiguous; (b)
17 this Request seeks to impose obligations upon Lubbers beyond those required by the Rules; (c) this
18 Request calls for the production of attorney-client privileged communications and attorney work
19 product; (d) the Request seeks information that is not relevant and is not reasonably calculated to
20 lead to the discovery of admissible evidence regarding the limited issues remaining in this matter,
21 and any marginal relevance is heavily outweighed by the prejudice to Lubbers; (e) this Request is
22 unreasonably cumulative and duplicative, overly burdensome, and harassing in requesting
23 documents already disclosed to and/or in Scott's possession, custody or control (*see* General
24 Objection No. 11).

25 Subject to and without waiving said objections or the General Objections, Lubbers is
26 informed and believes, and thereupon states that documents responsive to this Request already have
27 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
28

1 RESP0012177-18799 produced concurrently herewith, including but not limited to RESP0013619-
2 13943.

3 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
4 his possession, custody, or control responsive to this Request if such documents are located and it is
5 determined that such documents have not also already been disclosed to Scott and/or are not already
6 in Scott's possession, custody, or control.

7 **REQUEST FOR PRODUCTION NO. 15:**

8 Please produce any and all documentation that identifies, concerns or relates to any
9 payments made to Scott Canarelli, or for his benefit, from the SCIT from January 1, 2012 to
10 present.

11 **RESPONSE:**

12 Lubbers objects to this Request to the extent: (a) certain terms, including "identifies,
13 concerns or relates to any payments made to Scott Canarelli, or for his benefit" are overly broad,
14 vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond those
15 required by the Rules; (c) this Request calls for the production of attorney-client privileged
16 communications and attorney work product; (d) the Request seeks information that is not relevant
17 and is not reasonably calculated to lead to the discovery of admissible evidence regarding the
18 limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
19 prejudice to Lubbers; (e) this Request is unreasonably cumulative and duplicative, overly
20 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
21 possession, custody or control (*see* General Objection No. 11).

22 Subject to and without waiving said objections or the General Objections, Lubbers is
23 informed and believes, and thereupon states that documents responsive to this Request already have
24 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
25 RESP0012177-18799 produced concurrently herewith, including but not limited to RESP0013619-
26 13943.

27 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
28 his possession, custody, or control responsive to this Request if such documents are located and it is

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1 determined that such documents have not also already been disclosed to Scott and/or are not already
2 in Scott's possession, custody, or control.

3 **REQUEST FOR PRODUCTION NO. 16:**

4 Please produce any and all documentation concerning any transfer of funds from any
5 account owned by the SCIT to any account owned by Scott Canarelli from January 1, 2012 to the
6 present.

7 **RESPONSE:**

8 Lubbers objects to this Request to the extent: (a) certain terms, including any transfer of
9 funds," "any account owned by the SCIT," and "any account owned by Scott Canarelli" are overly
10 broad, vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond
11 those required by the Rules; (c) this Request calls for the production of attorney-client privileged
12 communications and attorney work product; (d) the Request seeks information that is not relevant
13 and is not reasonably calculated to lead to the discovery of admissible evidence regarding the
14 limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
15 prejudice to Lubbers (e) this Request is unreasonably cumulative and duplicative, overly
16 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
17 possession, custody or control (*see* General Objection No. 11).

18 Subject to and without waiving said objections or the General Objections, Lubbers is
19 informed and believes, and thereupon states that documents responsive to this Request already have
20 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
21 RESP0012177-18799 produced concurrently herewith, including but not limited to RESP0013619-
22 13943. .

23 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
24 his possession, custody, or control responsive to this Request if such documents are located and it is
25 determined that such documents have not also already been disclosed to Scott and/or are not already
26 in Scott's possession, custody, or control.

1 **REQUEST FOR PRODUCTION NO. 17:**

2 Please produce any and all documentation concerning any payments and/or transfer of funds
3 from any account owned by the SCIT to any account owned by any person or entity other than Scott
4 Canarelli from January 1, 2012 to present.

5 **RESPONSE:**

6 Lubbers objects to this Request to the extent: (a) certain terms, including including "any
7 transfer of funds," any account owned by the SCIT," and "any account owned by any person or
8 entity other than Scott Canarelli" are overly broad, vague, and ambiguous; (b) this Request seeks to
9 impose obligations upon Lubbers beyond those required by the Rules; (c) this Request calls for the
10 production of attorney-client privileged communications and attorney work product; (d) the
11 Request seeks information that is not relevant and is not reasonably calculated to lead to the
12 discovery of admissible evidence regarding the limited issues remaining in this matter, and any
13 marginal relevance is heavily outweighed by the prejudice to Lubbers (e) this Request is
14 unreasonably cumulative and duplicative, overly burdensome, and harassing in requesting
15 documents already disclosed to and/or in Scott's possession, custody or control (*see* General
16 Objection No. 11).

17 Subject to and without waiving said objections or the General Objections, Lubbers is
18 informed and believes, and thereupon states that documents responsive to this Request already have
19 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See also*
20 RESP0012177-18799 produced concurrently herewith, including but not limited to RESP0013619-
21 13943.

22 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
23 his possession, custody, or control responsive to this Request if such documents are located and it is
24 determined that such documents have not also already been disclosed to Scott and/or are not already
25 in Scott's possession, custody, or control.

26 **REQUEST FOR PRODUCTION NO. 18:**

27 Please produce any and all documents concerning any proposed budget submitted to You by
28 Scott Canarelli from January 1, 2012 to present.

1 **RESPONSE:**

2 Lubbers objects to this Request to the extent: (a) this Request seeks to impose obligations
3 upon Lubbers beyond those required by the Rules; (b) the Request seeks information that is not
4 relevant and is not reasonably calculated to lead to the discovery of admissible evidence regarding
5 the limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
6 prejudice to the Lubbers; and (c) this Request is unreasonably cumulative and duplicative, overly
7 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
8 possession, custody or control (*see* General Objection No. 11).

9 Subject to and without waiving said objections or the General Objections, other than
10 RESP0013125-13133, Lubbers is not aware of any documents responsive to this Request. If such
11 documents exist, they should be in Scott's possession, custody, or control. Discovery is ongoing,
12 and Lubbers will produce any additional non-privileged documents in his possession, custody, or
13 control responsive to this Request if such documents are located and it is determined that such
14 documents have not also already been disclosed to Scott and/or are not already in Scott's
15 possession, custody, or control.

16 **REQUEST FOR PRODUCTION NO. 19:**

17 Please produce any and all documents concerning any proposed budget prepared by You or
18 at Your direction for the health, education, maintenance and support of Scott Canarelli and his
19 children from January 1, 2012 to present.

20 **RESPONSE:**

21 Lubbers objects to this Request to the extent: (a) certain terms, including "for the health,
22 education, maintenance and support of Scott Canarelli and his children" are overly broad, vague,
23 and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond those required
24 by the Rules; (c) the Request seeks information that is not relevant and is not reasonably calculated
25 to lead to the discovery of admissible evidence regarding the limited issues remaining in this matter,
26 and any marginal relevance is heavily outweighed by the prejudice to Lubbers; and (d) this Request
27 is unreasonably cumulative and duplicative, overly burdensome, and harassing in requesting
28

1 **REQUEST FOR PRODUCTION NO. 23:**

2 Please produce any and all correspondence, notes, memoranda and documents relating to
3 any suspension or deferral of principal and/or interest payments on the LLC Note and/or Corporate
4 Note.

5 **RESPONSE:**

6 Lubbers objects to this Request to the extent: (a) certain terms, including “correspondence,
7 notes, memoranda and documents relating to any suspension or deferral of principal and/or interest
8 payments” are overly broad, vague, and ambiguous; (b) this Request seeks to impose obligations
9 upon Lubbers beyond those required by the Rules; (c), this Request calls for the production of
10 attorney-client privileged communications and attorney work product in requesting “any and all . . .
11 documents”; (d) the Request seeks information that is not relevant and is not reasonably calculated
12 to lead to the discovery of admissible evidence regarding the limited issues remaining in this matter,
13 and any marginal relevance is heavily outweighed by the prejudice to Lubbers; and (e) this Request
14 is unreasonably cumulative and duplicative, overly burdensome, and harassing in requesting
15 documents already disclosed to and/or in Scott’s possession, custody or control (*see* General
16 Objection No. 11).

17 Subject to and without waiving said objections or the General Objections, Lubbers is
18 informed and believes, and thereupon states that documents responsive to this Request already have
19 been disclosed to Scott and/or are already in Scott’s possession, custody, or control. *See also*
20 RESP0012177-18799 produced concurrently herewith, including but not limited to RESP0012732-
21 12733. .

22 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
23 his possession, custody, or control responsive to this Request if such documents are located and it is
24 determined that such documents have not also already been disclosed to Scott and/or are not already
25 in Scott’s possession, custody, or control.

26 **REQUEST FOR PRODUCTION NO. 24:**

27 Please produce any documentation that identifies, concerns or relates to the Purchase
28 Agreement, including, but not limited to drafts, communications, notes and/or memos.

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2 **RESPONSE:**

3 Lubbers objects to this Request to the extent: (a) certain terms, including “any
4 documentation that identifies, concerns or relates to the Purchase Agreement” are overly broad,
5 vague, and ambiguous; (b) this Request seeks to impose obligations upon Lubbers beyond those
6 required by the Rules; (c), this Request calls for the production of attorney-client privileged
7 communications and attorney work product in requesting “any documentation”; (d) the Request
8 seeks information that is not relevant and is not reasonably calculated to lead to the discovery of
9 admissible evidence regarding the limited issues remaining in this matter, and any marginal
10 relevance is heavily outweighed by the prejudice to Lubbers; and (e) this Request is unreasonably
11 cumulative and duplicative, overly burdensome, and harassing in requesting documents already
12 disclosed to and/or in Scott’s possession, custody or control (*see* General Objection No. 11).

13 Subject to and without waiving said objections or the General Objections, Lubbers is
14 informed and believes, and thereupon states that documents responsive to this Request, including
15 the Western Valuation Advisors report, already have been disclosed to Scott and/or are already in
16 Scott’s possession, custody, or control. *See also* RESP0012177-18799 produced concurrently
17 herewith, including but not limited to RESP0012879-12908. .

18 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
19 his possession, custody, or control responsive to this Request if such documents are located and it is
20 determined that such documents have not also already been disclosed to Scott and/or are not already
21 in Scott’s possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 25:**

23 Please produce copies of profit and loss statements, balance sheets and/or financial
24 statements, whether audited, unaudited or a compilation, from December 31, 2012 to December 31,
25 2016 for all Corporations and/or LLCs that were subject to the Purchase Agreement.

26 **RESPONSE:**

27 Lubbers objects to this Request to the extent: (a) this Request seeks to impose obligations
28 upon Lubbers beyond those required by the Rules; (b) the Request seeks information that is not

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1 prejudice to Lubbers because, *inter alia*, there has been no default under the Purchase Agreement;
2 (c) this Request is unreasonably cumulative and duplicative, overly burdensome, and harassing in
3 requesting documents already disclosed to and/or in Scott's possession, custody or control (*see*
4 General Objection No. 11); and (d) this Request improperly requests non-party documents which
5 are not in Lubbers' possession, custody, or control.

6 Subject to and without waiving said objections or the General Objections, Lubbers is
7 informed and believes, and thereupon states that documents responsive to this Request already have
8 been disclosed to Scott. Discovery is ongoing, and Lubbers will produce any additional non-
9 privileged documents in his possession, custody, or control responsive to this Request if such
10 documents are located and it is determined that such documents have not also already been
11 disclosed to Scott and/or are not already in Scott's possession, custody, or control.

12 DATED this 15th day of December 2017.

13 **CAMPBELL & WILLIAMS**
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20 and

21 
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EXHIBIT 7

RSPN

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Counsel for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE
TRUST, dated February 24, 1998.

Case No.: P-13-078912-T

Dept. No.: 26

**SUPPLEMENTAL OBJECTIONS AND RESPONSES TO SCOTT CANARELLI'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO EDWARD LUBBERS**

Edward Lubbers ("Lubbers"), individually and as former Family Trustee and former Independent Trustee of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, by and through his counsel, the law firms of Campbell & Williams and Dickinson Wright PLLC, hereby submits his supplemental responses to Scott Canarelli's ("Scott") First Set of Request for Production of Documents (the "Requests") as follows:

PRELIMINARY STATEMENT

1. As to all matters referred to in these responses and objections to the Requests, Lubbers' investigation and discovery is ongoing. The responses are based upon, and necessarily limited by, information presently known and available to Lubbers. Further discovery lead to

1 correct, or accurate. Lubbers hereby reserves any and all rights to contest the admissibility,
2 accuracy, validity, truth, or correctness of each and every item of information and/or document
3 described, identified, or otherwise referenced in Lubbers' responses.

4 19. The fact that Lubbers objects to any particular Request should not be construed
5 generally to mean that responsive information or documents exist. In addition, Lubbers does not
6 adopt, by responding to the Requests, any definition of words or phrases or any express or implied
7 characterization of fact or law contained in the Requests.

8 20. Lubbers objects to these Requests pursuant to NRCP 26(b)(2)(i) insofar as they are
9 unreasonably repetitive, redundant or overlapping with information and/or documents previously
10 produced to Scott. Lubbers should not have to produce information already in Scott's possession.

11 21. Lubbers objects to the requests pursuant to NRCP 26(b)(2)(iii) to the extent that they
12 are unduly burdensome, oppressive, annoying and/or harassing.

13 22. The absence of an objection to a particular Request, or any part thereof, shall not be
14 deemed to be an acknowledgment that information and/or documents responsive to such Request
15 exists, or an admission or agreement that the subject of any such Request (or part thereof) is
16 relevant to the subject matter of this case. Lubbers hereby reserves the right to object to the
17 relevancy and/or admissibility of any information provided in their responses.

18 **RESPONSES TO FIRST REQUEST FOR PRODUCTION**

19 The above-referenced Preliminary Statement and General Objections are incorporated into
20 each of the following specific responses. Any specific objection is in addition to the Preliminary
21 Objections and General Objections and a failure to reiterate the Preliminary Statement or any of the
22 General Objection does not constitute a waiver of that or any other objection. Subject to the
23 foregoing Preliminary Statement and General Objections, and to the particularized objections set
24 forth below, Lubbers respond to the requests as follows:

25 **REQUEST FOR PRODUCTION NO. 1:**

26 Please produce Your entire file on the SCIT.

27 **RESPONSE:**

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1 Lubbers objects to this Request to the extent: (a) certain terms, including “your entire file on
2 the SCIT” are overly broad, vague, and ambiguous; (b) this Request seeks to impose obligations
3 upon Lubbers beyond those required by the Rules; (c) based upon Scott’s definition of “You,”
4 which includes agents, employees, and representatives of Lubbers, this Request calls for the
5 production of attorney-client privileged communications and attorney work product in requesting
6 “Your entire file”; (d) the Request seeks information that is not relevant and is not reasonably
7 calculated to lead to the discovery of admissible evidence regarding the limited issues remaining in
8 this matter, and any marginal relevance is heavily outweighed by the prejudice to Lubbers; and (f)
9 this Request is unreasonably cumulative and duplicative, overly burdensome, and harassing in
10 requesting documents already disclosed to and/or in Scott’s possession, custody or control (*see*
11 General Objection No. 11).

12 Subject to and without waiving said objections or the General Objections, Lubbers is
13 informed and believes, and thereupon states that documents constituting the “file on the SCIT”
14 already have been disclosed to Scott. *See* RESP0012177-18799, **previously produced; see also**
15 **RESP18800-37926 produced concurrently herewith as maintained in the ordinary course of**
16 **business. Specifically, see RESP0012178-12183 (Investment and Fiduciary Services Wells**
17 **Fargo); RESP0012184 (Email US Bank to Lubbers re: US Bank Private Client Reserve);**
18 **RESP0012286-12304 (Trust Agreement SCIT); RESP0012305-12318 (the SLG Canarelli**
19 **Secondary Trust); RESP0012732-12733 (Instruction from Lubbers to defer principal**
20 **payment due 4/1/14); RESP0012734-12735 (Scott Canarelli Settlement – Points of Analysis);**
21 **RESP0012736-12737 (3/11/14 letter from Scott Canarelli); RESP0012738 (RSM Financial**
22 **Statements Chart 2008-2012); RESP0012740-12742 (CCLH Land Holding and Other Assets**
23 **3/31/13); RESP0012915 (TNP Notes Arville); RESP0012951-13005 (Premarital Agreement);**
24 **RESP0013100 (1/28/14 Freer letter); RESP0013101-13102 (11/14/12 Solomon letter);**
25 **RESP0013125-13133 (8/27/12 Solomon letter); RESP0013144-13146 (Personal Budget –**
26 **Canarelli Family); RESP0013147 (8/17/12 notes); RESP0013148-13152 (Email**
27 **communications 2012); RESP0013156-13157 (8/3/12 Solomon letter); RESP0013162-13167**
28 **(7/17/12 LeVeque letter); RESP0013247-13250 (Personal Budget); RESP0013289-13290**

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1 (5/20/13 notes); RESP0013291 (Email from Scott Canarelli to Ed Lubbers); RESP0013292-
2 13293 (Notes – ESBT); RESP0013296-13297 (Canarelli-Outstanding Obligations);
3 RESP0013298-13299 (Lubbers sub-file opening sheet); RESP0013305 (6/26/15
4 communication); RESP0013412 (July 7, 2015 notes); RESP0013442 (2/3/15 Freer letter);
5 RESP0013443-13454 (5/6/14 Freer letter); RESP0013465 (12/23/16 Dwiggins letter);
6 RESP0013490-13491 (Accounting for Calendar Year 2013); RESP0013753-13754 (Trust Net
7 Worth Values Original-2013); RESP0013755 (Chart Assets/Liabilities 2001-2012);
8 RESP0013413-13414 (Protection Trust and Family Trust); RESP0015683-15699 (2014 Tax
9 Return – Kylie Canarelli); RESP0015704 (1040 Extension granted – 2014); RESP0015964
10 (1099 Stacia Leigh Lemke Irrev Trust 2014); RESP0015968 (Accounting for Calendar Year
11 2014); RESP0015969-15970 (Good Shepherd Preschool childcare costs for 2014);
12 RESP0016075-16076 (Email from Cheryl Corley to Scott Canarelli; Ed Lubbers);
13 RESP0016079-16083 (Canarelli-Lagenza Lease); RESP0016212 (1040 Extension Granted
14 2012 tax return Kylie); RESP0016442 (Gaudin-vehicle buyer's order for 2013 Porsche
15 Cayenne); RESP0016443 (Email Ed Lubber to Jackie Nares – Scott wants \$62,000);
16 RESP0016458 (2013 Scott Canarelli Individual Return); RESP0016929 (2013 Kylie Canarelli
17 Individual Return); RESP0016983-16986 (Form 1045-Application for Tentative Refund
18 12/31/12); RESP0016998-17106 (Application for Tentative Refund 12/31/11); RESP0017268
19 (Settlement Statement); RESP0017692 (Transfer confirmation-Wells Fargo); RESP0017708
20 (Message-\$5,000 Deposit); RESP0017711 (Message-new price \$181,408.73); RESP0017714
21 (Clark County Treasurer notice-past due); RESP0017732 (Email Scott to Teresa);
22 RESP0017762 (1099 Alyssa L Canarelli Irrev Trust 2016); RESP0017763 (Email from Scott
23 Canarelli to Teresa O'Malley); RESP0017697 (Clark County Treasurer notice-past due);
24 RESP0017778 (Clark County Treasurer notice-past due); RESP0018249 (Invoice – Delightful
25 Chefs, LLC); RESP0018469 (State Farm insurance); RESP0018624 (State Farm insurance);
26 RESP0018789 (Check copy to Adam Kaswiner); RESP0018856 (Student enrollment);
27 RESP0018964 (E-mail from Teresa O'Malley to Scott Canarelli); RESP0020444 (Contact info
28 Scott Canarelli); RESP0020621 (7/20/06 Memo to File); RESP0029776 (Sch D – 2007 Taxes

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1 Scott Canarelli); RESP0036969 (Settlement Statement – Grants Landing); RESP0037295-
2 37358 (Solomon 8/3/16 letter); and RESP0037494-37500 (Summary 2012-2017 – Scott
3 Canarelli).

4 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
5 his possession, custody, or control responsive to this Request if such documents are located and it is
6 determined that such documents have not also already been disclosed to Scott and/or are not already
7 in Scott's possession, custody, or control.

8 **REQUEST FOR PRODUCTION NO. 2:**

9 Please produce any and all correspondence, notes, memoranda, contracts, agreements,
10 invoices and documents of any kind from, to, by and/or between You and Scott Canarelli from
11 January 1, 2012 to present relating directly or indirectly to the SCIT, Scott Canarelli's employment
12 with the American West Entities, Scott Canarelli's decision to resign from his employment with the
13 American West Entities and/or Scott Canarelli's decisions to raise his children.

14 **RESPONSE:**

15 Lubbers objects to this Request to the extent: (a) certain terms, including "correspondence,
16 notes, memoranda, contracts, agreements. invoices and documents of any kind," and "relating
17 directly or indirectly to the SCIT, Scott Canarelli's employment with the American West Entities,
18 Scott Canarelli's decision to resign from his employment with the American West Entities and/or
19 Scott Canarelli's decisions to raise his children" are overly broad, vague, and ambiguous; (b) this
20 Request seeks to impose obligations upon Lubbers beyond those required by the Rules; (c) this
21 Request assumes facts not in evidence, namely, that Scott decided to resign from employment
22 and/or to raise his children; (d) based upon Scott's definition of "You," which includes agents,
23 employees, and representatives of Lubbers, this Request calls for the production of attorney-client
24 privileged communications and attorney work product in requesting "any and all . . . documents of
25 any kind from, to, by and/or between You and Scott Canarelli"; (e) the Request seeks information
26 that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence
27 regarding the limited issues remaining in this matter, and any marginal relevance is heavily
28 outweighed by the prejudice to Lubbers; and (f) this Request is unreasonably cumulative and

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1 Subject to and without waiving said objections or the General Objections, Lubbers is
2 informed and believes, and thereupon states that documents responsive to this Request already have
3 been disclosed to Scott. Discovery is ongoing, and Lubbers will produce any additional non-
4 privileged documents in his possession, custody, or control responsive to this Request if such
5 documents are located and it is determined that such documents have not also already been
6 disclosed to Scott and/or are not already in Scott's possession, custody, or control.

7 DATED this 19th day of January, 2018.

8 **CAMPBELL & WILLIAMS**
9 J. Colby Williams (NSB#5549)
10 700 S. Seventh Street
11 Las Vegas, NV 89101
12 Telephone: (702) 382-5222
13 Facsimile: (702) 382-0540
14 Jcw@campbellandwilliams.com

15 and

16 
17 **DICKINSON WRIGHT PLLC**
18 Elizabeth Brickfield, Esq. (NSB #6236)
19 Joel Z. Schwarz, Esq. (NSB #9181)
20 Var E. Lordahl, Esq. (NSB #12028)
21 8363 W. Sunset Road, Suite 200
22 Las Vegas, Nevada 89113
23 Telephone: (702) 550-4400
24 Facsimile: (844) 670-6009
25 ebrickfield@dickinsonwright.com
26 jschwarz@dickinsonwright.com
27 vlordahl@dickinsonwright.com

28 *Attorneys for Respondents*

EXHIBIT 8



8363 WEST SUNSET ROAD, SUITE 200
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JSCHWARZ@DICKINSONWRIGHT.COM
(702) 550-4436

February 16, 2018

VIA E-MAIL

ddwiggins@sdfnlaw.com

tjohnson@sdfnlaw.com

Dana Dwiggins, Esq.
Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

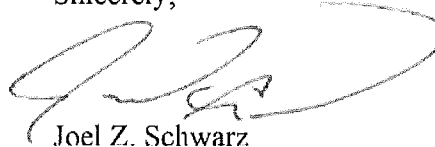
Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

As we were reviewing our supplemental productions, we found that RESP045293 had inadvertently been produced. Pursuant to the "claw back" provisions in the order entered in this case, I ask you gather any and all copies of RESP045293 and either 1) return them to my office, or 2) provide me with written confirmation that you have destroyed all copies.

Thank you for your attention to this matter.

Sincerely,



Joel Z. Schwarz

JZS:lms

cc: Elizabeth Brickfield, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 9

Production:Begin Bates	Production:End Bates	File Name	Email Subject	Email To	Email From	Email CC	Date Sent	Privilege Designation
PRIV_RESP0000001		2016 Canarelli Irrevocable Trust Accounting.msg	2016 Canarelli Irrevocable Trust Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDA24]	'Colby Williams' [cww@cwlawlv.com]; Hilary B. Dahlhaus [Hbdahlhaus@dickinson-wright.com]	11/1/2017 23:10	Attorney Work Product
PRIV_RESP0000002		2016 Scott Canarelli Irrevocable Trust accounting.msg	2016 Scott Canarelli Irrevocable Trust accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDA24]	'Ed Lubbers' [elubbers@lubberrslaw.com]; 'Colby Williams' [cww@cwlawlv.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP0000003		2016 Trust Accounting for Scott Lyle Graves Canarelli IRT.msg	2016 Trust Accounting for Scott Lyle Graves Canarelli IRT	elubbers@lubberrslaw.com; Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Jennifer Rosario [jrosario@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	12/14/2017 22:20	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000004		Attachments.html						Attorney Work Product
PRIV_RESP0000005		Attorney Fees.msg	Attorney Fees	Teresa O'Malley [TOMalley@AmericanWesthomes.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberrslaw.com]; Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]; Dan Gerety [Dan@geretycpa.com]	11/14/2017 19:06	Accountant Client Privilege; Attorney Client Communication
PRIV_RESP0000006		RE_Canarelli Trust questions	RE: Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:46	Attorney Work Product
PRIV_RESP0000011		RE_Canarelli Trust questions	RE: Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/15/2017 17:30	Attorney Work Product
PRIV_RESP0000016		RE_Canarelli	RE: Canarelli	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	'Colby Williams' [cww@cwlawlv.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]	12/15/2017 19:33	Attorney Client Communication
PRIV_RESP0000018		LVEGAS-#196105-v2Letter_to_Gerety_12-14-2017.PDF	Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	'Colby Williams' [cww@cwlawlv.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000019		LVEGAS-#196105-v2Letter_to_Gerety_12-14-2017.pdf	Canarelli					Attorney Work Product
PRIV_RESP0000023								Attorney Work Product
PRIV_RESP0000027		Canarelli - SCIT 2016 accounting.msg	Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [Hbdahlhaus@dickinson-wright.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]; Var E. Lordahl [Vlordahl@dickinson-wright.com]; Hilary A. Williams [HWilliams@dickinson-wright.com]	10/23/2017 18:57	Attorney Work Product
PRIV_RESP0000028		LVEGAS-#177246-v1-Gerety_Engagement_Letter_10-17-2017.PDF			Elizabeth Brickfield [/O=DICKINSON GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDA24]			Attorney Work Product
PRIV_RESP0000031		Canarelli .msg	Canarelli	'Ed Lubbers' [elubbers@lubberrslaw.com]			9/20/2017 18:29	Attorney Client Communication
PRIV_RESP0000032		LVEGAS-#168201-v1-LVEGAS-#167965-v1-geretydischarge.DOC						Attorney Work Product
PRIV_RESP0000034		Canarelli accountings.msg	Canarelli accountings	'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDA24]	'Dan Gerety' [Dan@geretycpa.com]	1/9/2018 20:19	Attorney Work Product

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PRIV_RESP00000035	Canarelli SCIT accounting.msg	Canarelli SCIT accounting	'Dan Gerey' [Dan@geretypca.com]	Elizabeth Brickfield [O=DICKINSON GROUP /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFELDEA24]	12/9/2017 4:06	Attorney Work Product
PRIV_RESP00000036	Canarelli Trust questions (26).msg	Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretypca.com]	12/14/2017 22:50	Attorney Work Product
PRIV_RESP00000037	Canarelli Trust questions (28).msg	Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretypca.com]	12/14/2017 22:48	Attorney Work Product
PRIV_RESP00000038	Canarelli Trust questions (42).msg	Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretypca.com]	12/11/2017 19:39	Attorney Work Product
PRIV_RESP00000040	Canarelli Trust questions.msg	Canarelli Trust questions	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretypca.com]	12/14/2017 22:53	Attorney Work Product
PRIV_RESP00000041	Canarelli.msg	Canarelli	Dan Gerey [Dan@geretypca.com]	'Colby Williams' [cww@cwlawlv.com];Joel Z. Schwarz [Schwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP00000042	WEGAS-#196105-v2-Letter_to_Gerey_12-14-2017.PDF		Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretypca.com]	1/9/2018 21:03	Attorney Work Product
PRIV_RESP00000046	Canarelli Trust accounting.msg	Canarelli Trust accounting	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Elizabeth Brickfield [O=DICKINSON GROUP /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFELDEA24]	12/22/2017 0:55	Attorney Client Communication
PRIV_RESP00000047	Draft 2016 Accounting .msg	Draft 2016 Accounting	'Dan Gerey' [Dan@geretypca.com]	Elizabeth Brickfield [O=DICKINSON GROUP /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFELDEA24]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP00000048	draft SCIT 2016 Accounting .msg	draft SCIT 2016 Accounting	'Dan Gerey' [Dan@geretypca.com]	Larry Canarelli [LCanarelli@AmericanWestHomes.com];Bob Evans [BobEvans@AmericanWestHomes.com]	9/38/2017 23:02	Attorney Client Communication
PRIV_RESP00000050	FW: [Gerey and Associates] Marlene Sowby has sent you the document 08_-_Trust_COURT_ACCTG_Eng_Letter_-_Canarelli_Scot_-_092617__2_.pdf to sign .msg	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com];Colby Williams [cww@cwlawlv.com]	Ed Lubbers [elubbers@lubberlaw.com]	Elizabeth Brickfield [O=DICKINSON GROUP /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFELDEA24]	12/6/2017 21:24	Attorney Client Communication
PRIV_RESP00000051	FW Canarelli .msg	FW: Canarelli	'Dan Gerey' [Dan@geretypca.com]	Elizabeth Brickfield [O=DICKINSON GROUP /OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFELDEA24]	1/10/2018 0:05	Attorney Work Product
PRIV_RESP00000052	FW Canarelli Trust accounting (9).msg	FW: Canarelli Trust accounting	Hilary B. Dahlhaus [Hbdahlhaus@dickinson-wright.com]	Ed Lubbers [elubbers@lubberlaw.com];Colby Williams [cww@cwlawlv.com]	12/6/2017 3:00	Attorney Client Communication
PRIV_RESP00000058	Attachments.html	RE: Canarelli - SCIT 2016 accounting	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Dan Gerey [Dan@geretypca.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP00000059	RE Canarelli - SCIT 2016 accounting	2016 Scott Canarelli Irrevocable Trust accounting	Dan Gerey [Dan@geretypca.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	11/1/2017 23:10	Attorney Work Product
PRIV_RESP00000063	2016 Canarelli Irrevocable Trust Accounting	2016 Canarelli Irrevocable Trust Accounting	Dan Gerey [Dan@geretypca.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]		

PRIV_RESP0000064	PRIV_RESP0000064	Scott Canarelli Irrevocable Trust	Scott Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	11/3/2017 22:54	Attorney Work Product
PRIV_RESP0000065	PRIV_RESP0000066	FW_Scott Canarelli Irrevocable Trust	FW_Scott Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahhaus [Hdahhaus@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	11/7/2017 22:03	Attorney Work Product
PRIV_RESP0000067	PRIV_RESP0000068	RE_Canarelli	RE_Canarelli	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000069	PRIV_RESP0000070	RE_Canarelli - SCIT 2016 accounting	RE_Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/15/2017 19:53	Attorney Work Product
PRIV_RESP0000071	PRIV_RESP0000071	FW_Canarelli	FW_Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/6/2017 21:24	Attorney Work Product
PRIV_RESP0000072	PRIV_RESP0000072	SCIT	SCIT	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/6/2017 22:26	Attorney Work Product
PRIV_RESP0000073	PRIV_RESP0000073	SCIT Accounting	SCIT Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/7/2017 19:21	Attorney Work Product
PRIV_RESP0000074	PRIV_RESP0000077	VEGAS-#135886-v1-Fournote_.pdf	VEGAS-#135886-v1-Fournote_.pdf	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000078	PRIV_RESP0000078	Canarelli	Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000079	PRIV_RESP0000082	VEGAS-#196105-v2 letter to Gerety_12-14-2017.pdf	VEGAS-#196105-v2 letter to Gerety_12-14-2017.pdf	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP0000083	PRIV_RESP0000083	draft SCIT 2016 Accounting	draft SCIT 2016 Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000084	PRIV_RESP0000084	RE_draft SCIT 2016 Accounting	RE_draft SCIT 2016 Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	2/12/2018 20:15	Attorney Client Communication
PRIV_RESP0000085	PRIV_RESP0000087	FW Gerety accountings privilege log msg	FW Gerety accountings privilege log	Lisa M. Stewart [LStewart@dickinson-wright.com]	WRIGHT/OLU-EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD62424	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubberslaw.com]	10/17/2017 17:43	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000088	PRIV_RESP0000088	2016 Trust Accounting	2016 Trust Accounting	Teresa O'Malley [TOMalley@AmericanWesthomes.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/26/2017 16:35	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000089	PRIV_RESP0000089	2015 Trust Accounting	2015 Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	3/22/2017 18:18	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000090	PRIV_RESP0000090	RE_Scott Canarelli	RE_Scott Canarelli	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/29/2017 19:32	Attorney Work Product
PRIV_RESP0000091	PRIV_RESP0000091	Scott Canarelli Trust Accounting	Scott Canarelli Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/26/2017 17:38	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000092	PRIV_RESP0000092	Attachments.html	Attachments.html	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/29/2017 18:21	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000093	PRIV_RESP0000094	(Gerety and Associates) Marlene Sowby has sent you the document 08_..._Compilation_Estate-Trust_COURT_ACTG_-_Eng_Letter_-_Canarelli_Scott_-_092617_2_.pdf to sign.	(Gerety and Associates) Marlene Sowby has sent you the document 08_..._Compilation_Estate-Trust_COURT_ACTG_-_Eng_Letter_-_Canarelli_Scott_-_092617_2_.pdf to sign.	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/26/2017 17:38	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000095	PRIV_RESP0000095	New voicemail from CPA FRM (702) 933 - 2213	New voicemail from CPA FRM (702) 933 - 2213	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/29/2017 18:51	Attorney Client Privilege; Attorney Work Product
PRIV_RESP0000096	PRIV_RESP0000097	RE_Scott Canarelli	RE_Scott Canarelli	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/29/2017 18:21	Attorney Client Privilege; Attorney Work Product

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PRIV_RESP000098	PRIV_RESP000099	FW SCIT 2016 accounting.msg	FW: SCIT 2016 accounting	Lisa M. Stewart [LStewart@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Colby Williams [colby@campbellandwilliams.com]; Elubbers [Elubbers@lubberslaw.com]	10/26/2017 0:37	Attorney Client Communication
PRIV_RESP000100	PRIV_RESP000100	FW Scott Canarelli Irrevocable Trust .msg	FW: Scott Canarelli Irrevocable Trust	'Dan Gerety' [Dan@geretycpa.com]				Attorney Work Product
PRIV_RESP000101	PRIV_RESP000101	LVEGAS #207097-1-Letter to Gerety 02-05-2018 .PDF					11/7/2017 22:03	Attorney Work Product
PRIV_RESP000102	PRIV_RESP000103	FW Valuation Schedules.msg	FW: Valuation Schedules	'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]		12/19/2017 21:41	Attorney Work Product
PRIV_RESP000104	PRIV_RESP000104	Attachments.html						Attorney Work Product
PRIV_RESP000105	PRIV_RESP000105	is your telephone working.msg	is your telephone working	'geretycpas@geretycpa.com' [geretycpas@geretycpa.com]; 'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]		10/27/2017 17:00	Attorney Work Product
PRIV_RESP000106	PRIV_RESP000107	RE Attorney Fees (67).msg	RE: Attorney Fees	Kirstin Lambrecht [klambrecht@geretycpa.com]	Teresa O'Malley [TOmalley@AmericanWestHomes.com]	Ed Lubbers [elubbers@lubberslaw.com]; Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Dan Gerety [Dan@geretycpa.com]	11/14/2017 19:09	Accountant Client Privilege: Attorney Work Product
PRIV_RESP000108	PRIV_RESP000110	RE Canarelli - SCIT 2016 accounting (63).msg	RE: Canarelli - SCIT 2016 accounting	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [colby@cowlaw.com]	12/6/2017 3:00	Attorney Work Product
PRIV_RESP000111	PRIV_RESP000112	RE Canarelli - SCIT 2016 accounting (64).msg	RE: Canarelli - SCIT 2016 accounting	'Dan Gerety' [Dan@geretycpa.com]	WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [colby@cowlaw.com]	12/5/2017 19:53	Attorney Work Product
PRIV_RESP000113	PRIV_RESP000114	RE Canarelli - SCIT 2016 accounting (69).msg	RE: Canarelli - SCIT 2016 accounting	Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Var E. Lordan [VLordan@dickinson-wright.com]; Hilary A. Williams [HWilliams@dickinson-wright.com]	10/23/2017 19:33	Attorney Work Product
PRIV_RESP000115	PRIV_RESP000117	Re Canarelli - SCIT 2016 accounting.msg	Re: Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		12/6/2017 6:19	Attorney Work Product
PRIV_RESP000118	PRIV_RESP000122	RE Canarelli Trust questions (24).msg	RE: Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretycpa.com]	WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]		12/19/2017 19:45	Attorney Work Product
PRIV_RESP000123	PRIV_RESP000127	RE Canarelli Trust questions (25).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/15/2017 17:30	Attorney Work Product
PRIV_RESP000128	PRIV_RESP000132	RE Canarelli Trust questions (29).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/14/2017 22:46	Attorney Work Product
PRIV_RESP000133	PRIV_RESP000135	Re Canarelli Trust questions (31).msg	Re: Canarelli Trust questions	Marcia S. Papa [mpapa@geretycpa.com]			12/14/2017 22:36	Attorney Work Product
PRIV_RESP000136	PRIV_RESP000139	RE Canarelli Trust questions (32).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/14/2017 22:33	Attorney Work Product
PRIV_RESP000140	PRIV_RESP000143	RE Canarelli Trust questions (33).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/14/2017 0:20	Attorney Work Product

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PRIV_RESP0000144	PRIV_RESP0000146	RE Canarelli Trust questions (34).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretycpa.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	Bob Evans Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	12/13/2017 19:32	Attorney Work Product
PRIV_RESP0000147	PRIV_RESP0000149	RE Canarelli Trust questions (35).msg	RE Canarelli Trust questions				12/13/2017 18:04	Attorney Client Communication
PRIV_RESP0000150	PRIV_RESP0000152	RE Canarelli Trust questions (38).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretycpa.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/11/2017 20:43	Attorney Work Product
PRIV_RESP0000153	PRIV_RESP0000155	RE Canarelli Trust questions (39).msg	RE Canarelli Trust questions				12/11/2017 20:01	Attorney Work Product
PRIV_RESP0000156	PRIV_RESP0000157	RE Canarelli Trust questions (41).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretycpa.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/11/2017 19:57	Attorney Work Product
PRIV_RESP0000158	PRIV_RESP0000159	RE Canarelli Trust questions (42).msg	RE Canarelli Trust questions				12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000160	PRIV_RESP0000165	RE Canarelli Trust accounting (10).msg	RE Canarelli Trust accounting				1/9/2018 23:48	Attorney Work Product
PRIV_RESP0000166	PRIV_RESP0000166	Attachments.html						Attorney Work Product
PRIV_RESP0000167	PRIV_RESP0000171	RE Canarelli Trust accounting (11).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretycpa.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			1/9/2018 22:33	Attorney Work Product
PRIV_RESP0000172	PRIV_RESP0000175	RE Canarelli Trust accounting (12).msg	RE Canarelli Trust accounting				1/9/2018 22:20	Attorney Work Product
PRIV_RESP0000176	PRIV_RESP0000178	RE Canarelli Trust accounting (13).msg	RE Canarelli Trust accounting				1/9/2018 20:16	Attorney Work Product
PRIV_RESP0000179	PRIV_RESP0000181	RE Canarelli Trust accounting (14).msg	RE Canarelli Trust accounting				1/9/2018 0:25	Attorney Work Product
PRIV_RESP0000182	PRIV_RESP0000183	RE Canarelli Trust accounting (15).msg	RE Canarelli Trust accounting				1/8/2018 23:25	Attorney Work Product
PRIV_RESP0000184	PRIV_RESP0000185	RE Canarelli Trust accounting (16).msg	RE Canarelli Trust accounting				1/8/2018 22:49	Attorney Work Product
PRIV_RESP0000186	PRIV_RESP0000186	2015 Letter.pdf						Attorney Work Product
PRIV_RESP0000187	PRIV_RESP0000187	RE Canarelli Trust accounting (17).msg	RE Canarelli Trust accounting				1/8/2018 22:04	Attorney Work Product
PRIV_RESP0000188	PRIV_RESP0000193	RE Canarelli Trust accounting (3).msg	RE Canarelli Trust accounting				1/11/2018 21:42	Attorney Work Product

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PRIV_RESP0000194	PRIV_RESP0000199	RE Canerelli Trust accounting (5).msg				'Dan Gerety' [Dan@geretycpa.com]; Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	'Kirstin Umbrecht' [kumbrecht@geretycpa.com]	1/1/2018 17:30	Attorney Work Product
PRIV_RESP0000200	PRIV_RESP0000204	RE Canerelli Trust accounting (6).msg				Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]		Dan Gerety [Dan@geretycpa.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	1/1/2018 17:11	Attorney Work Product
PRIV_RESP0000205	PRIV_RESP0000209	RE Canerelli Trust accounting (7).msg				'Dan Gerety' [Dan@geretycpa.com]; Marcia S. Papa [mpapa@geretycpa.com]		WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24		1/1/2018 3:26	Attorney Work Product
PRIV_RESP0000210	PRIV_RESP0000213	RE Canerelli Trust accounting (8).msg				Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]		Dan Gerety [Dan@geretycpa.com]		1/10/2018 0:39	Attorney Work Product
PRIV_RESP0000214	PRIV_RESP0000220	RE Canerelli Trust accounting.msg				'Marcia S. Papa' [mpapa@geretycpa.com]		WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24		1/1/2018 21:42	Attorney Work Product
PRIV_RESP0000221	PRIV_RESP0000221	RE Draft 2016 Accounting (21).msg				Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		Dan Gerety [Dan@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	12/22/2017 1:30	Attorney Work Product
PRIV_RESP0000222	PRIV_RESP0000223	RE Draft 2016 Accounting.msg				'Dan Gerety' [Dan@geretycpa.com]		Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24]	'Marcia S. Papa' [mpapa@geretycpa.com]	12/22/2017 1:53	Attorney Work Product
PRIV_RESP0000224	PRIV_RESP0000224	RE draft SCIT 2016 Accounting .msg				'Dan Gerety' [Dan@geretycpa.com]		WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDDEA24	'Colby Williams' [cwl@cwlawlv.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000225	PRIV_RESP0000227	RE Canerelli - SCIT 2016 accounting				Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [cwl@cwlawlv.com]	12/6/2017 3:00	Attorney Work Product
PRIV_RESP0000228	PRIV_RESP0000228	2016 Scott Canarelli Irrevocable Trust accounting				Dan Gerety [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	[elubbers@lubberrslaw.com]; Colby Williams [cwl@cwlawlv.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP0000229	PRIV_RESP0000229	2016 Canarelli Irrevocable Trust Accounting				Dan Gerety [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	'Colby Williams' [cwl@cwlawlv.com]; Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	11/1/2017 23:10	Attorney Work Product
PRIV_RESP0000230	PRIV_RESP0000230	Scott Canarelli Irrevocable Trust				Dan Gerety [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cwl@cwlawlv.com]; Elubbers [elubbers@lubberrslaw.com]	11/3/2017 22:54	Attorney Work Product
PRIV_RESP0000231	PRIV_RESP0000232	FW_ Scott Canarelli Irrevocable Trust				Dan Gerety [Dan@geretycpa.com]		Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Colby Williams [cwl@cwlawlv.com]; Elubbers [elubbers@lubberrslaw.com]	11/7/2017 22:03	Attorney Work Product
PRIV_RESP0000233	PRIV_RESP0000234	RE Canarelli				Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		Dan Gerety [Dan@geretycpa.com]	'Colby Williams' [cwl@cwlawlv.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000235	PRIV_RESP0000236	RE Canarelli - SCIT 2016 accounting				'Dan Gerety' [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [cwl@cwlawlv.com]	12/5/2017 19:53	Attorney Work Product
PRIV_RESP0000237	PRIV_RESP0000237	FW Canarelli				Dan Gerety [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cwl@cwlawlv.com]	12/6/2017 21:24	Attorney Work Product

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PRIV_RESP0000238	PRIV_RESP0000238	SCIT	SCIT	SCIT	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	12/6/2017 21:26	Attorney Work Product
PRIV_RESP0000239	PRIV_RESP0000239	SCIT Accounting	SCIT Accounting	SCIT Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	12/7/2017 19:21	Attorney Work Product
PRIV_RESP0000240	PRIV_RESP0000240	LVEGAS-#193686-v1-Footnote_PDF							Attorney Work Product
PRIV_RESP0000244	PRIV_RESP0000244	Canarelli	Canarelli	Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000245	PRIV_RESP0000245	14-2017 PDF							Attorney Work Product
PRIV_RESP0000249	PRIV_RESP0000249	draft SCIT 2016 Accounting	draft SCIT 2016 Accounting	draft SCIT 2016 Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP0000250	PRIV_RESP0000250	RE_draft SCIT 2016 Accounting	RE_draft SCIT 2016 Accounting	RE_draft SCIT 2016 Accounting	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]; Larry Canarelli [LCanarelli@AmericanWestHomes.com]; Bob Evans [BobEvans@AmericanWestHomes.com]; Colby Williams [cww@cwlawlv.com]; Jennifer Braxter [Jbraxter@nwlawlv.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000251	PRIV_RESP0000251	RE Gerety accountings; privilege log.mug	RE Gerety accountings; privilege log.mug	RE Gerety accountings; privilege log	Teresa O'Malley [TOMalley@AmericanWestHomes.com]; Kirstin Lambrecht [KLambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	Justin J. Bustos [JBustos@dickinson-wright.com]; Lisa M. Stewart [LStewart@dickinson-wright.com]; Hilary B. Dahlhaus [HDahlhaus@dickinson-wright.com]; Tina Goode [TGoode@AmericanWestHomes.com]; Lisa M. Stewart [LStewart@dickinson-wright.com]	2/12/2018 20:08	Attorney Client Communication
PRIV_RESP0000254	PRIV_RESP0000254	2016 Trust Accounting	2016 Trust Accounting	2016 Trust Accounting	Teresa O'Malley [TOMalley@AmericanWestHomes.com]; Kirstin Lambrecht [KLambrecht@geretycpa.com]	Kirstin Lambrecht [KLambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	10/17/2017 17:43	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000255	PRIV_RESP0000255	2015 Trust Accounting	2015 Trust Accounting	2015 Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [KLambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/26/2017 16:35	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000256	PRIV_RESP0000256	2015 General Ledger.pdf	2015 General Ledger.pdf	2015 General Ledger.pdf	Lambrecht [KLambrecht@geretycpa.com]	Kirstin Lambrecht [KLambrecht@geretycpa.com]	O'Malley [TOMalley@AmericanWestHomes.com]		Attorney Work Product
PRIV_RESP0000280	PRIV_RESP0000280	2015 Beginning Balance Scott Checking #8800.pdf	2015 Beginning Balance Scott Checking #8800.pdf			Kirstin Lambrecht [KLambrecht@geretycpa.com]			Attorney Work Product
PRIV_RESP0000281	PRIV_RESP0000281	RE_Scott Canarelli	RE_Scott Canarelli	RE_Scott Canarelli	Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [KLambrecht@geretycpa.com]		3/22/2017 18:18	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000282	PRIV_RESP0000282	Scott Canarelli Trust Accounting	Scott Canarelli Trust Accounting	Scott Canarelli Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]; Kirstin Lambrecht [KLambrecht@geretycpa.com]	Marlene Sowby [msowby@geretycpa.com]		9/29/2017 19:32	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000283	PRIV_RESP0000283	(Gerety and Associates) Marlene Sowby has sent you the document 08 - Compilation_Estate-Trust COURT ACTCG_Eng_Letter - Canarelli_Scott_092617_2_.pdf to sign	(Gerety and Associates) Marlene Sowby has sent you the document 08 - Compilation_Estate-Trust COURT ACTCG_Eng_Letter - Canarelli_Scott_092617_2_.pdf to sign			Marlene Sowby [msowby@geretycpa.com]			Attorney Work Product
PRIV_RESP0000284	PRIV_RESP0000284	RE_Scott Canarelli	RE_Scott Canarelli	RE_Scott Canarelli	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]		9/26/2017 17:38	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000286	PRIV_RESP0000286	RE_Scott Canarelli	RE_Scott Canarelli	RE_Scott Canarelli	Kirstin Lambrecht [KLambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]		3/22/2017 18:21	Product
PRIV_RESP0000288	PRIV_RESP0000288	RE SCIT 2016 accounting (70).msg	RE SCIT 2016 accounting	RE SCIT 2016 accounting	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]; Ed Lubbers [elubbers@lubberlaw.com]	Dan Gerety [Dan@geretycpa.com]	Teresa O'Malley [TOMalley@AmericanWestHomes.com]	10/23/2017 18:12	Attorney Work Product
PRIV_RESP0000290	PRIV_RESP0000290	RE SCIT 2016 accounting (71).msg	RE SCIT 2016 accounting	RE SCIT 2016 accounting	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]; Ed Lubbers [elubbers@lubberlaw.com]	Dan Gerety [Dan@geretycpa.com]	Teresa O'Malley [TOMalley@AmericanWestHomes.com]	10/23/2017 18:09	Attorney Work Product
PRIV_RESP0000292	PRIV_RESP0000292	08 - Compilation (Estate-Trust COURT ACTCG) Eng Letter - Canarelli_Scott_.pdf	08 - Compilation (Estate-Trust COURT ACTCG) Eng Letter - Canarelli_Scott_.pdf			Dan Gerety [Dan@geretycpa.com]			Attorney Work Product

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PRIV_RESP0000295	PRIV_RESP0000296	RE SCIT 2016 accounting.msg			'Teresa O'Malley' [TOMalley@AmericanWestHomes.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	'Ed Lubbers' [elubbers@lubberrslaw.com]	10/25/2017 17:53	Attorney Client Communication
PRIV_RESP0000297	PRIV_RESP0000299	RE Valuation Schedules (2).msg			'Marcia S. Papa' [mpapa@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	'Dan Gerety' [Dan@geretycpa.com]	12/20/2017 1:06	Attorney Work Product
PRIV_RESP0000300	PRIV_RESP0000303	RE Valuation Schedules (2).msg			Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]			12/19/2017 22:54	Attorney Work Product
PRIV_RESP0000304	PRIV_RESP0000307	RE Valuation Schedules.msg			Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]			12/20/2017 1:15	Attorney Work Product
PRIV_RESP0000308	PRIV_RESP0000309	Revised Trust accounting (20).msg			Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Jennifer Rosario [jrosario@geretycpa.com]	Marlene Sowby [msowby@geretycpa.com]; Marcia S. Papa [mpapa@geretycpa.com]	12/22/2017 16:28	Attorney Work Product
PRIV_RESP0000310	PRIV_RESP0000310	Revised Trust Accounting.msg			Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Marlene Sowby [msowby@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	1/11/2018 21:49	Attorney Work Product
PRIV_RESP0000311	PRIV_RESP0000311	SCIT (53).msg			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	'Colby Williams' [cww@cwlawlv.com]	12/6/2017 22:26	Attorney Work Product
PRIV_RESP0000312	PRIV_RESP0000312	SCIT 2016 accounting .msg			'Dan Gerety' [Dan@geretycpa.com]; 'Ed Lubbers' [elubbers@lubberrslaw.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Teresa O'Malley [TOMalley@AmericanWestHomes.com]	10/21/2017 1:14	Attorney Work Product
PRIV_RESP0000313	PRIV_RESP0000313	SCIT Accounting.msg			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	'Colby Williams' [cww@cwlawlv.com]	12/7/2017 19:21	Attorney Work Product
PRIV_RESP0000314	PRIV_RESP0000317	LVEGAS-#193686-v1.Footnote_.pdf				Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD6A24]	'Colby Williams' [colby@campbellandwilliams.com]; 'Elubbers [elubbers@lubberrslaw.com]		Attorney Work Product
PRIV_RESP0000318	PRIV_RESP0000318	Scott Canarelli Irrevocable Trust .msg			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]; Var E. Lordahl [VLordahl@dickinson-wright.com]; Kendal L. Weissenmiller [KWeissenmiller@dickinson- wright.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]; John P. Desmond [JDesmond@dickinson- wright.com]		11/3/2017 22:54	Attorney Work Product
PRIV_RESP0000319	PRIV_RESP0000319	Scott Lyle Graves Canarelli Irrevocable Trust dated February 24 1998 (86).msg			Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24 1998	Hilary B. Dahlhaus [Hbdahlhaus@dickinson- wright.com]	Hilary B. Dahlhaus [Hbdahlhaus@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]; Joel Z. Schwarz [jschwarz@dickinson-wright.com]; Var E. Lordahl [VLordahl@dickinson- wright.com]; Hilary A. Williams [HWilliams@dickinson-wright.com]	7/25/2017 18:17	Attorney Work Product
PRIV_RESP0000320	PRIV_RESP0000321	Letter_to_Gerety_7_25_2017.pdf			Dan Gerety [Dan@geretycpa.com]					Attorney Work Product
PRIV_RESP0000322	PRIV_RESP0000322	Scott Lyle Graves Canarelli Irrevocable Trust dated February 24 1998.msg			Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24 1998	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [Hbdahlhaus@dickinson- wright.com]		2/5/2018 22:59	Attorney Work Product

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PRIV_RESP0000351	PRIV_RESP0000351	Scott Lyle Graves Canarelli Irrevocable Trust.msg	Scott Lyle Graves Canarelli Irrevocable Trust	TO	FROM	CC	Elisabeth Brickfield [EBrickfield@dickinson-wright.com]; Kendal L. Weisenmiller [KWeisenmiller@dickinson-wright.com]; Var E. Lordahl [VLordahl@dickinson-wright.com]	9/20/2017 21:34	Accountant Client Privilege
PRIV_RESP0000352	PRIV_RESP0000353	[VEGAS-#168389-v1-Letter_to_Gerety_9-20-2017].PDF	Scott Lyle Graves Canarelli Irrevocable Trust	TO	FROM	CC			Accountant Client Privilege
PRIV_RESP013471	RESP013473	Letter	Bob Evans		Kirstin Lambrecht		N/A	12/21/2016	Product Accountant Client Privilege; Attorney Work
RESP019380	RESP0019382	Engagement letter	Ed Lubbers		Kirstin Lambrecht		N/A	9/26/2017	Product Accountant Client Privilege; Attorney Work
RESP019383	RESP0019383	Engagement letter (page 1)	Ed Lubbers		Kirstin Lambrecht		N/A	1/15/2015	Product Accountant Client Privilege; Attorney Work
RESP019335	RESP0019336	Engagement letter (page 2)	Ed Lubbers		Kirstin Lambrecht		N/A	1/15/2015	Product Accountant Client Privilege; Attorney Work
RESP019337	RESP0019338	Engagement letter	Ed Lubbers		Kirstin Lambrecht		N/A	1/15/2015	Product Accountant Client Privilege; Attorney Work
RESP045260	RESP045261	Letter	Bob Evans		Kirstin Lambrecht		N/A	12/21/2016	Product Accountant Client Privilege; Attorney Work
RESP045263	RESP045263	Email	Gerety & Associates		Marlene Sowby		Kirstin Lambrecht	12/22/2016 at 9:53:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045264	RESP045264	Email	Sharefile documents		Cheryl Corley			12/22/2016 at 10:35 AM	Product Accountant Client Privilege; Attorney Work
RESP045265	RESP045265	Email	Sharefile documents		Cheryl Corley			12/22/2016 at 11:54 AM	Product Accountant Client Privilege; Attorney Work
RESP045266	RESP045266	Email	Sharefile documents		Cheryl Corley			12/22/2016 at 9:54:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045267	RESP045267	Email	Sharefile documents		Cheryl Corley			12/22/2016 at 10:35:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045268	RESP045268	Email	Sharefile documents		Cheryl Corley			12/22/2016 at 11:53:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045269	RESP045269	Email	Distributions		Kirstin Lambrecht			12/28/2016 at 2:01:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045270	RESP045271	Email	Trust Accounting		Cheryl Corley			1/5/2010 at 9:29:00 AM	Product Accountant Client Privilege; Attorney Work
RESP045272	RESP045272	Email	Sharefile documents		Kirstin Lambrecht; Dan@geretycpa.com			1/6/2017 at 12:56 AM	Product Accountant Client Privilege; Attorney Work
RESP045276	RESP045276	Email	Scott Canarelli Irrevocable Trust		Cheryl Corley		Kristin Lambrecht; Cheryl Corley	1/6/2017 at 1:42:00 PM	Product Accountant Client Privilege; Attorney Work
RESP045277	RESP045277	Email	Sharefile documents		Dan Gerety			1/6/2017 at 12:56:00 PM	Product Accountant Client Privilege; Attorney Work
RESP045280	RESP045281	Email	Trust Accounting		Cheryl Corley			1/19/2017 at 4:49 PM	Product Accountant Client Privilege; Attorney Work
RESP045282	RESP045284	Email	Trust Accounting		Cheryl Corley		Kirstin Lambrecht; Dan Gerety; Bob Evans	2/21/2017 at 5:50 PM	Product Accountant Client Privilege; Attorney Work
RESP045288	RESP045292	Email	Scott Canarelli 2005		Cheryl Corley		Kirstin Lambrecht	3/7/2017 at 8:25 AM	Product Accountant Client Privilege; Attorney Work
RESP045293	RESP045293	Email	Scott Canarelli		Bob Evans; Elizabeth Brickfield; elubbers@lubberrslaw.com; Colby Williams; colby@campbellandwilliams.com				Accountant Client Privilege; Attorney Work
RESP045311	RESP045311	Memo to File prepared by Cheryl Corley	Scott Canarelli Trust		Cheryl Corley			9/1/2017	Product Accountant Client Privilege; Attorney Work
RESP045312	RESP045316	Email	Scott Canarelli 2005		N/A		N/A	1/6/2017	Product Accountant Client Privilege; Attorney Work
					Kirstin Lambrecht		Cheryl Corley	3/8/2017 1:43	Product

APP001086

EXHIBIT 10



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February 19, 2018

VIA E-MAIL

ddwiggins@sdfnvlaw.com

tjohnson@sdfnvlaw.com

Dana Dwiggins, Esq.
Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

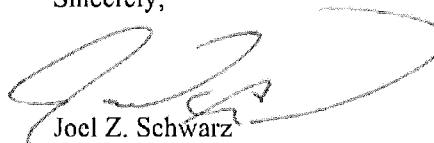
As we were reviewing the supplemental productions in this matter, we located additional items which have been marked Attorney Client and/or Accountant Client Privilege:

RESP013471-RESP013473; RESP019380-RESP019382; RESP019383-RESP019383; RESP019335-RESP019336; RESP019337-RESP019338; RESP045260-RESP045261; RESP045263-RESP045263; RESP045264-RESP045264; RESP045265-RESP045265; RESP045266-RESP045266; RESP045267-RESP045267; RESP045268-RESP045268; RESP045269-RESP045269; RESP045270-RESP045271; RESP045272-RESP045272; RESP045276-RESP045276; RESP045277-RESP045277; RESP045280-RESP045281; RESP045282-RESP045284; RESP045288-RESP045292; RESP045293-RESP045293; RESP045311-RESP045311; RESP045312-RESP045316.

Pursuant to Paragraph 21 of the ESI Protocol, please promptly return the documents and confirm that any copies of the document have been destroyed.

Thank you for your attention to this matter.

Sincerely,



Joel Z. Schwarz

JZS:lms

cc: Elizabeth Brickfield, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 11

1 **RTRAN**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 IN THE MATTER OF THE TRUST OF:) Case No. P-13-078912-T
7 THE SCOTT LYLE GRAVES CANARELLI)
8 IRREVOCABLE TRUST, DATED) DEPT. XXVI/Probate
9 FEBRUARY 24, 1998)
10

11
12 BEFORE THE HONORABLE BONNIE BULLA,
13 DISCOVERY COMMISSIONER

14
15 WEDNESDAY, AUGUST 29, 2018

16
17 ***TRANSCRIPT OF PROCEEDINGS RE:***
18 **ALL PENDING MOTIONS AND ADDITIONAL BRIEFING**

19
20 **APPEARANCES:**

21
22 For the Petitioner: DANA ANN DWIGGINS, ESQ.
23 TESS E. JOHNSON, ESQ.
24 JEFFREY P. LUSZECK, ESQ.

25
26 For the Trustee/Respondent(s): JON COLBY WILLIAMS, ESQ.
27 ELIZABETH BRICKFIELD, ESQ.
28 PHILIP R. ERWIN, ESQ.
29 JOEL Z. SCHWARZ, ESQ.

30
31 For the Nonparty Witnesses: JENNIFER L. BRASTER, ESQ.
32 ANDREW J. SHARPLES, ESQ.

33
34 For the Special Administrator: LIANE K. WAKAYAMA, ESQ.

35
36 RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 And so I got on the phone with Mr. Erwin and Ms. Dwiggins,
2 and I don't know if Ms. Johnson was on the phone --

3 DISCOVERY COMMISSIONER: But what raised her
4 suspicion weren't these two pages, they were pages around it.

5 MR. WILLIAMS: Correct.

6 DISCOVERY COMMISSIONER: I'm not faulting her for not
7 calling you on these two pages.

8 MR. WILLIAMS: I'm not either. I'm not either.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. WILLIAMS: No, no. I'm --

11 DISCOVERY COMMISSIONER: I'm faulting you all for
12 producing them --

13 MR. WILLIAMS: No, no, no. Your Honor --

14 DISCOVERY COMMISSIONER: -- if you really thought it was
15 privilege.

16 MR. WILLIAMS: I'm not -- I'm not faulting Ms. Dwiggins for
17 these two pages of notes either. In fact, I -- that's why I say in the
18 papers this I how it was supposed to work. She under the ESI protocol,
19 but more importantly, Rule 4.4(b), she saw something that looked
20 potentially protected. She called me. She gave me notice that it looked
21 like there's something that was inadvertently produced and then we
22 worked, Your Honor, most respectfully, let me just walk through it.
23 There were 48 pages, give or take, in this packet. We went through
24 them. We then clawed them back under the ESI protocol. She had --
25 she agreed with certain items that were clawed back, she disagreed with

1 others. We had further discussions about them in exchange for further
2 letters.

3 So of the universe of 48 documents in the packet, we got the
4 dispute down to these two pages with respect to her contention that
5 they're not protected and my contention that there is. It's exactly the
6 way that it should have worked with the other set of notes.

7 But -- but talking about these, I'm not faulting her at all.

8 DISCOVERY COMMISSIONER: But how could you fault her
9 for the other set of notes? What about those would have stood out to
10 her to call you?

11 MR. WILLIAMS: The typed notes?

12 DISCOVERY COMMISSIONER: Yeah.

13 MS. DWIGGINS: Your Honor had already ruled the --

14 DISCOVERY COMMISSIONER: I mean, there is a --

15 MS. DWIGGINS: -- fiduciary exception applied.

16 DISCOVERY COMMISSIONER: Huge production.

17 MS. DWIGGINS: They had clawed back documents twice
18 prior to that time. One of them was with -- 100 pages. I would assume
19 after the second clawback, or even in connection with the second
20 clawback, they did a thorough review. And as this court already had
21 applied the fiduciary exception, I had no reason to believe they were
22 privileged. He was our trustee at the time.

23 DISCOVERY COMMISSIONER: Which court applied that the
24 fiduciary exception?

25 MS. DWIGGINS: It was in the context of Mr. Gerety, sorry.

1 and there is an issue in Federal Court and there are a couple of cases
2 that talk about once you get these documentation in the public eye, or
3 in -- or attached to some sort of a dispositive type motion, which
4 arguably they are, that motion's pending in front of the judge, then they
5 become presumptively public.

6 MR. WILLIAMS: No, Your Honor. I think -- I understand what
7 you're talking about. If I were to file a dispositive motion, a Motion for
8 Summary Judgment, for example, and --

9 DISCOVERY COMMISSIONER: But you're not in that
10 situation.

11 MR. WILLIAMS: No, I'm not.

12 DISCOVERY COMMISSIONER: You're with petitions and --
13 and --

14 MR. WILLIAMS: Exactly.

15 DISCOVERY COMMISSIONER: -- and I understand that.

16 MR. WILLIAMS: And I didn't do it. They filed it as part of their
17 petition seeking to expand their claims. I didn't attach them as part of
18 my motion to have that dismissed.

19 DISCOVERY COMMISSIONER: But it's -- see, the problem is
20 it's any -- it's any side bringing it. And the --

21 MR. WILLIAMS: No.

22 DISCOVERY COMMISSIONER: -- petition is -- I -- I disagree
23 with you.

24 MR. WILLIAMS: Okay.

25 DISCOVERY COMMISSIONER: -- because the problem is

1 that the documents were out there. That's why you have to claw back
2 quickly and you have to have procedures in place. Once you do a huge
3 document production, you go back through. Once they had a telephone
4 call with you and some of the documents in this range were privileged,
5 did you look again? Did you assert a privilege? It wasn't until they
6 actually filed the petition with the attachment of the documents that the
7 red flag went up. I think that might be too late. Six months later from the
8 initial production.

9 MS. DWIGGINS: And they waited --

10 DISCOVERY COMMISSIONER: Don't shake your head at
11 me.

12 MR. WILLIAMS: I'm -- I don't know if you're talking to me. I
13 was --

14 DISCOVERY COMMISSIONER: No, I'm not.

15 MR. WILLIAMS: I was -- okay. Your Honor, so --

16 DISCOVERY COMMISSIONER: Be respectful to the Court,
17 please.

18 MR. WILLIAMS: Just for chronological purposes, the -- the
19 notes that we were just talking about .the two pages of handwritten
20 notes where Ms. Dwiggin called me in June, that occurs after the filing
21 of the petition, dealing with the typewritten notes. That occurs on
22 May 18th.

23 DISCOVERY COMMISSIONER: Which is even more
24 problematic, because you didn't move to object to them.

25 MR. WILLIAMS: No, no. Your Honor -

1 we sent a notice clawing it back. They then said, We disagree with you,
2 we don't think it's -- and we're not going to take any of the public
3 references to the document out of our pleading. Okay.

4 Now, the ESI protocol says even if you disagree with us, you
5 don't debate the matter in the letters. You agree to either destroy it or if
6 you're going to contest it, you sequester it. They didn't agree to do that
7 in the first letter. We then wrote back again and said, here is a more
8 detailed explanation from our position. In addition, there's an ESI
9 protocol, there's Rule 4.4(b) and there's merits incentives, all of which
10 compel you to follow a certain process here.

11 DISCOVERY COMMISSIONER: But that process does not
12 apply to the inadvertent production. It's two separate paragraphs. And
13 on the inadvertent production on the last line, it says:

14 A producing party may not request a return of the document
15 pursuant to this section if the document contains any discoverable
16 information .

17 MR. WILLIAMS: Wait a sec. Your Honor, that's not -- that's
18 the wrong section. Most -- again, that's -- the ESI protocol provision that
19 we're talking about is 21.

20 DISCOVERY COMMISSIONER: But then you have 22.

21 MR. WILLIAMS: But that --

22 DISCOVERY COMMISSIONER: Who drafted this document?

23 MR. WILLIAMS: But 22 deals with nonresponsive information.
24 That's like if I produced -- if I produced Ed Lubbers' vacation schedule to
25 go somewhere, and it -- because it's not responsive to any requests,

1 MR. WILLIAMS: They then --

2 MS. DWIGGINS: -- different situation.

3 MR. WILLIAMS: They then -- they then --

4 DISCOVERY COMMISSIONER: Don't interrupt, please.

5 MR. WILLIAMS: -- done it, we put them on notice of it, and
6 they've continued to make them public. Your Honor, that's not my fault
7 that they're making them public. I'm -- I'm following the process to get
8 the relief that we're entitled to.

9 DISCOVERY COMMISSIONER: But on a clawback provision
10 in general, I don't think either the judge or I signed off on this. I can tell
11 you right now I would not have signed off on it.

12 MR. WILLIAMS: I agree with you it's not a court order.

13 DISCOVERY COMMISSIONER: I would not have signed off
14 on it. But I can tell you this. There -- to have the benefit of a clawback
15 provision to get the benefit of it, you have to act promptly. You have to
16 have procedures in place to ensure that you are constantly reviewing
17 your materials and you're clawing back inadvertent productions.
18 Because they don't know whether it's inadvertent or not.

19 Now, there was a clue apparently on -- on handwritten notes
20 that -- that Ms. Dwiggin was concerned about. And she called you.
21 And the protocol worked, no question about it.

22 MR. WILLIAMS: Right.

23 DISCOVERY COMMISSIONER: But I'm not sure it was a
24 clear on the other documents and I'm certainly not sure it was clear
25 on 899 -- 899 through 900.

1 told you, unless you're doing a transcription of the entire interview.

2 There's no distinction there.

3 DISCOVERY COMMISSIONER: What safeguards were in
4 place when you produced these documents to make sure once you did a
5 production there wasn't an inadvertent disclosure, what did you do?

6 MR. WILLIAMS: I would start with the ESI protocol, Your
7 Honor, which --

8 DISCOVERY COMMISSIONER: That puts the burden on the
9 other side. What would you do?

10 MR. WILLIAMS: Well, it -- it -- but there's an important feature
11 of that and -- and this was a negotiated document signed by both
12 parties, agreed to by both parties. And what it said is, is that you can't
13 argue waiver based on the inadvertent production, which is what we're
14 talking about now is the fact -- in today's world, and I don't need to tell
15 the Court this, you live it day in and day out, I mean, discovery has
16 changed completely from the time I started practicing as a young lawyer.
17 Inadvertent productions are going to happen. There is no question
18 about that. And that's why we put in the protocol that if there ends up
19 being an inadvertent production, you can't argue that is the basis for
20 waiver or why you get the document. So I would start with that, Your
21 Honor.

22 MS. DWIGGINS: And I have not argued that.

23 MR. WILLIAMS: Right. But -- but the commissioner is
24 focused on it. And that's -- that's why I'm addressing it.

25 So with respect to the production --

1 another one on the 19th where they clawed back a large number of
2 documents, as you can see.

3 But the first one is Document 13471, which is within a couple
4 hundred pages of this. I would think once you do the first one, you
5 would do a thorough review of everything you've produced to that date
6 to see if there was anything else inadvertently disclosed, which I assume
7 is what led to the second clawback.

8 DISCOVERY COMMISSIONER: I'm just trying to understand,
9 Respondent's counsel, what did you all do to ensure -- did you just rely
10 on the ESI protocol, well, they'll let us know? But how would they --

11 MR. WILLIAMS: No.

12 DISCOVERY COMMISSIONER: -- know that? Because it's
13 identified as, you know, you've produced it, but how would they know
14 what it is? See, that's why I would -- I --

15 MR. WILLIAMS: So --

16 DISCOVERY COMMISSIONER: -- I would not have liked, I
17 don't really love this protocol.

18 MR. WILLIAMS: But -- but, Your Honor, it's not just --

19 DISCOVERY COMMISSIONER: I know you negotiated it.

20 MR. WILLIAMS: Yeah. But it's not just the protocol. If you
21 look at Rule 4.4(b), which deals with what happens when you get an
22 inadvertent disclosure --

23 DISCOVERY COMMISSIONER: All you have to do is notify.

24 MR. WILLIAMS: Right.

25 DISCOVERY COMMISSIONER: You don't have a clawback

1 provision.

2 MR. WILLIAMS: Correct. There was never a notification
3 here, Your Honor. I'm not talking about clawback, I'm talking about --

4 DISCOVERY COMMISSIONER: Well, how would they know?

5 MR. WILLIAMS: When --

6 DISCOVERY COMMISSIONER: Because you've not put a --
7 you've produced them.

8 MR. WILLIAMS: I -- I get that, Your Honor. But when I -- if I'm
9 a lawyer and I review this document, especially a lawyer as experienced
10 as Ms. Dwiggins, and I see some of the things in this document, Your
11 Honor, talking about what he perceives to be strengths and weaknesses
12 of his case?

13 DISCOVERY COMMISSIONER: Okay. I -- I am not --

14 MR. WILLIAMS: That's not --

15 DISCOVERY COMMISSIONER: I am not on the group yet.
16 I'm going to deal with this one --

17 MR. WILLIAMS: Okay. Oh, we're still --

18 DISCOVERY COMMISSIONER: -- first.

19 MR. WILLIAMS: -- talking about Exhibit 2?

20 DISCOVERY COMMISSIONER: Yes.

21 MR. WILLIAMS: Oh, Your Honor, again, I --

22 DISCOVERY COMMISSIONER: Okay. I'm going to require --

23 MR. WILLIAMS: -- I don't know how much --

24 DISCOVERY COMMISSIONER: -- that to retain its
25 nonprivileged but confidential designation, I don't see any alleged

1 DISCOVERY COMMISSIONER: And -- and then the issue,
2 then we get back to full circle on the inadvertent disclosure and what
3 efforts were made to ensure that the documents were not, in fact,
4 produced. I understand you have an ESI protocol, but you also have
5 responsibility with a clawback provision to make sure you're timely
6 reviewing to make sure that things have not been rushed, you know,
7 within 30 days. I -- I don't know all the different provisions they have in
8 Federal Court. And -- and by the way, if you haven't looked, we've --
9 we've somewhat proposed adopting the Federal Court standards on this.
10 So, you know, this is important. These are really important issues.

11 MR. WILLIAMS: Your Honor, I could not agree more.

12 DISCOVERY COMMISSIONER: But again, I -- I do not
13 believe -- I -- I struggle to know when Document 13288 was created.
14 Maybe it was created contemporaneously with the call. There's no date
15 on the document. All I have is a page. It seems to be notes about the
16 trust. I think if it's attorney/client, I think this is the perfect document for
17 the trustee exception to apply, because it's talking about an accounting.
18 Not other litigation.

19 And number two, if it's work product, there's no other way to
20 get to the information.

21 Then that leaves me only with page 13284 and 13285. 13284
22 does appear to be a note contemporaneous with the date of the
23 telephone call, the fact that the lawyer is referenced. I think that there
24 may -- the argument that would extend the trustee exception to this note
25 exists, because it's in 2013 before the actual petition that was filed

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you've had to review, more importantly.

MR. SCHWARZ: Thank you to your staff.

DISCOVERY COMMISSIONER: Thank you.

[Proceedings concluded at 4:57 p.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562

EXHIBIT 12



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June 5, 2018

VIA E-MAIL and U.S. Mail
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Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

In reviewing your recently-filed Supplement to Petition and the Errata thereto, we see that you have attached as an exhibit document Bates No. **RESP013284-RESP013288**. This document is clearly an attorney-client privileged and attorney work product-protected document which was inadvertently produced by Respondents. By **Friday, June 8, 2018**, please:

- (1) Confirm your agreement that the document is privileged and that you will enter into a stipulation to redact all references to the document from your pleading and seal the exhibit in the already-filed pleading; and
- (2) Return the document to us and confirm that all copies in your possession have been destroyed.

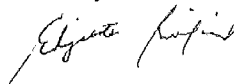
Separately, in reviewing documents for Respondents' supplemental disclosure of today's date, we have identified detailed billings from your firm to Scott which were provided to Mr. Lubbers. We have not reviewed these documents, copies of which are beings sent to you on a second separate FTP link. Please review the documents and advise us of your position regarding the documents at your earliest convenience.

Lastly, in response to your letter dated June 1, 2018, the Documents Bates Nos. RESP0087114-RESP0087115 were inaccurately designated as responsive to certain requests for production to Lubbers. As we advised you on May 10, 2018, those documents are not responsive and, in addition, are communications with counsel during the course of litigation. As such, they have been removed from Lubbers' most recent supplemental responses. Moreover, as we previously discussed, the parties in this matter are not seeking, and accordingly have not been logging, communications with their counsel during the course of the litigation. Thus, there is no need for Respondents to provide the records or amend their privilege log.

Dana Dwiggins, Esq.
Tess Johnson, Esq.
June 5, 2018
Page 2

Thank you for your prompt attention to this matter.

Sincerely,



Elizabeth Brickfield

JZS:lms

cc: Joel Z. Schwarz, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 13

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8 and

9 Elizabeth Brickfield, Esq. (NSB #6236)
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20 *Counsel for Respondents*

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 In the Matter of:

24 SCOTT LYLE GRAVES CANARELLI
25 IRREVOCABLE TRUST, dated February
26 24, 1998.

Case No: P-13-078912-T
Dept. No: 26

27 **EDWARD LUBBERS, LAWRENCE CANARELLI, AND HEIDI CANARELLI'S SECOND**
28 **SUPPLEMENT TO INITIAL DISCLOSURES OF WITNESSES AND DOCUMENTS**
PURSUANT TO NRCP 16.1

Edward C. Lubbers, Individually and in his Representative Capacity as former Family Trustee and/or the Independent Trustee ("Lubbers")¹ of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, and Lawrence Canarelli ("Larry") and Heidi Canarelli ("Heidi," and together with Larry, the "Canarellis") former Family Trustees of the Scott Lyle Graves Canarelli Irrevocable Trust Dated February 24, 1998 (the "Trust"), (collectively, "Respondents"), by and

¹ Lubbers died on April 2, 2018, and a suggestion of death upon the record has not yet been filed in this matter. By providing the following supplemental disclosure, Lubbers is not waiving any rights, remedies, or objections.

APP001106

1	6372.	Scott LGC.pdf	RESP0088894- RESP0088896
2	6373.	WF - 1099 acct 8800-4476.pdf	RESP0088897
3	6374.	RE: Canarelli Irrevocable Trust.msg	RESP0088898
4	6375.	Cankids.pdf	RESP0088899- RESP0088917
5	6376.	corr. note. memo.pdf	RESP0088918- RESP0088969
6	6377.	corr. note. memo.pdf	RESP0088970
7	6378.	Dickinson Wright.pdf	RESP0088971
8	6379.	Irrevocable Account 2013.pdf	RESP0088972- RESP0089012
9	6380.	Objection to Accounting.pdf	RESP0089013- RESP0089039
10	6381.	Scott AWH Note.pdf	RESP0089040- RESP0089042
11	6382.	Scott LGC LLC.pdf	RESP0089043- RESP0089071
12	6383.	Scott LGC LLC.pdf	RESP0089072
13	6384.	Scott note to Acy.pdf	RESP0089073- RESP0089074
14	6385.	Scott Proposed investments.pdf	RESP0089075- RESP0089076
15	6386.	Scott Proposed investments.pdf	RESP0089077
16	6387.	Scott Proposed investments.pdf	RESP0089078- RESP0089082
17	6388.	Scott Proposed investments.pdf	RESP0089083- RESP0089090
18	6389.	Scott Trust. Budget and Cash.pdf	RESP0089091- RESP0089109
19	6390.	Scott Trust. Budget and Cash.pdf	RESP0089110- RESP0089111
20	6391.	Solomon cod desp 2012.pdf	RESP0089112- RESP0089185
21	6392.	01_2015 SCOTT TAXES 0617.pdf	RESP0089186- RESP0089285
22	6393.	07_SCOTT 2014 TAXES.pdf	RESP0089286- RESP0089677
23	6394.	1037 SCIT'16.pdf	RESP0089678
24	6395.	122 SCIT'16.pdf	RESP0089679
25	6396.	138 SCIT'16.pdf	RESP0089680
26	6397.	154 SCIT'16.pdf	RESP0089681
27	6398.	170 SCIT'16.pdf	RESP0089682
28	6399.	184 SCIT'16.pdf	RESP0089683
	6400.	199 SCIT'16.pdf	RESP0089684
	6401.	214 SCIT'16.pdf	RESP0089685
	6402.	231 SCIT'16.pdf	RESP0089686

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6517.	Certificate (CS 2005 Investments).pdf	RESP0091190- RESP0091250
6518.	Certificate (EH 2002).pdf	RESP0091251- RESP0091307
6519.	Certificate (Green Valley Aurora).pdf	RESP0091308- RESP0091368
6520.	Certificate (Green Valley East).pdf	RESP0091369- RESP0091425
6521.	Certificate (GVR King, LLC).pdf	RESP0091426- RESP0091486
6522.	Certificate (Tower Road Farms).pdf	RESP0091487- RESP0091544
6523.	2012 invoices, spreadsheets relating to trust administration	RESP0091545- RESP0091809
6524.	2013 invoices, spreadsheets relating to trust administration	RESP0091810- RESP0092078
6525.	2014 invoices, spreadsheets relating to trust administration	RESP0092079- RESP0092110

Discovery is ongoing, and Respondents reserve the right to supplement, amend, correct, or otherwise modify this document and this list of documents as additional documents are identified and obtained through discovery. Further, Respondents reserve the right to use as exhibits any and all documents listed by other parties related to this matter.

III. INSURANCE AGREEMENTS

Not applicable.

DATED this 5th day of June 2018.

CAMPBELL & WILLIAMS

J. Colby Williams (NSB#5549)
700 S. Seventh Street
Las Vegas, NV 89101

and



DICKINSON WRIGHT PLLC

Elizabeth Brickfield, Esq. (NSB #6236)
Joel Z. Schwarz, Esq. (NSB #9181)
Var E. Lordahl, Esq. (NSB #12028)
8363 W. Sunset Road, Suite 200
Las Vegas, Nevada 89113
Attorneys for Respondents

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EXHIBIT 14

TEST

Production:Begin Bates	Production:End Bates	File Name	Email Subject	Email To	Email From	Email CC	Date Sent	Privilege Designation
PRIV_RESP0000001		2016 Canarelli Irrevocable Trust Accounting.msg	2016 Canarelli Irrevocable Trust Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Colby Williams' [jcw@cwiawv.com];Hilary B. Dahlhaus [HbDahlhaus@dickinson-wright.com]	11/1/2017 23:10	Attorney Work Product
PRIV_RESP0000002		2016 Scott Canarelli Irrevocable Trust accounting.msg	2016 Scott Canarelli Irrevocable Trust accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Ed Lubbers' [elubbers@lubberlaw.com];'Colby Williams' [jcw@cwiawv.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP0000003		2016 Trust Accounting for Scott Lyle Graves Canarelli IRT.msg	2016 Trust Accounting for Scott Lyle Graves Canarelli IRT	elubbers@lubberlaw.com;Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Jennifer Rosario [rosario@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	12/4/2017 22:20	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000004		Attachments.html						Attorney Work Product
PRIV_RESP0000005		Attorney Fees.msg	Attorney Fees	Teresa O'Malley [TOMalley@AmericanWesthomes.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com];Elizabeth Brickfield [EBrickfield@dickinson-wright.com];Dan Gerety [Dan@geretycpa.com]	11/14/2017 19:06	Accountant Client Privilege; Attorney Client Communication
PRIV_RESP0000006		RE_Canarelli Trust questions	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:46	Attorney Work Product
PRIV_RESP0000007		RE_Canarelli Trust questions	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/15/2017 17:30	Attorney Work Product
PRIV_RESP0000008		RE_Canarelli	RE: Canarelli	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	'Colby Williams' [jcw@cwiawv.com];Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 19:33	Attorney Client Communication
PRIV_RESP0000009		LVEGAS-#196105-42-Letter_to_Gerety_12-14-2017.pdf	LVEGAS-#196105-42-Letter_to_Gerety_12-14-2017.pdf				12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000010		LVEGAS-#196105-42-Letter_to_Gerety_12-14-2017.pdf	LVEGAS-#196105-42-Letter_to_Gerety_12-14-2017.pdf					Attorney Work Product
PRIV_RESP0000011		Canarelli - SCIT 2016 accounting.msg	Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [HbDahlhaus@dickinson-wright.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com];Var E. Lordahl [VLordahl@dickinson-wright.com];Hilary A. Williams [HWilliams@dickinson-wright.com]	10/23/2017 18:57	Attorney Work Product
PRIV_RESP0000012		Canarelli - SCIT 2016 accounting.msg	Canarelli - SCIT 2016 accounting					Attorney Work Product
PRIV_RESP0000013		LVEGAS-#17746-v1-Gerety_Engagement_Letter_10-17-2017.pdf	LVEGAS-#17746-v1-Gerety_Engagement_Letter_10-17-2017.pdf					Attorney Work Product
PRIV_RESP0000014		Canarelli .msg	Canarelli	'Ed Lubbers' [elubbers@lubberlaw.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]		9/20/2017 16:29	Attorney Client Communication
PRIV_RESP0000015		LVEGAS-#168201-v1-LVEGAS-#167965-v1-geretydischarge.DOC	LVEGAS-#168201-v1-LVEGAS-#167965-v1-geretydischarge.DOC					Attorney Work Product
PRIV_RESP0000016		Canarelli accountings.msg	Canarelli accountings	Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Dan Gerety' [Dan@geretycpa.com]	1/9/2018 20:19	Attorney Work Product

APP0001110

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PRIV_RESP0000035	PRIV_RESP0000035	Canarelli SCIT accounting.msg	Canarelli SCIT accounting	'Dan Gerety' [Dan@geretycpa.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]		12/9/2017 4:06	Attorney Work Product
PRIV_RESP0000036	PRIV_RESP0000036	Canarelli Trust questions (26).msg	Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:50	Attorney Work Product
PRIV_RESP0000037	PRIV_RESP0000037	Canarelli Trust questions (28).msg	Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:48	Attorney Work Product
PRIV_RESP0000038	PRIV_RESP0000039	Canarelli Trust questions (42).msg	Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/11/2017 19:39	Attorney Work Product
PRIV_RESP0000040	PRIV_RESP0000040	Canarelli Trust questions.msg	Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:53	Attorney Work Product
PRIV_RESP0000041	PRIV_RESP0000041	Canarelli.msg			Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Colby Williams' [cww@cwlawlv.com];Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000042	PRIV_RESP0000045	VEGAS#196105-v2-Letter_to_Gerety_12-14-2017 PDF		Dan Gerety [Dan@geretycpa.com]				Attorney Work Product
PRIV_RESP0000046	PRIV_RESP0000046	Canarelli Trust accounting.msg	Canarelli Trust accounting	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		1/8/2018 21:03	Attorney Work Product
PRIV_RESP0000047	PRIV_RESP0000047	Draft 2016 Accounting.msg	Draft 2016 Accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Marcia S. Papa' [mpapa@geretycpa.com]	12/22/2017 0:55	Attorney Client Communication
PRIV_RESP0000048	PRIV_RESP0000048	draft SCIT 2016 Accounting.msg	draft SCIT 2016 Accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Colby Williams' [cww@cwlawlv.com]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP0000049	PRIV_RESP0000050	FW Gerety and Associates Marlene Sowby has sent you the document 08...Trust_COURT_ACTG_Eng_Letter...Canarelli_Scott...092617...2...pdf to sign...msg	FW: [Gerety and Associates] Marlene Sowby has sent you the document 08...Trust_COURT_ACTG_Eng_Letter...Canarelli_Scott...092617...2...pdf to sign...msg	Elizabeth Brickfield [EBrickfield@dickinson-wright.com];Colby Williams [cww@cwlawlv.com]	Ed Lubbers [elubbers@lubberrslaw.com]	Larry Canarelli [LCanarelli@AmericanWestHomes.com];Bob Evans [BobEvans@AmericanWestHomes.com]	9/28/2017 23:02	Attorney Client Communication
PRIV_RESP0000051	PRIV_RESP0000051	FW Canarelli .msg	FW: Canarelli	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]	'Colby Williams' [cww@cwlawlv.com]	12/6/2017 21:24	Attorney Client Communication
PRIV_RESP0000052	PRIV_RESP0000057	FW Canarelli Trust accounting (9).msg	FW: Canarelli Trust accounting	Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD/EA24]		1/10/2018 0:05	Attorney Work Product
PRIV_RESP0000059	PRIV_RESP0000061	RE Canarelli - SCIT 2016 accounting	RE: Canarelli - SCIT 2016 accounting	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com];Colby Williams [cww@cwlawlv.com]	12/6/2017 3:30	Attorney Client Communication
PRIV_RESP0000062	PRIV_RESP0000062	2016 Scott Canarelli Irrevocable Trust accounting	2016 Scott Canarelli Irrevocable Trust accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Ed Lubbers [elubbers@lubberrslaw.com];Colby Williams [cww@cwlawlv.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP0000063	PRIV_RESP0000063	2016 Canarelli Irrevocable Trust Accounting	2016 Canarelli Irrevocable Trust Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com];Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	11/1/2017 23:10	Attorney Work Product

APP001111

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PRIV_RESP0000064	PRIV_RESP0000064	Scott Canarelli Irrevocable Trust	Scott Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]; Elubbers [elubberslaw.com]	11/3/2017 22:54	Attorney Work Product
PRIV_RESP0000065	PRIV_RESP0000066	FW_Scott Canarelli Irrevocable Trust	FW_Scott Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [HDahlhaus@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]; Elubbers [elubberslaw.com]	11/7/2017 22:03	Attorney Work Product
PRIV_RESP0000067	PRIV_RESP0000068	RE_Canarelli	RE_Canarelli	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Colby Williams [cwb@cwlawlv.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000069	PRIV_RESP0000070	RE_Canarelli - SCIT 2016 accounting	RE_Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [cwb@cwlawlv.com]	12/5/2017 19:53	Attorney Work Product
PRIV_RESP0000071	PRIV_RESP0000071	FW_Canarelli	FW_Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]	12/6/2017 21:24	Attorney Work Product
PRIV_RESP0000072	PRIV_RESP0000072	SCIT	SCIT	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]	12/6/2017 22:26	Attorney Work Product
PRIV_RESP0000073	PRIV_RESP0000073	SCIT Accounting	SCIT Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]	12/7/2017 19:21	Attorney Work Product
PRIV_RESP0000074	PRIV_RESP0000077	LVEGAS-#19388-v1-Footnote_PDF	LVEGAS-#19388-v1-Footnote_PDF		Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000078	PRIV_RESP0000078	Canarelli	Canarelli	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]			Attorney Work Product
PRIV_RESP0000079	PRIV_RESP0000082	LVEGAS-#196105-v2-Letter_To_Gerety_12-14-2017 PDF	LVEGAS-#196105-v2-Letter_To_Gerety_12-14-2017 PDF		Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]			Attorney Work Product
PRIV_RESP0000083	PRIV_RESP0000083	draft SCIT 2016 Accounting	draft SCIT 2016 Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP0000084	PRIV_RESP0000084	RE_draft SCIT 2016 Accounting	RE_draft SCIT 2016 Accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [Ebrickfield@dickinson-wright.com]	Colby Williams [cwb@cwlawlv.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000085	PRIV_RESP0000087	PW Gerety accountings privilege log.msg	PW Gerety accountings privilege log.msg	Lisa M. Stewart [LStewart@dickinson-wright.com]	WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDPA24			Attorney Client Communication
PRIV_RESP0000088	PRIV_RESP0000088	2016 Trust Accounting	2016 Trust Accounting	Teresa OMalley [TOmalley@AmericanWesthomes.com]	Kristin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	2/12/2018 20:15	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000089	PRIV_RESP0000089	2015 Trust Accounting	2015 Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]	Kristin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	10/17/2017 17:43	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000090	PRIV_RESP0000090	RE_Scott Canarelli	RE_Scott Canarelli	Ed Lubbers [elubbers@lubberlaw.com]	Kristin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]; Teresa OMalley [TOmalley@AmericanWesthomes.com]	9/26/2017 16:35	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000091	PRIV_RESP0000091	Scott Canarelli Trust Accounting	Scott Canarelli Trust Accounting	Ed Lubbers [elubbers@lubberlaw.com]	Kristin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	3/22/2017 18:18	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000092	PRIV_RESP0000092	Attachments.html	Attachments.html	Ed Lubbers [elubbers@lubberlaw.com]; Kristin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	Ed Lubbers [elubbers@lubberlaw.com]	9/29/2017 19:32	Attorney Work Product
PRIV_RESP0000093	PRIV_RESP0000094	[Gerety and Associates] Marlene Sowby has sent you the document 08_-_Compilation_-_Estate-Trust_COURT ACCTG - Eng. Letter - Canarelli_Scott_-_092617_-_2_.pdf to sign.	[Gerety and Associates] Marlene Sowby has sent you the document 08_-_Compilation_-_Estate-Trust_COURT ACCTG - Eng. Letter - Canarelli_Scott_-_092617_-_2_.pdf to sign.	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]			Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000095	PRIV_RESP0000095	New voicemail from CPA FIRM (702) 933 - 2213)	New voicemail from CPA FIRM (702) 933 - 2213)	Ed Lubbers [elubbers@lubberlaw.com]	Marlene Sowby [msowby@geretycpa.com]		9/26/2017 17:38	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000096	PRIV_RESP0000097	RE_Scott Canarelli	RE_Scott Canarelli	Kristin Lambrecht [klambrecht@geretycpa.com]	no_reply@switch.net		9/29/2017 18:51	Accountant Client Privilege; Attorney Work Product
				Ed Lubbers [elubbers@lubberlaw.com]			3/22/2017 18:21	Attorney Work Product

TEST

PRIV_RESP0000098	PRIV_RESP0000099	FW SCIT 2016 accounting.msg	FW: SCIT 2016 accounting	Lisa M. Stewart [LStewart@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD24]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubbers@lubberlaw.com]	10/26/2017 0:37	Attorney Client Communication
PRIV_RESP0000100	PRIV_RESP0000100	FW Scott Canarelli Irrevocable Trust.msg	FW: Scott Canarelli Irrevocable Trust	'Dan Gerety' [Dan@geretycpa.com]		Hilary B. Dahlhaus [HDahlhaus@dickinson-wright.com]	11/7/2017 22:03	Attorney Work Product
PRIV_RESP0000101	PRIV_RESP0000101	FW Scott Canarelli Irrevocable Trust.msg [VEDAS47207037-1-Letter to Gerety 02-05-2018].pdf						Attorney Work Product
PRIV_RESP0000102	PRIV_RESP0000103	FW Valuation Schedules.msg	FW: Valuation Schedules	'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD24]		12/19/2017 21:41	Attorney Work Product
PRIV_RESP0000104	PRIV_RESP0000104	Attachments.html						Attorney Work Product
PRIV_RESP0000105	PRIV_RESP0000105	is your telephone working.msg	is your telephone working	'geretycpas@geretycpa.com' [geretycpas@geretycpa.com]; 'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD24]		10/17/2017 17:00	Attorney Work Product
PRIV_RESP0000106	PRIV_RESP0000107	RE Attorney Fees (67).msg	RE: Attorney Fees	Kirstin Lambrecht [klambrecht@geretycpa.com]	Teresa O'Malley [TOmalley@AmericanWestHomes.com]	Ed Lubbers [elubbers@lubberlaw.com]; Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Dan Gerety [Dan@geretycpa.com]	11/14/2017 19:09	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000108	PRIV_RESP0000110	RE Canarelli - SCIT 2016 accounting (63).msg	RE: Canarelli - SCIT 2016 accounting	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	12/6/2017 3:00	Attorney Work Product
PRIV_RESP0000111	PRIV_RESP0000112	RE Canarelli - SCIT 2016 accounting (64).msg	RE: Canarelli - SCIT 2016 accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD24]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	12/19/2017 19:53	Attorney Work Product
PRIV_RESP0000113	PRIV_RESP0000114	RE Canarelli - SCIT 2016 accounting (69).msg	RE: Canarelli - SCIT 2016 accounting	Hilary B. Dahlhaus [HDahlhaus@dickinson-wright.com]	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Var E. Lordahl [VLordahl@dickinson-wright.com]; Hilary A. Williams [HWilliams@dickinson-wright.com]	10/23/2017 19:33	Attorney Work Product
PRIV_RESP0000115	PRIV_RESP0000117	RE Canarelli - SCIT 2016 accounting.msg	RE: Canarelli - SCIT 2016 accounting	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		12/6/2017 6:19	Attorney Work Product
PRIV_RESP0000118	PRIV_RESP0000122	RE Canarelli Trust questions (24).msg	RE: Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELD24]		12/19/2017 19:45	Attorney Work Product
PRIV_RESP0000123	PRIV_RESP0000127	RE Canarelli Trust questions (25).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]			12/15/2017 17:30	Attorney Work Product
PRIV_RESP0000128	PRIV_RESP0000132	RE Canarelli Trust questions (29).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:46	Attorney Work Product
PRIV_RESP0000133	PRIV_RESP0000135	RE Canarelli Trust questions (31).msg	RE: Canarelli Trust questions	Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		12/14/2017 22:36	Attorney Work Product
PRIV_RESP0000136	PRIV_RESP0000139	RE Canarelli Trust questions (32).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 22:33	Attorney Work Product
PRIV_RESP0000140	PRIV_RESP0000143	RE Canarelli Trust questions (33).msg	RE: Canarelli Trust questions	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Marcia S. Papa [mpapa@geretycpa.com]		12/14/2017 0:20	Attorney Work Product

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PRIV_RESP0000144	PRIV_RESP0000146	RE Canarelli Trust questions (34).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	12/13/2017 19:32	Attorney Work Product
PRIV_RESP0000147	PRIV_RESP0000149	RE Canarelli Trust questions (35).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Bob Evans [BobEvans@AmericanWestHomes.com]	12/13/2017 18:04	Attorney Client Communication
PRIV_RESP0000150	PRIV_RESP0000152	RE Canarelli Trust questions (36).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		12/11/2017 20:43	Attorney Work Product
PRIV_RESP0000153	PRIV_RESP0000155	RE Canarelli Trust questions (39).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		12/11/2017 20:01	Attorney Work Product
PRIV_RESP0000156	PRIV_RESP0000157	RE Canarelli Trust questions (41).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		12/11/2017 19:57	Attorney Work Product
PRIV_RESP0000158	PRIV_RESP0000159	RE Canarelli Trust questions (42).msg	RE Canarelli Trust questions	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Colby Williams [CWilliams@colbywilliams.com]	12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000160	PRIV_RESP0000166	RE Canarelli Trust accounting (10).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Schwarz [Schwarz@dickinson-wright.com]	1/9/2018 23:48	Attorney Work Product
PRIV_RESP0000167	PRIV_RESP0000171	RE Canarelli Trust accounting (11).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/9/2018 22:33	Attorney Work Product
PRIV_RESP0000172	PRIV_RESP0000175	RE Canarelli Trust accounting (12).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Dan Gerety [Dan@geretypca.com]	1/9/2018 22:20	Attorney Work Product
PRIV_RESP0000176	PRIV_RESP0000178	RE Canarelli Trust accounting (13).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/9/2018 20:16	Attorney Work Product
PRIV_RESP0000179	PRIV_RESP0000181	RE Canarelli Trust accounting (14).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]	Dan Gerety [Dan@geretypca.com]	1/9/2018 0:25	Attorney Work Product
PRIV_RESP0000182	PRIV_RESP0000183	RE Canarelli Trust accounting (15).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/8/2018 23:25	Attorney Work Product
PRIV_RESP0000184	PRIV_RESP0000185	RE Canarelli Trust accounting (16).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/8/2018 22:49	Attorney Work Product
PRIV_RESP0000186	PRIV_RESP0000186	2015 Letter.pdf	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/8/2018 22:04	Attorney Work Product
PRIV_RESP0000187	PRIV_RESP0000187	RE Canarelli Trust accounting (17).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]		1/11/2018 21:42	Attorney Work Product
PRIV_RESP0000188	PRIV_RESP0000193	RE Canarelli Trust accounting (2).msg	RE Canarelli Trust accounting	'Marcia S. Papa' [mpapa@geretypca.com] Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD24]			

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PRIV_RESP0000194	PRIV_RESP0000199	RE Canarelli Trust accounting (5).msg			'Dan Gerety' [Dan@geretycpa.com]; Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]	'Kirstin Lambrecht' [klambrecht@geretycpa.com]	1/11/2018 17:30	Attorney Work Product
PRIV_RESP0000200	PRIV_RESP0000204	RE Canarelli Trust accounting (6).msg			Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]	Dan Gerety [Dan@geretycpa.com]	Dan Gerety [Dan@geretycpa.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	1/11/2018 17:11	Attorney Work Product
PRIV_RESP0000205	PRIV_RESP0000209	RE Canarelli Trust accounting (7).msg			'Dan Gerety' [Dan@geretycpa.com]; Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]		1/11/2018 3:25	Attorney Work Product
PRIV_RESP0000210	PRIV_RESP0000213	RE Canarelli Trust accounting (8).msg			Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Marcia S. Papa [mpapa@geretycpa.com]	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]		1/10/2018 0:39	Attorney Work Product
PRIV_RESP0000214	PRIV_RESP0000220	RE Canarelli Trust accounting .msg			'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]		1/11/2018 21:42	Attorney Work Product
PRIV_RESP0000221	PRIV_RESP0000221	RE Draft 2016 Accounting (21).msg			Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		Dan Gerety [Dan@geretycpa.com]	Marcia S. Papa [mpapa@geretycpa.com]	12/22/2017 1:20	Attorney Work Product
PRIV_RESP0000222	PRIV_RESP0000223	RE Draft 2016 Accounting .msg			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]	'Marcia S. Papa' [mpapa@geretycpa.com]	12/22/2017 1:53	Attorney Work Product
PRIV_RESP0000224	PRIV_RESP0000224	RE draft SCIT 2016 Accounting .msg			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BRICKFIELDFA24]	'Colby Williams' [jcw@cwlawlv.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000225	PRIV_RESP0000227	RE Canarelli - SCIT 2016 accounting			Elizabeth Brickfield [EBrickfield@dickinson-wright.com]		Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; 'Colby Williams' [jcw@cwlawlv.com]	12/6/2017 3:00	Attorney Work Product
PRIV_RESP0000228	PRIV_RESP0000228	2016 Scott Canarelli Irrevocable Trust accounting			Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	'Colby Williams' [jcw@cwlawlv.com]; Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	10/16/2017 19:26	Attorney Work Product
PRIV_RESP0000229	PRIV_RESP0000229	2016 Canarelli Irrevocable Trust Accounting			Dan Gerety [Dan@geretycpa.com]	Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubbers@lubberlaw.com]	11/1/2017 23:10	Attorney Work Product
PRIV_RESP0000230	PRIV_RESP0000230	Scott Canarelli Irrevocable Trust			Dan Gerety [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Colby Williams [colby@campbellandwilliams.com]; Elubbers [elubbers@lubberlaw.com]	11/3/2017 22:54	Attorney Work Product
PRIV_RESP0000231	PRIV_RESP0000232	PW_ Scott Canarelli Irrevocable Trust			'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Hilary B. Dahlhaus [Hbahlhaus@dickinson-wright.com]	'Colby Williams' [jcw@cwlawlv.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	11/7/2017 22:03	Attorney Work Product
PRIV_RESP0000233	PRIV_RESP0000234	RE Canarelli			RE Canarelli		Dan Gerety [Dan@geretycpa.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; 'Colby Williams' [jcw@cwlawlv.com]	12/15/2017 19:33	Attorney Work Product
PRIV_RESP0000235	PRIV_RESP0000236	RE Canarelli - SCIT 2016 accounting			RE Canarelli		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; 'Colby Williams' [jcw@cwlawlv.com]	12/5/2017 19:53	Attorney Work Product
PRIV_RESP0000237	PRIV_RESP0000237	PW_ Canarelli			Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [jcw@cwlawlv.com]	12/6/2017 21:24	Attorney Work Product

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PRIV_RESP0000238	PRIV_RESP0000238	SCIT	SCIT		Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	12/6/2017 22:26	Attorney Work Product
PRIV_RESP0000239	PRIV_RESP0000239	SCIT Accounting	SCIT Accounting		Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	12/7/2017 19:21	Attorney Work Product
PRIV_RESP0000240	LVEGAS-#193686-v1-Footnote_PDF								Attorney Work Product
PRIV_RESP0000244	Canarelli	Canarelli	Canarelli		Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]	12/15/2017 2:47	Attorney Work Product
PRIV_RESP0000245	PRIV_RESP0000248	LVEGAS-#196105-v2-Letter_to_Gerety_12-14-2017.PDF							Attorney Work Product
PRIV_RESP0000249	PRIV_RESP0000249	draft SCIT 2016 Accounting	draft SCIT 2016 Accounting		Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	1/3/2018 0:11	Attorney Work Product
PRIV_RESP0000250	PRIV_RESP0000250	RE_draft SCIT 2016 Accounting	RE_draft SCIT 2016 Accounting		Dan Gerety [Dan@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com]	Colby Williams [cww@cwlawlv.com]	1/5/2018 19:15	Attorney Work Product
PRIV_RESP0000251	PRIV_RESP0000253	RE Gerety accountings privilege log.msg	RE Gerety accountings privilege log		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Larry Canarelli [LCanarelli@AmericanWestHomes.com]; Bob Evans [BobEvans@AmericanWestHomes.com]; Colby Williams [cww@cwlawlv.com]; Jennifer Braster [jbraster@nblawvnv.com]	Justin J. Bustos [JBustos@dickinson-wright.com]; Lisa M. Stewart [LStewart@dickinson-wright.com]; Hilary B. Dahlhaus [HDahlhaus@dickinson-wright.com]; Tina Goode [TGoode@AmericanWestHomes.com]; Lisa M. Stewart [LStewart@dickinson-wright.com]			Attorney Client Communication
PRIV_RESP0000254	PRIV_RESP0000254	2016 Trust Accounting	2016 Trust Accounting		Teresa O'Malley [TOmalley@AmericanWestHomes.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]	10/17/2017 17:43	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000255	PRIV_RESP0000255	2015 Trust Accounting	2015 Trust Accounting		Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]	Dan Gerety [Dan@geretycpa.com]; Teresa O'Malley [TOmalley@AmericanWestHomes.com]	9/26/2017 16:35	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000256	PRIV_RESP0000279	2014 General Ledger.pdf							Attorney Work Product
PRIV_RESP0000280	PRIV_RESP0000280	2015 Beginning Balance Scott Checking #8800.pdf							Attorney Work Product
PRIV_RESP0000281	PRIV_RESP0000281	RE_Scott Canarelli	RE_Scott Canarelli		Ed Lubbers [elubbers@lubberlaw.com]	Kirstin Lambrecht [klambrecht@geretycpa.com]		3/22/2017 18:18	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000282	PRIV_RESP0000282	Scott Canarelli Trust Accounting	Scott Canarelli Trust Accounting		elubbers@lubberlaw.com;Kirstin Lambrecht [klambrecht@geretycpa.com]	Marlene Sowby [msowby@geretycpa.com]		9/29/2017 19:32	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000283	PRIV_RESP0000283	Attachments.html							Attorney Work Product
PRIV_RESP0000284	PRIV_RESP0000285	(Gerety and Associates) Marlene Sowby has sent you the document 08_-_Compilation__Estate_Trust_COURT_ACTS_Eng_Letter_-_Canarelli_Scott_-_092617__2_.pdf to sign_	(Gerety and Associates) Marlene Sowby has sent you the document 08_-_Compilation__Estate_Trust_COURT_ACTS_Eng_Letter_-_Canarelli_Scott_-_092617__2_.pdf to sign_						
PRIV_RESP0000286	PRIV_RESP0000287	RE_Scott Canarelli	RE_Scott Canarelli		elubbers@lubberlaw.com	Marlene Sowby [documents@rightsignatures.com]		9/26/2017 17:38	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000288	PRIV_RESP0000289	RE SCIT 2016 accounting (70).msg	RE SCIT 2016 accounting		Kirstin Lambrecht [klambrecht@geretycpa.com]	Ed Lubbers [elubbers@lubberlaw.com]		3/22/2017 18:21	Accountant Client Privilege; Attorney Work Product
PRIV_RESP0000290	PRIV_RESP0000291	RE SCIT 2016 accounting (71).msg	RE SCIT 2016 accounting		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Ed Lubbers [elubbers@lubberlaw.com]	Dan Gerety [Dan@geretycpa.com]	Teresa O'Malley [TOmalley@AmericanWestHomes.com]	10/23/2017 18:12	Attorney Work Product
PRIV_RESP0000292	PRIV_RESP0000294	RE SCIT 2016 accounting (71).msg	RE SCIT 2016 accounting		Elizabeth Brickfield [EBrickfield@dickinson-wright.com]; Ed Lubbers [elubbers@lubberlaw.com]	Dan Gerety [Dan@geretycpa.com]	Teresa O'Malley [TOmalley@AmericanWestHomes.com]	10/23/2017 18:09	Attorney Work Product
PRIV_RESP0000293	PRIV_RESP0000294	08_-_Compilation (Estate-Trust COURT ACTS)_Eng_Letter_-_Canarelli_Scott_-_092617__2_.pdf							Attorney Work Product

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PRIV_RESP0000285		RE SCIT 2016 accounting.msg	RE SCIT 2016 accounting	"Teresa O'Malley" [TOMalley@AmericanWestHomes.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD0424]	'Ed Lubbers' [elubbers@lubberslaw.com]	10/25/2017 17:53		Attorney Client Communication
PRIV_RESP0000287	PRIV_RESP00000299	RE Valuation Schedules (22).msg	RE: Valuation Schedules	'Marcia S. Papa' [mpapa@geretycpa.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	'Dan Gerety' [Dan@geretycpa.com]	12/20/2017 1:06		Attorney Work Product
PRIV_RESP0000300	PRIV_RESP0000303	RE Valuation Schedules (23).msg	RE: Valuation Schedules	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]		12/19/2017 22:54		Attorney Work Product
PRIV_RESP0000304	PRIV_RESP0000307	RE Valuation Schedules.msg	RE: Valuation Schedules			Dan Gerety [Dan@geretycpa.com]	12/20/2017 1:15		Attorney Work Product
PRIV_RESP0000308	PRIV_RESP0000309	Revised Trust accounting (20).msg	Revised Trust accounting	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Elizabeth Brickfield [EBrickfield@dickinson- wright.com]	Jennifer Rosario [jrosario@geretycpa.com]	12/22/2017 16:28		Attorney Work Product
PRIV_RESP0000310	PRIV_RESP0000310	Revised Trust Accounting.msg	Revised Trust Accounting			Marcia S. Papa [mpapa@geretycpa.com]	1/11/2018 21:49		Attorney Work Product
PRIV_RESP0000311	PRIV_RESP0000311	SCIT (53).msg	SCIT	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD0424]	'Colby Williams' [jew@cwlawlv.com]	12/6/2017 22:26		Attorney Work Product
PRIV_RESP0000312		SCIT 2016 accounting .msg	SCIT 2016 accounting	'Dan Gerety' [dan@geretycpa.com]; 'Ed Lubbers' [elubbers@lubberslaw.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD0424]	'Teresa O'Malley' [TOMalley@AmericanWestHomes.com]	10/23/2017 1:14		Attorney Work Product
PRIV_RESP0000313	PRIV_RESP0000313	SCIT Accounting.msg	SCIT Accounting	'Dan Gerety' [Dan@geretycpa.com]	Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD0424]	Colby Williams' [jew@cwlawlv.com]	12/7/2017 19:21		Attorney Work Product
PRIV_RESP0000314	PRIV_RESP0000317	LVEGAS #195886-v1-Footnote .PDF			Elizabeth Brickfield [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BR ICKFIELD0424]	'Colby Williams ' [colby@campbellandwilliams.com]; 'Elubbers [elubberslaw.com]			Attorney Work Product
PRIV_RESP0000318	PRIV_RESP0000318	Scott Canarelli Irrevocable Trust .msg	Scott Canarelli Irrevocable Trust	'Dan Gerety' [Dan@geretycpa.com]		Elizabeth Brickfield [EBrickfield@dickinson- wright.com]; Var E. Lordahl [Vlordahl@dickinson-wright.com]; Kendal L. Weisenmiller [KWaisenmiller@dickinson- wright.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; John P. Desmond [JDesmond@dickinson- wright.com]	11/3/2017 22:54		Attorney Work Product
PRIV_RESP0000319	PRIV_RESP0000319	Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998 (86).msg	Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998		Hilary B. Dahlhaus [HDahlhaus@dickinson- wright.com]		7/25/2017 18:17		Attorney Work Product
PRIV_RESP0000320	PRIV_RESP0000321	LVEGAS #152321-v1- Letter to Gerety_7_25_2017.pdf				Elizabeth Brickfield [EBrickfield@dickinson- wright.com]; Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Var E. Lordahl [Vlordahl@dickinson- wright.com]; Hilary A. Williams [HWilliams@dickinson-wright.com]			Attorney Work Product
PRIV_RESP0000322	PRIV_RESP0000322	Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998 .msg	Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [HDahlhaus@dickinson- wright.com]		2/5/2018 22:59		Attorney Work Product

[illegible]

TEST

PRIV_RESP0000351	PRIV_RESP0000351	Scott Lyle Graves Canarelli Irrevocable Trust.msg	Scott Lyle Graves Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]	Hilary B. Dahlhaus [/O=DICKINSON WRIGHT/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAHLHAUSHEBO]	Elizabeth Brickfield [EBrickfield@dickinson-wright.com];Kendal L. Weisenmiller [KWeisenmiller@dickinson-wright.com];Var E. Lordahl [Vordahl@dickinson-wright.com]	9/20/2017 21:34	Accountant Client Privilege
PRIV_RESP0000352	PRIV_RESP0000353	2017 PDF	Scott Lyle Graves Canarelli Irrevocable Trust	Dan Gerety [Dan@geretycpa.com]				Accountant Client Privilege
Production:Begin Bates	Production:End Bates	File Type	Subject	TO	FROM	CC	Date Sent	Privilege Designation
RESP013471	RESP013473	Letter		Bob Evans	Kristin Lambrecht	N/A	12/21/2016	Accountant Client Privilege; Attorney Work Product
RESP019380	RESP0019382	Engagement letter	Scott Canarelli	Ed Lubbers	Kristin Lambrecht	N/A	9/26/2017	Accountant Client Privilege; Attorney Work Product
RESP019383	RESP0019383	Engagement letter (page 1)	Scott Canarelli Irrevocable Trust	Ed Lubbers	Kristin Lambrecht	N/A	1/15/2015	Accountant Client Privilege; Attorney Work Product
RESP019335	RESP0019336	Engagement letter (page 2)	Scott Canarelli Irrevocable Trust	Ed Lubbers	Kristin Lambrecht	N/A	1/15/2015	Accountant Client Privilege; Attorney Work Product
RESP019337	RESP0019338	Engagement letter	Scott Canarelli Irrevocable Trust	Ed Lubbers	Kristin Lambrecht	N/A	1/15/2015	Accountant Client Privilege; Attorney Work Product
RESP045260	RESP045261	Letter		Bob Evans	Kristin Lambrecht	N/A	12/21/2016	Accountant Client Privilege; Attorney Work Product
RESP045263	RESP045263	Email	Gerety & Associates	Cheryl Corley	Marlene Sowby	Kristin Lambrecht	12/22/2016 at 9:53:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045264	RESP045264	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		12/22/2016 at 10:35 AM	Accountant Client Privilege; Attorney Work Product
RESP045265	RESP045265	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		12/22/2016 at 11:54 AM	Accountant Client Privilege; Attorney Work Product
RESP045266	RESP045266	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		12/22/2016 at 9:54:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045267	RESP045267	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		12/22/2016 at 10:35:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045268	RESP045268	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		12/22/2016 at 11:53:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045269	RESP045269	Email	Distributions	Cheryl Corley	Kristin Lambrecht		12/28/2016 at 2:01:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045270	RESP045271	Email	Trust Accounting	Kristin Lambrecht; Dan@geretycpa.com	Cheryl Corley		1/5/2010 at 9:29:00 AM	Accountant Client Privilege; Attorney Work Product
RESP045272	RESP045272	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		1/6/2017 at 12:56 AM	Accountant Client Privilege; Attorney Work Product
RESP045276	RESP045276	Email	Scott Canarelli Irrevocable Trust	Dan Gerety	Bob Evans	Kristin Lambrecht; Cheryl Corley	1/6/2017 at 1:42:00 PM	Accountant Client Privilege; Attorney Work Product
RESP045277	RESP045277	Email	Sharefile documents	Cheryl Corley	Cheryl Corley		1/6/2017 at 12:56:00 PM	Accountant Client Privilege; Attorney Work Product
RESP045280	RESP045281	Email	Trust Accounting	Cheryl Corley	Kristin Lambrecht; Dan Gerety; Bob Evans		1/19/2017 at 4:49 PM	Accountant Client Privilege; Attorney Work Product
RESP045282	RESP045284	Email	Trust Accounting	Cheryl Corley	Kristin Lambrecht		2/22/2017 at 5:50 PM	Accountant Client Privilege; Attorney Work Product
RESP045288	RESP045292	Email	Scott Canarelli 2005	Cheryl Corley	Kristin Lambrecht		3/7/2017 at 8:25 AM	Accountant Client Privilege; Attorney Work Product
RESP045293	RESP045293	Email	Scott Canarelli	Bob Evans; Elizabeth Brickfield; elubbers@lubberrslaw.com; Colby Williams; colby@cambellandwilliams.com	Cheryl Corley		9/1/2017	Accountant Client Privilege; Attorney Work Product
RESP045311	RESP045311	Memo to File prepared by Cheryl Corley	Gerety & Associates - Transmission of Data- Scott Canarelli Trust	N/A	N/A	N/A	1/6/2017	Accountant Client Privilege; Attorney Work Product
RESP045312	RESP045316	Email	Scott Canarelli 2005	Kristin Lambrecht	Cheryl Corley		3/8/2017 1:43	Accountant Client Privilege; Attorney Work Product

APP001119

TEST

RESPONDENTS THIRD SUPPLEMENTAL 16.1 DISCLOSURE
 RESPONDENTS PRIVILEGE LOG
 DATE: 6/12/2018

Production-Begin Dates	Production-End Dates	File Type	Subject	TO	From	CC	Date Sent	Privilege Designation
PRIV_RESP000985	PRIV_RESP000985	Letter	Scott Canarelli Irrevocable Trust	Edward C. Lubbers	Gerety and Associates		1/15/2018	Accountant Client Privilege
PRIV_RESP000986	PRIV_RESP000986	Email	Re: Canarelli Trust questions	Marcia Papa	Elizabeth Brickfield, Esq.		12/13/2017	Accountant Client Privilege
PRIV_RESP000987	PRIV_RESP000987	Email	FW: Valuation Schedules		Dan Gerety		12/19/2017	Accountant Client Privilege
PRIV_RESP000988	PRIV_RESP000988	Letter	FW: Scott Canarelli	Kristin Lambrecht and Jennifer Rosario			1/14/2018	Accountant Client Privilege
PRIV_RESP000989	PRIV_RESP000989	Letter	Scott Canarelli	Ed Lubbers	Gerety and Associates		12/29/2017	Accountant Client Privilege
PRIV_RESP000990	PRIV_RESP000990	Letter	None	Ed Lubbers	Gerety and Associates		10/17/2017	Accountant Client Privilege
PRIV_RESP000991	PRIV_RESP000991	Email	2016 Trust Accounting for Scott Lyle Graves Canarelli IRT	Ed Lubbers and Elizabeth Brickfield, Esq.	Jennifer Rosario	Marcia Papa	12/4/2017	Accountant Client Privilege
Production-Begin Dates	Production-End Dates	File Type	Subject	TO	From	CC	Date Sent	Privilege Designation
PRIV_RESP000992	PRIV_RESP000992	Email	RE: Canarelli information	EBrickfield@dickinson-wright.com	Dan Gerety	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	4/12/2008	Accountant Client Privilege
PRIV_RESP000993	PRIV_RESP000993	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	EBrickfield@dickinson-wright.com	Dan Gerety	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	3/16/2018	Accountant Client Privilege
PRIV_RESP000994	PRIV_RESP000994	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	EBrickfield@dickinson-wright.com	Dan Gerety	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	3/16/2018	Accountant Client Privilege
PRIV_RESP000995	PRIV_RESP000995	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	EBrickfield@dickinson-wright.com	Dan Gerety	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	2/26/2018	Accountant Client Privilege
PRIV_RESP000996	PRIV_RESP000996	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	EBrickfield@dickinson-wright.com	Dan Gerety	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	3/17/2018	Accountant Client Privilege
PRIV_RESP000997	PRIV_RESP000997	Email	Scott Canarelli Trust Documents	EBrickfield@dickinson-wright.com	Adrienne Varner		3/15/2018	Accountant Client Privilege
PRIV_RESP000998	PRIV_RESP000998	Attachment - sharefile link						Accountant Client Privilege
PRIV_RESP000999	PRIV_RESP000999	Email	Canarelli information	Dan@geretycpa.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	4/12/2018	Accountant Client Privilege
PRIV_RESP001000	PRIV_RESP001000	Email	Canarelli Trust matters	Dan@geretycpa.com	Elizabeth Brickfield, Esq.	Coby Williams [jcw@cwlawlv.com];Phil Erwin [pre@cwlawlv.com];Joel Z. Schwarz [Schwarz@dickinson-wright.com]	6/1/2018	Accountant Client Privilege
PRIV_RESP001001	PRIV_RESP001001	Email with attachment	FW: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan@geretycpa.com	Elizabeth Brickfield, Esq.		2/26/2018	Accountant Client Privilege
PRIV_RESP001002	PRIV_RESP001002	Attachment	2014, 2015 and 2016 Annual Accountings	Dan Gerety	Elizabeth Brickfield, Esq.		2/5/2018	Accountant Client Privilege
PRIV_RESP001003	PRIV_RESP001003	Email	FW: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan@geretycpa.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [Schwarz@dickinson-wright.com];Coby Williams [jcw@cwlawlv.com]	3/20/2018	Accountant Client Privilege
PRIV_RESP001004	PRIV_RESP001004	Email	Lubbers Canarelli accountings files	Dan@geretycpa.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [Schwarz@dickinson-wright.com]	5/11/2018	Accountant Client Privilege

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PRIV_RESP001005	PRIV_RESP001005	Email	RE: Canarelli information	Dan@geretypca.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	4/12/2018	Accountant Client Privilege
PRIV_RESP001006	PRIV_RESP001006	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan@geretypca.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	3/16/2018	Accountant Client Privilege
PRIV_RESP001007	PRIV_RESP001007	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan@geretypca.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	3/16/2018	Accountant Client Privilege
PRIV_RESP001008	PRIV_RESP001008	Email	RE: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998	Dan@geretypca.com	Elizabeth Brickfield, Esq.	Joel Z. Schwarz [JSchwarz@dickinson-wright.com]; Colby Williams [jcw@cwlawlv.com]	3/16/2018	Accountant Client Privilege
RESP0013284	RESP0013288	Ed Lubber's hand written notes	Irrevocable trust	N/A	N/A	N/A	10/14/2013	Attorney Client Privilege; Attorney Work Product

EXHIBIT 15

RSPN

J. Colby Williams, Esq. (NSB #5549)

CAMPBELL & WILLIAMS

700 South Seventh Street

Las Vegas, NV 89101

Telephone: (702) 382-5222

Facsimile: (702) 382-0540

jcw@campbellandwilliams.com

and

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Joel Z. Schwarz, Esq. (NSB #9181)

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ebrickfield@dickinsonwright.com

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vlordahl@dickinsonwright.com

Counsel for Respondents

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

SCOTT LYLE GRAVES

CANARELLI IRREVOCABLE

TRUST, dated February 24, 1998.

Case No.: P-13-078912-T

Dept. No.: 26

**SIXTH SUPPLEMENTAL OBJECTIONS AND RESPONSES TO SCOTT CANARELLI'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO EDWARD LUBBERS**

Frank Martin, the nominated Special Administrator of The Estate of Edward Lubbers, successor-in-interest to Edward Lubbers ("Lubbers"), named in this matter individually and as former Family Trustee and former Independent Trustee of the Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998, by and through his counsel, the law firms of Campbell & Williams and Dickinson Wright PLLC, hereby submits **Lubbers' sixth supplemental**

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1 been disclosed to Scott and/or are already in Scott's possession, custody, or control. *See*
2 RESP0012177-18799, RESP0013471-13473 (Gerety 12/21/16 letter), RESP0019380-19388
3 (Engagement Letter with Gerety), RESP0019389-19442 (Gerety-2nd Accounting of Successor
4 Trustee December 31, 2014), all previously produced; *see also*, RESP0045260-45310
5 (Correspondence with Gerety regarding Accounting), RESP0045311-45316 (Correspondence with
6 Gerety), RESP0045317-45337 (SCIT Trial Balance Reconciliations), and RESPO0091545-
7 0092110, previously produced. ***See also* RESP0092734-92738 produced concurrently herewith.**

8 Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in
9 his possession, custody, or control responsive to this Request if such documents are located and it is
10 determined that such documents have not also already been disclosed to Scott and/or are not already
11 in Scott's possession, custody, or control.

12 **REQUEST FOR PRODUCTION NO. 13:**

13 Please produce any and all records of all checking and/or savings accounts, credit union
14 accounts, certificates of deposit and/or brokerage accounts maintained by You in Your capacity as a
15 trustee of the SCIT (regardless of whether or not the account or accounts have been closed) from
16 January 1, 2012 to present, including, but not limited to, monthly bank statements, checkbooks,
17 cancelled checks, check registers, deposit slips, check requests, passbooks, statements relating to
18 savings accounts or certificates of savings deposit.

19 **RESPONSE:**

20 Lubbers objects to this Request to the extent: (a) this Request seeks to impose obligations
21 upon Lubbers beyond those required by the Rules; (b) the Request seeks information that is not
22 relevant and is not reasonably calculated to lead to the discovery of admissible evidence regarding
23 the limited issues remaining in this matter, and any marginal relevance is heavily outweighed by the
24 prejudice to Lubbers; and (c) this Request is unreasonably cumulative and duplicative, overly
25 burdensome, and harassing in requesting documents already disclosed to and/or in Scott's
26 possession, custody or control (*see* General Objection No. 11).

27 Subject to and without waiving said objections or the General Objections, Lubbers is
28 informed and believes, and thereupon states that documents responsive to this Request already have

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1 RESP0008225-RESP0008357, RESP0008358-RESP0008490, RESP0008491-RESP0008642,
2 RESP0008643-RESP0008774, RESP0008775-RESP0008887, RESP0008888-RESP0009006,
3 RESP0009007-RESP0009118, RESP0009405-RESP0009471, RESP0087485-RESP0087487,
4 RESP0078761-RESP0078762, RESP0078959-RESP0079044, RESP0079111-RESP0079153,
5 RESP0079154-RESP0079302, **RESP0088918-RESP0088969**, RESP0088971, RESP0088972-
6 RESP0089012, RESP0079335-RESP0079340, RESP0079346-RESP0079347, RESP0079351,
7 RESP008904-RESP0089042, RESP0079481-RESP0079490, RESP0079491-RESP0079501,
8 RESP0079596-RESP0079622, RESP0089091-RESP0089109, RESP0079631, RESP0079651-
9 RESP0079652, RESP0079696-RESP0079747, RESP0089186-RESP0089285, RESP0015618-
10 RESP0015634, RESP0015645, RESP0089286-RESP0089677, RESP0015683-RESP0015699,
11 RESP0015701-RESP0015782, RESP0015974, RESP0016432-RESP0016441, RESP0016732-
12 RESP0016819, RESP0016948-RESP0016968, RESP0017001-RESP0017104, RESP0017270-
13 RESP0017283, RESP0017308-RESP0017310, RESP0017311-RESP0017324, RESP0017474,
14 RESP0017475, RESP0017477, RESP0017479, RESP0017481, RESP0017484, RESP0017486,
15 RESP0017487, RESP0017492, RESP0017494, RESP0017495, RESP0017497, RESP0017498,
16 RESP0017500, RESP0017503, RESP0017504, RESP0017507, RESP0017508, RESP0017510,
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19 RESP0017531, RESP0017533, RESP0017535, RESP0017538, RESP0017539, RESP0017541,
20 RESP0017544, RESP0017545, RESP0017546, RESP0017547, RESP0017549, RESP0017550,
21 RESP0017556, RESP0017558, RESP0017559, RESP0017560, RESP0017561, RESP0017563,
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23 RESP0017577, RESP0017580, RESP0017582, RESP0017583, RESP0017584, RESP0017588,
24 RESP0017589, RESP0017591, RESP0017593, RESP0017596, RESP0017597, RESP0017599,
25 RESP0017600, RESP0017603, RESP0017604, RESP0017607, RESP0017609, RESP0017610,
26 RESP0017612, RESP0017613, RESP0017615, RESP0017617, RESP0017621, RESP0017623,
27 RESP0017625, RESP0017628, RESP0017629, RESP0017631, RESP0017632, RESP0017635,
28 RESP0017637, RESP0017639, RESP0017641, RESP0017643, RESP0017644, RESP0017646,

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Discovery is ongoing, and Lubbers will produce any additional non-privileged documents in his possession, custody, or control responsive to this Request if such documents are located and it is determined that such documents have not also already been disclosed to Scott and/or are not already in Scott's possession, custody, or control.

DATED this 13th day of June, 2018.

CAMPBELL & WILLIAMS

J. Colby Williams (NSB#5549)
700 S. Seventh Street
Las Vegas, NV 89101

and

Edgardo Pujol

DICKINSON WRIGHT PLLC

Elizabeth Brickfield, Esq. (NSB #6236)
Joel Z. Schwarz, Esq. (NSB #9181)
Var E. Lordahl, Esq. (NSB #12028)
8363 W. Sunset Road, Suite 200
Las Vegas, Nevada 89113

Attorneys for Respondents

EXHIBIT 16



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA EMAIL
ddwiggins@sdfnvlaw.com

June 18, 2018

Dana A. Dwiggins, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: *The Scott Lyle Graves Canarelli Irrevocable Trust – Case Nos. P-13-078912-T*

Dear Dana:

This letter follows our telephone conversation from last Thursday, wherein you notified me of a potential inadvertent disclosure of attorney-client and/or work product protected information. As a threshold matter, I would like to thank you for notifying me of the potential inadvertent disclosure.

I have now had an opportunity to review the subject documents, which comprise 49 pages and are labeled (at least in the Relativity review platform) with Bates Nos. RESP0078884 – RESP0078932. The documents consist predominantly of attorney's notes taken during the pendency of this action by me and Hunter Campbell while he was an attorney with our firm. I have additionally confirmed that certain of the documents comprise notes taken by Edward Lubbers during the pendency of this action. It is our position that all of the documents are protected by the attorney-client privilege and/or work product doctrine and should not have been produced.

Accordingly, pursuant to Paragraph 21 of the ESI Protocol agreed to in this action, we request that you immediately return or destroy the documents referenced above. Pursuant to the ESI Protocol, the inadvertent disclosure of the subject documents by Respondents does not constitute a waiver, or estoppel, as to any claim of attorney client privilege, attorney work product, or other ground for withholding production as to which Respondents would be entitled in this matter. *See id.* If you contend that the information contained in any of the documents is not privileged or otherwise protected, please sequester those documents until the claim of privilege is resolved and notify Respondents in writing of the basis for your objection. *See id.*

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

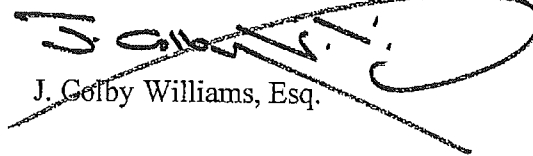
APP001128

Dana Dwiggin, Esq.
June 18, 2018
Page 2

Thank you for your attention to this matter. Please confirm as soon as possible that you will return, destroy or sequester the subject documents.

Very truly yours,

CAMPBELL & WILLIAMS



J. Colby Williams, Esq.

JCW/

cc: Philip R. Erwin, Esq.
Elizabeth Brickfield, Esq./Joel Schwarz, Esq.
Tess E. Johnson, Esq./Jeffrey P. Luszeck, Esq.
(all via e-mail).

APP001129

EXHIBIT 17



SOLOMON | DWIGGINS | FREER LTD
TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Diggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
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Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Christopher J. Fowler
Craig D. Friedel
Tess E. Johnson

June 19, 2018

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Via EMAIL ONLY

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Las Vegas, Nevada 89101
Email: jcw@cwlawlv.com

Re: **Scott Lyle Graves Canarelli Irrevocable Trust ("Trust")**
Case No. P-13-078912-T

Dear Colby and Phil:

This letter in response to your letter dated June 18, 2018, in regards to the disclosures you and I spoke about on the telephone last Thursday, June 14, 2018. As a preliminary matter, the documents appear to start with Bate Nos. RESP0078884, however, each of the pages are not individually bate labeled; therefore, I am referencing herein the page number of the 49 pages in total.

I am in agreement that your notes and Hunter Campbell's notes, which I understand to be Pages 1-15, 18-41 and 45-49 are privileged and, therefore, I agree to destroy the same. As to Pages 16-17 and 42-44, please confirm which of those documents are Mr. Lubbers' or any other individual's notes based on the handwriting. It is my understanding based on our conversation that these latter pages are not notes of any of the attorneys with your firm. If I am mistaken as to any of the foregoing categories, please clarify.

To the extent the notes consisting of Pages 16-17 and 42-44 are either Mr. Lubbers (or possibly Mr. Evans), I do not understand the basis for your objection. The notes appear to be taken at a group meeting; therefore, do not constitute "confidential communications" between an attorney and his client.

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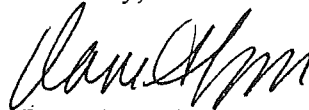
SOLOMON | DWIGGINS | FREER^{LTD}
TRUST AND ESTATE ATTORNEYS

Colby Williams, Esq.
June 19, 2018

As I mentioned, I am willing to delete the link entirely from our database and allow you to resend those documents that are not privileged in a separate link. However, in light of your position that Pages 16-17 and 42-44 are privileged, I am be sequestering all of the documents until such time as we are otherwise able to reach an agreement or the Court addresses the same. In the interim, I have instructed those attorneys at my firm with access to the database not to review the documents, print or otherwise make copies of the same.

If you have any questions, please contact me at the number listed above.

Sincerely,



Dana A. Dwiggins

cc: client
Elizabeth Brickfield, Esq.

APP001132

EXHIBIT 18



8363 WEST SUNSET ROAD, SUITE 200
LAS VEGAS, NV 89113-2210
TELEPHONE: (702) 550-4400
FACSIMILE: (844) 670-6009
<http://www.dickinsonwright.com>

ELIZABETH BRICKFIELD
EBRICKFIELD@DICKINSONWRIGHT.COM
(702) 550-4464

June 22, 2018

VIA E-MAIL and U.S. Mail

ddwiggins@sdfnvlaw.com

tjohnson@sdfnvlaw.com

Dana Dwiggins, Esq.
Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

Following up on the written exchanges between your office and Campbell & Williams in connection with the attorney's notes inadvertently produced to you as Bates Nos. RESP78884-007932, we have undertaken a further review of Edward Lubbers' production on April 6, 2018 to determine the scope of the inadvertent production. Besides the aforementioned documents, we have discovered eighteen additional documents that were inadvertently produced as part of the subject production. The reason for the inadvertent production stems from the native files produced to your office, which mistakenly included the 19 documents at issue.

Ten of the documents represent attorney-client communications involving other clients of Edward Lubbers that are entirely unrelated to this matter: RESP742390-74262; RESP74366-74368; RESP74369-74370; RESP74371; RESP74372-74373; RESP74374; RESP74375; RESP74376-74377; RESP74378-74434; and RESP74435. Mr. Lubbers' clients have not waived their attorney-client privilege, and we would request that the subject documents be immediately returned or destroyed consistent with Paragraph 21 of the ESI Protocol governing this action.

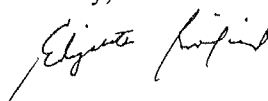
The remaining documents and their attachments (*i.e.*, RESP77186; RESP77894; RESP78275-78278; RESP78559; RESP78720; RESP84283-84284; RESP84310-84313; RESP87604-87626) comprise privileged attorney-client communications and/or protected attorney work product related to this action. We would again request that you agree to immediately return or destroy the subject documents consistent with the ESI Protocol.

Dana Dwiggins, Esq.
Tess Johnson, Esq.
June 22, 2018
Page 2

Please advise by June 26, 2018 of your position on this matter. In the event you object to the protected nature of any of the documents at issue, please sequester said document(s) and provide us with a written explanation for the basis of your objection so that we may promptly hold an EDCR 2.34 conference.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Brickfield

cc: Joel Z. Schwarz, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 19

Erin L. Hansen

From: Colby Williams <jcw@cwlawlv.com>
Sent: Thursday, July 5, 2018 2:41 PM
To: Dana Dwiggin; Phil Erwin; Joel Z. Schwarz
Cc: Tess E. Johnson; Erin L. Hansen; Elizabeth Brickfield
Subject: Re: Canarelli, Potential Privileged Document

Dana,

Following up on the below e-mail chain, please find our response regarding the various clawback requests at issue:

First, thank you for alerting us to the potentially inadvertently produced documents contained within the Bates Range RESP0089013 - 89039. Having now reviewed those documents, we can confirm that Bates Nos. RESP0089014-89015 and RESP0089029-89030 are protected by the attorney-client privilege and/or work product doctrine and should not have been produced. We ask that you return or destroy the subject documents in accordance with the parties' ESI Protocol.

Second, in addition to the non-responsive documents listed in your e-mail below that you have agreed to destroy, we also believe that Bates Nos. RESP0074369-74370 should likewise be included in this category. These were included in Elizabeth's June 22 letter but appear to have been inadvertently left off your list.

Third, we agree that Bates Nos. RESP0078275-278 are not privileged and, thus, do not need to be returned or destroyed.

Fourth, we are reserving our rights as to Bates Nos. RESP0084283-84284 (the proposed budget/investment document) and 84310-84313 (the proposed release document) while we continue to research these documents, but we are not demanding that they be returned or destroyed at this time.

Fifth, for the remaining documents contained within RESP0087604-87626 (you have already agreed to destroy 87604-87606), we agree that Bates Nos. 87607-87622 and 87624 are not privileged and, thus, do not need to be returned or destroyed. We maintain our position on RESP0087623 and 87625-87626.

Please advise if you are in agreement with the above or whether we need to discuss further.

Regards,
Colby

J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
T: 702.382.5222
F: 702.382.0540
E: jcw@cwlawlv.com

From: Dana Dwiggin <ddwiggin@sdfnlaw.com>
Date: Friday, June 29, 2018 at 3:28 PM
To: Phil Erwin <pre@cwlawlv.com>, Colby Williams <jcw@cwlawlv.com>, "Joel Z. Schwarz" <JSchwarz@dickinson-wright.com>
Cc: "Tess E. Johnson" <tjohnson@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>, Elizabeth

APP001137

Brickfield <EBrickfield@dickinson-wright.com>
Subject: RE: Canarelli, Potential Privileged Document

Phil,

Holo has confirmed that it has deleted the bate numbers referenced in my email from the database, including any coding. Holo previously deleted the "undated attorney notes" from our database as well, including any coding. I have further instructed the attorneys working on this matter to destroy any hard copies and delete any electronic copies.

As to the remainder of the documents, I will await your review of them following our call from yesterday.

Dana A. Dwiggins
SOLOMON DWIGGINS & FREER, LTD.
Direct: 702.589.3505
Email: ddwiggins@sdfnlaw.com

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From: Phil Erwin [mailto:pre@cwlawlv.com]
Sent: Friday, June 29, 2018 1:57 PM
To: Dana Dwiggins <ddwiggins@sdfnlaw.com>; Colby Williams <jcw@cwlawlv.com>; Joel Z. Schwarz <JSchwarz@dickinson-wright.com>
Cc: Tess E. Johnson <tjohnson@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>; Elizabeth Brickfield <EBrickfield@dickinson-wright.com>
Subject: Re: Canarelli, Potential Privileged Document

Thanks Dana.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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From: Dana Dwiggins <ddwiggins@sdfnlaw.com>
Date: Friday, June 29, 2018 at 1:28 PM

APP001138

To: Phil Erwin <pre@cwlawlv.com>, Colby Williams <jcw@cwlawlv.com>, "Joel Z. Schwarz" <JSchwarz@dickinson-wright.com>
Cc: "Tess E. Johnson" <tjohnson@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>, Elizabeth Brickfield <EBrickfield@dickinson-wright.com>
Subject: RE: Canarelli, Potential Privileged Document

Gentlemen,

Erin, my paralegal, was providing the document numbers to Holo to extract pursuant to my email yesterday and brought to my attention that I had some numbers backwards. These relate to only those documents that are not relevant at all to this matter, but for convenience, see below (which I copied from my prior email);

Also, as confirmation of our call this morning, I am extracting the following documents:

RESP0074239-74262 (please confirm range because EB has first document with an additional number, 742390)
RESP0074366-74368
RESP0074731 – This should be 74371
RESP0074372-74373
RESP0074374
RESP0074735 – This should be 74375
RESP00747374377 – This should be 74376-74377
RESP0074378-74434
RESP0074435

The correct numbers will be extracted from our database. I wanted to bring it to your attention so as to hopefully avoid confusion and save time.

Dana A. Dwiggins
SOLOMON DWIGGINS & FREER, LTD.
Direct: 702.589.3505
Email: ddwiggins@sdfnlaw.com

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From: Dana Dwiggins
Sent: Thursday, June 28, 2018 12:09 PM
To: Phil Erwin <pre@cwlawlv.com>; 'Colby Williams ' <colby@campbellandwilliams.com>; Joel Z. Schwarz <JSchwarz@dickinson-wright.com>
Cc: Tess E. Johnson <tjohnson@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>; Elizabeth Brickfield <EBrickfield@dickinson-wright.com>
Subject: Canarelli, Potential Privileged Document

Gentlemen,

Pursuant to our conversation, please see attached the documents that potentially include privileged communications for your review. Even though we disagree on the date "litigation commenced," as I mentioned in my prior email, I do agree that once you received Dan Gerety's letters from our office litigation was anticipated as to the accounting matters. As I

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previously mentioned, my position is that the valuation matters have a later date in time. I mention this to avoid any misunderstanding.

If it is your intent to claw a portion of the documents back, please so indicate and I will extract from our database. FYI, the handwriting on the first page is my paralegal's writing. She marked it for me to review for the purposes of today's call.

Also, as confirmation of our call this morning, I am extracting the following documents:

RESP0074239-74262 (please confirm range because EB has first document with an additional number, 742390)
RESP0074366-74368
RESP0074731
RESP0074372-74373
RESP0074374
RESP0074735
RESP00747374377
RESP0074378-74434
RESP0074435

*Note the foregoing are all referenced in the second paragraph of the June 22 letter.

We are agree to extract the following:



RESP0077186
RESP0077894
RESP0078720
RESP0087604-87606

As to RESP0087604-87606, I am holding off on the actual extraction until you look at the remainder of this document group to decide whether the documents should be reproduced as non-privileged documents.

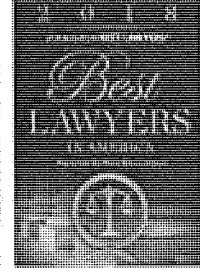
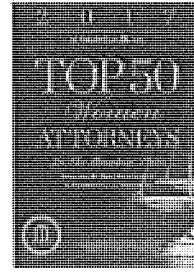
You are reserving your rights as to RESP0084310-84313 and not requiring it to be destroyed at this time.

As to all remaining documents set forth in the June 22 letter, you will be reviewing again to determine whether you agree such documents are non-privileged (with the exception of RESP0078559, which you are reviewing to see if wrong bate number referenced).

If I missed anything, please let me know.

Dana A. Dwiggin
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129
Direct: 702.589.3505 | Office: 702.853.5483 |
Direct Facsimile: 702.473.2834 | Facsimile: 702.853.5485
Email: ddwiggin@sdfnlaw.com | Website: www.sdfnlaw.com
 www.facebook.com/sdfnlaw
 www.linkedin.com/company/solomon-dwiggin-&-freer-ltd-

APP001140



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EXHIBIT 20

Erin L. Hansen

From: Dana Dwiggins
Sent: Friday, November 2, 2018 5:07 PM
To: Colby Williams
Cc: Jeffrey P. Luszeck; Tess E. Johnson; Erin L. Hansen; Terrie Maxfield; Elizabeth Brickfield; Joel Z. Schwarz; Phil Erwin
Subject: Re: Clawback Request

I agree with your summary of our conversation.

Dana A. Dwiggins
Solomon Dwiggins & Freer, Ltd.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Direct Dial: 702.589.3505
Facsimile: 702.853.5485
Email: ddwiggins@sdfnlaw.com
Website: www.sdfnlaw.com
☐ www.facebook.com/sdfnlaw
☐ www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



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On Nov 2, 2018, at 5:03 PM, Colby Williams <jcw@cwlawlv.com> wrote:

Dana,

I am following up on our telephone conversation this afternoon wherein we discussed several topics, one of which was your notification to me that the Ed Lubbers' type-written notes originally produced in **APP001143** RESP0013285 have also been produced at Bates No. RESP0088955. As you know, we contend the notes

are privileged and were inadvertently produced. Petitioner disagrees, and the parties are presently litigating the privilege dispute before the Court. In any event, for completeness, we hereby provide notice of our request to clawback Bates No. RESP0088955 pursuant to Paragraph 21 of the parties' ESI Protocol. I understand Petitioner disputes our position, but agrees to sequester the document pursuant to the parties' agreement. We will also undertake a further review of Respondents' production to determine whether any other documents (including those that are the subject of the pending privilege dispute) were included as part of this or other productions.

Please advise if I have incorrectly summarized our discussion. Thank you for the notification.

Regards,
Colby

J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
T: 702.382.5222
F: 702.382.0540
Email: jcw@cwlawlv.com

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APP001144

EXHIBIT 21



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA EMAIL
ddwiggins@sdfnvlaw.com

June 19, 2019

Dana A. Dwiggins, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: *The Scott Lyle Graves Canarelli Irrevocable Trust* – Case No. P-13-078912-T;

Dear Dana:

In reviewing Respondents' various productions of documents in the above-referenced matter, we have determined that a portion of the e-mail chain reflected in RESP013263-67 was inadvertently produced, specifically RESP013263 and the top portion of RESP013264. Additionally, RESP013283 was inadvertently produced. Pursuant to Section 21 of the parties' ESI Protocol Agreement, Respondents hereby clawback the subject documents. Please confirm that you will return these documents or otherwise destroy them in accordance with the terms of the parties' agreement. We will reproduce a redacted version of RESP013263-67.

Thank you.

Very truly yours,

CAMPBELL & WILLIAMS



J. Colby Williams, Esq.

JCW/

cc: Liane K. Wakayama, Esq.
(via e-mail)

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

APP001146

EXHIBIT 22



SOLOMON | DWIGGINS | FREER ^{LTD}

TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Craig D. Friedel
Tess E. Johnson

Direct Dial (702) 589-3505
Email ddwiggins@sdfnlaw.com

June 20, 2019

Via EMAIL ONLY @ jcw@cwlawlv.com

Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101

Re: Scott Lyle Graves Canarelli Irrevocable Trust ("Trust")

Dear Colby:

In response to your letter of yesterday's date in regards to clawing back additional documents, I am bit surprised that you are clawing back RESP0013283 when you initially clawed back RESP0013824 over one (1) year ago and the document immediately precedes the documents you previously clawed back. I am also surprised that, in light of the numerous "inadvertent disclosures" that a comprehensive review of Respondents' disclosures was not undertaken over one (1) year ago. Notwithstanding, I am amenable to you clawing back RESP0013283 and RESP0013263-0013264. Accordingly, I will instruct Holo Discovery to extract such bates numbers from our electronic database. Please be advised, however, that it is my belief that the documents referenced in your correspondence *may* have been produced multiple times so I would advise you to further search your disclosures.

If you have any questions in the interim, please contact me at the number listed above.

Sincerely,

Dana A. Dwiggins

cc: Client
Liana Wakayama, Esq., *via email*

APP001148

EXHIBIT 23

Erin L. Hansen

From: Phil Erwin <pre@cwlawlv.com>
Sent: Tuesday, June 2, 2020 5:39 PM
To: Dana Dwiggin
Cc: Terrie Maxfield; Craig Friedel; Roberto M. Campos; Erin L. Hansen; Austrey Dwiggin;
Jennifer Braster; Liane K Wakayama; Colby Williams; jchong
Subject: Re: Canarelli
Attachments: Canarelli Docs[2].pdf

Dana,

Attached please find the non-privileged documents from the range identified in your e-mail below (RESP0088918-88969). Please let me know if you have any questions. Thank you.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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From: Dana Dwiggin <ddwiggin@sdfnlaw.com>
Date: Monday, June 1, 2020 at 12:18 PM
To: jchong <jyc@cwlawlv.com>
Cc: Terrie Maxfield <TMaxfield@sdfnlaw.com>, Craig Friedel <cfriedel@sdfnlaw.com>, "Roberto M. Campos" <RCampos@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>, Austrey Dwiggin <ADwiggin@sdfnlaw.com>, Jennifer Braster <jbraster@nblawnv.com>, Liane K Wakayama <lkw@hwlawnv.com>, Phil Erwin <pre@cwlawlv.com>, Colby Williams <jcw@cwlawlv.com>
Subject: RE: Canarelli

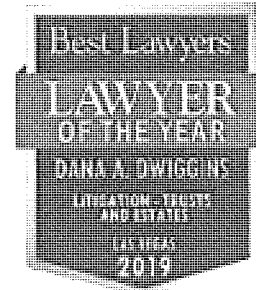
Colby and Phil,

As a follow up to my prior email and in the interim of me finishing our review and destruction of the documents, can you please review Bate Labels RESP0088918-88969? The Lubbers memo was contained therein and we had to delete the entire document range from relativity; however, there might be other

APP001150

documents in which you assert privilege. I will need you to please reproduce those documents in that range in which you are not asserting privilege. Thanks.

Dana A. Dwiggins
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Center |
9060 W. Cheyenne Avenue | Las Vegas, NV 89129
Direct: 702.589.3505 | Office: 702.853.5483 |
Direct Facsimile: 702.473.2834 | Facsimile: 702.853.5485
Email: ddwiggins@sdfnlaw.com | Website: www.sdfnlaw.com
 www.facebook.com/sdfnlaw
 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



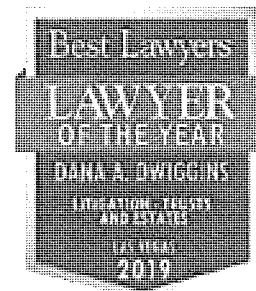
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From: Dana Dwiggins
Sent: Monday, June 1, 2020 10:43 AM
To: 'jchong' <jyc@cwlawlv.com>
Cc: Terrie Maxfield <TMaxfield@sdfnlaw.com>; Craig Friedel <cfriedel@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>; Austrey Dwiggins <ADwiggins@sdfnlaw.com>; Jennifer Braster <jbraster@nblawnv.com>; Liane K Wakayama <lkw@hwlawnv.com>; Phil Erwin <pre@cwlawlv.com>; Colby Williams <jcw@cwlawlv.com>
Subject: RE: Canarelli

Colby,

Please give me a few days before confirming that all copies of the documents have been removed from our files (e.g. NVSC binders) and destroyed. Thank you.

Dana A. Dwiggins
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Center |
9060 W. Cheyenne Avenue | Las Vegas, NV 89129
Direct: 702.589.3505 | Office: 702.853.5483 |
Direct Facsimile: 702.473.2834 | Facsimile: 702.853.5485
Email: ddwiggins@sdfnlaw.com | Website: www.sdfnlaw.com
 www.facebook.com/sdfnlaw
 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



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APP001151

From: jchong <jyc@cwlawlv.com>
Sent: Friday, May 29, 2020 4:20 PM
To: Dana Dwiggins <ddwiggins@sdfnlaw.com>
Cc: Terrie Maxfield <TMaxfield@sdfnlaw.com>; Craig Friedel <cfriedel@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>; Austrey Dwiggins <ADwiggins@sdfnlaw.com>; Jennifer Braster <jbraster@nblawnv.com>; Liane K Wakayama <lkw@hwlawnv.com>; Phil Erwin <pre@cwlawlv.com>; Colby Williams <jcw@cwlawlv.com>
Subject: Re: Canarelli

Dear Ms. Dwiggins,

Please see attached correspondence dated today from Mr. Williams. Thank you.

John Y. Chong
CAMPBELL & WILLIAMS
700 S. Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
Email: jyc@cwlawlv.com
Web: www.campbellandwilliams.com

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APP001152

EXHIBIT 24



SOLOMON | DWIGGINS | FREER LTD
TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Craig D. Friedel
Ronnie T. Goodwin, Jr.
Jacob D. Crawley
Roberto M. Campos

Direct Dial (702) 589-3505
Email: ddwiggins@sdfnlaw.com

June 15, 2020

VIA EMAIL ONLY

Colby Williams, Esq.
700 South 7th Street
Las Vegas, Nevada 89101
Campbell & Williams
Email: jcw@cwlawlv.com

**Re: Scott Lyle Graves Canarelli Irrevocable Trust ("SCIT")
District Court Case No. P-13-078912-T**

Dear Colby:

In light of your request on May 29, 2020 to destroy all documents related to the recent Nevada Supreme Court Opinion, my firm ran additional searches in our database to ensure all documents were being destroyed. Pursuant to the ESI Protocol, I am writing again to notify you that we have potentially found documents that may be privileged. Please review documents Bates labeled RESP0087490-0087594 and let me know if you would like to claw back any of these documents. We can then proceed therefrom.

Sincerely,

Dana A. Dwiggins

cc: Phil Erwin, Esq., *via email only*

APP001154

EXHIBIT 25

Erin L. Hansen

From: Phil Erwin <pre@cwlawlv.com>
Sent: Tuesday, June 16, 2020 11:42 AM
To: Dana Dwiggin; Craig Friedel; Roberto M. Campos; Terrie Maxfield; Erin L. Hansen
Cc: lkw@hwlawnv.com; Colby Williams
Subject: FW: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518
Attachments: Canarelli Docs[5].pdf

Dana,

Thank you for alerting us to the inadvertent disclosure of potentially privileged material in the bates range RESP0087490-RESP0087594. Having now reviewed the documents, I can confirm that the following documents are attorney-client communications that are protected by the attorney-client privilege and/or work-product doctrine: RESP0087499-RESP0087500; RESP0087506-RESP0087507; RESP0087514-RESP0087518; RESP0087521-RESP0087536; RESP0087556-RESP0087562; RESP0087565-RESP0087575; RESP0087581-RESP0087582; RESP0087588-RESP0087590. We ask that you destroy the subject documents in accordance with the parties' ESI protocol. In that regard, I have attached a replacement PDF file containing the remaining non-privileged documents for your records. Please contact me with any questions.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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From: "efilingmail@tylerhost.net" <efilingmail@tylerhost.net>
Date: Monday, June 15, 2020 at 4:54 PM
To: Phil Erwin <pre@cwlawlv.com>
Subject: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518



Notification of Service

APP00F136

Case Number: P-13-078912-T
Case Style: In the Matter of the Trust of: Scott Lyle
Graves Canarelli Irrevocable Trust, dated
February 24, 1998
Envelope Number: 6185518

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	P-13-078912-T
Case Style	In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998
Date/Time Submitted	6/15/2020 4:52 PM PST
Filing Type	Service Only
Filing Description	2020-06-15 Letter to Colby re Bates RESP0087490-0087594
Filed By	Terrie Maxfield
Service Contacts	<p>Scott Canarelli:</p> <p>Craig Friedel (cfriedel@sdfnlaw.com)</p> <p>Dana Dwigins (ddwigins@sdfnlaw.com)</p> <p>Terrie Maxfield (tmaxfield@sdfnlaw.com)</p> <p>Renee Guastaferrero (rguastaferrero@sdfnlaw.com)</p> <p>Austrey Dwigins (adwigins@sdfnlaw.com)</p> <p>Allie Carnival (acarnival@sdfnlaw.com)</p> <p>Erin Hansen (ehansen@sdfnlaw.com)</p> <p>Roberto Campos (rcampos@sdfnlaw.com)</p> <p>J. Colby Williams (jcw@cwlawlv.com)</p> <p>Jacob Crawley (jcrawley@sdfnlaw.com)</p> <p>Joshua Hood (jhood@sdfnlaw.com)</p> <p>Frank Martin:</p> <p>Liane Wakayama (lkw@hwlawnv.com)</p> <p>Julia Rodionova (julia@hwlawnv.com)</p> <p>APP001157</p>

	<p>Other Service Contacts not associated with a party on the case:</p> <p>Matt Wagner . (maw@cwlawlv.com)</p> <p>Phil Erwin (pre@cwlawlv.com)</p> <p>John Chong (jyc@cwlawlv.com)</p> <p>Lawrence Canarelli:</p> <p>J. Colby Williams (jcw@cwlawlv.com)</p>
--	---

Document Details	
Served Document	Download Document
This link is active for 30 days.	

EXHIBIT 26

Erin L. Hansen

From: Phil Erwin <pre@cwlawlv.com>
Sent: Monday, June 22, 2020 4:55 PM
To: Dana Dwigins
Cc: Craig Friedel; Roberto M. Campos; Terrie Maxfield; Erin L. Hansen; lkw@hwlawnv.com; Colby Williams
Subject: Re: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Dana,

Please calm down. In searching for duplicates of the documents that were previously clawed back, that bates number showed up as potentially having been produced in our relativity database. Out of an abundance of caution, I sent a clawback to you. You have now informed me that it was appropriately withheld in the first place so it is a non-issue. Have a nice evening.

Phil

Sent from my iPhone

On Jun 22, 2020, at 4:22 PM, Dana Dwigins <ddwigins@sdfnlaw.com> wrote:

Phil,

At this point, you are seriously upsetting me and wasting my time. You did not even produce the document that you referenced in your email. See attached. It is absolutely unbelievable that, as we sit here today, 3 years into the litigation and 2 ½ years after your Initial Disclosures that you are still clawing back documents. As I mentioned last June 2019, I would have thought you would have completed a thorough post production review after you first learned in February 2018 that documents were inadvertently disclosed.

<image001.png>

<image002.jpg>

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APP001160

From: Phil Erwin <pre@cwlawlv.com>

Sent: Monday, June 22, 2020 2:22 PM

To: Dana Dwiggins <ddwiggins@sdfnlaw.com>; Craig Friedel <cfriedel@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>

Cc: lkw@hwlawnv.com; Colby Williams <jcw@cwlawlv.com>

Subject: Re: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Dana,

My e-mail contained a typo. The correct bates number is RESP0078865. Thank you.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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From: Dana Dwiggins <ddwiggins@sdfnlaw.com>

Date: Monday, June 22, 2020 at 12:34 PM

To: Phil Erwin <pre@cwlawlv.com>, Craig Friedel <cfriedel@sdfnlaw.com>, "Roberto M. Campos" <RCampos@sdfnlaw.com>, Terrie Maxfield <TMaxfield@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>

Cc: "lkw@hwlawnv.com" <lkw@hwlawnv.com>, Colby Williams <jcw@cwlawlv.com>

Subject: RE: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Resent-From: Proofpoint Essentials <do-not-reply@proofpointessentials.com>

Resent-To: <pre@cwlawlv.com>

Resent-Date: Monday, June 22, 2020 at 12:29 PM

Phil,

In reviewing your email below, it appears that the bates labeled document referenced is the last page of an order and not privileged. Please clarify.

APP001161

<image009.png>

<image010.jpg>

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From: Phil Erwin <pre@cwlawlv.com>

Sent: Friday, June 19, 2020 2:34 PM

To: Dana Dwiggins <ddwiggins@sdfnvlaw.com>; Craig Friedel <cfriedel@sdfnvlaw.com>; Roberto M. Campos <RCampos@sdfnvlaw.com>; Terrie Maxfield <TMaxfield@sdfnvlaw.com>; Erin L. Hansen <ehansen@sdfnvlaw.com>

Cc: lkw@hwlawnv.com; Colby Williams <jcw@cwlawlv.com>

Subject: Re: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Dana,

In searching for duplicates of the documents identified below, we identified RESP0078665 as an attorney-client communication that is protected by the attorney-client privilege and/or work-product doctrine. Accordingly, we request that you please destroy that document as well pursuant to the ESI Protocol. Thank you and please do not hesitate to contact me with any questions.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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APP001162

From: Phil Erwin <pre@cwlawlv.com>
Date: Tuesday, June 16, 2020 at 12:54 PM
To: Dana Dwiggins <ddwiggins@sdfnlaw.com>, Craig Friedel <cfriedel@sdfnlaw.com>, "Roberto M. Campos" <RCampos@sdfnlaw.com>, Terrie Maxfield <TMaxfield@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>
Cc: "lkw@hwlawnv.com" <lkw@hwlawnv.com>, Colby Williams <jcw@cwlawlv.com>
Subject: Re: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Dana,

The revised PDF file I sent you contains all of the non-privileged correspondence from the e-mail chains that were clawed back. For example, the e-mail correspondence between Brian Eagan and Charlene Renwick that you referenced were separately produced in the same bates range. Thus, there is no need to produce redacted documents containing duplicative communications with your own office. Please destroy the original documents. Thank you.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

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From: Dana Dwiggins <ddwiggins@sdfnlaw.com>
Date: Tuesday, June 16, 2020 at 12:31 PM
To: Phil Erwin <pre@cwlawlv.com>, Craig Friedel <cfriedel@sdfnlaw.com>, "Roberto M. Campos" <RCampos@sdfnlaw.com>, Terrie Maxfield <TMaxfield@sdfnlaw.com>, "Erin L. Hansen" <ehansen@sdfnlaw.com>
Cc: "lkw@hwlawnv.com" <lkw@hwlawnv.com>, Colby Williams <jcw@cwlawlv.com>
Subject: RE: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Phil,

APP001163

In response to your email, I would request that you redact emails where appropriate versus clawing back the entire email string. For example, there are communications between Brian Eagan and Charlene Renwick that are clawed back in the string and should not be. Please send us a revised document production with the redactions and we will thereafter destroy the original documents. In the interim, we are sequestering the entire document range.

<image011.png>

<image012.jpg>

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From: Phil Erwin <pre@cwlawlv.com>

Sent: Tuesday, June 16, 2020 11:42 AM

To: Dana Dwiggs <ddwiggs@sdfnlaw.com>; Craig Friedel <cfriedel@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>; Erin L. Hansen <ehansen@sdfnlaw.com>

Cc: lkw@hwlawnv.com; Colby Williams <jcw@cwlawlv.com>

Subject: FW: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Dana,

Thank you for alerting us to the inadvertent disclosure of potentially privileged material in the bates range RESP0087490-RESP0087594. Having now reviewed the documents, I can confirm that the following documents are attorney-client communications that are protected by the attorney-client privilege and/or work-product doctrine: RESP0087499-RESP0087500; RESP0087506-RESP0087507; RESP0087514-RESP0087518; RESP0087521-RESP0087536; RESP0087556-RESP0087562; RESP0087565-RESP0087575; RESP0087581-RESP0087582; RESP0087588-RESP0087590. We ask that you destroy the subject documents in accordance with the parties' ESI protocol. In that regard, I have attached a replacement PDF file containing the remaining non-privileged documents for your records. Please contact me with any questions.

Philip R. Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Tel: (702) 382-5222
Fax: (702) 382-0540
pre@campbellandwilliams.com

APP001164

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From: "efilingmail@tylerhost.net" <efilingmail@tylerhost.net>

Date: Monday, June 15, 2020 at 4:54 PM

To: Phil Erwin <pre@cwlawlv.com>

Subject: Notification of Service for Case: P-13-078912-T, In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 for filing Service Only, Envelope Number: 6185518

Notification of Service

Case Number: P-13-078912-

Case Style: In the Matter of the Trust of: Scott Lyle

Graves Canarelli Irrevocable Trust, dated

February 24, 1998

Envelope Number: 6185518



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	P-13-078912-T
Case Style	In the Matter of the Trust of: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998
Date/Time Submitted	6/15/2020 4:52 PM PST
Filing Type	Service Only
Filing Description	2020-06-15 Letter to Colby re Bates RESP0087490-0087594
Filed By	Terrie Maxfield
Service Contacts	<p>Scott Canarelli:</p> <p>Craig Friedel (cfriedel@sdfnlaw.com)</p> <p>Dana Dwiggins (ddwiggins@sdfnlaw.com)</p> <p>Terrie Maxfield (tmaxfield@sdfnlaw.com)</p> <p>Renee Guastaferro (rguastaferro@sdfnlaw.com)</p> <p>APP001165</p>

	<p>Austrey Diggins (adwiggins@sdfnvlaw.com)</p> <p>Allie Carnival (acarnival@sdfnvlaw.com)</p> <p>Erin Hansen (ehansen@sdfnvlaw.com)</p> <p>Roberto Campos (rcampos@sdfnvlaw.com)</p> <p>J. Colby Williams (jcw@cwlawlv.com)</p> <p>Jacob Crawley (jcrawley@sdfnvlaw.com)</p> <p>Joshua Hood (jhood@sdfnvlaw.com)</p> <p>Frank Martin:</p> <p>Liane Wakayama (lkw@hwlawnv.com)</p> <p>Julia Rodionova (julia@hwlawnv.com)</p> <p>Other Service Contacts not associated with a party on the case:</p> <p>Matt Wagner . (maw@cwlawlv.com)</p> <p>Phil Erwin (pre@cwlawlv.com)</p> <p>John Chong (jyc@cwlawlv.com)</p> <p>Lawrence Canarelli:</p> <p>J. Colby Williams (jcw@cwlawlv.com)</p>
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Document Details	
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<Pages from 2018-04-06 1st Supplement to Initial Disclosures of Witnesses and Documents from Edward Lubbers Lawrence Canarelli and Heidi Canarelli's 4847-8534~,pdf>

APP001166

EXHIBIT B

DECLARATION OF ERIN L. HANSEN

I, ERIN L. HANSEN, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18, am mentally competent, have personal knowledge of the facts in this matter, except where stated as based upon information and belief, and if called upon to testify, could and would do so.

2. I am a paralegal at SOLOMON DWIGGINS & FREER, LTD., which maintains an office at 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129.

3. Our firm serves as counsel to Scott Canarelli *In the Matter of* the Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998, Eighth Judicial District Court Case No.: P-13-078912-T (the "Probate Court Proceedings"), pending in Dept. No. XXVI/PROBATE, before the Hon. Judge Gloria Sturman (the "Probate Court").

4. On November 2, 2018, I ran a search in the Relativity database containing the word "acquiescence," a unique word contained within the Group 1 documents. During this search, I found another copy of the Group 1 documents which were contained within the Bates range RESP0088918-0088969. These documents were Bates labeled RESP0088954-88958 ("Group 1A Documents"). Attached hereto as **Exhibit 1** is a true and correct copy of a recent search that I conducted using the term "acquiescence." The Group 1 and Group 1A documents had already been purged from our system at the time of the recent search, however, this recent search demonstrates that Respondents could have run the search and found the Group 1A documents. After finding the Group 1A Documents, I brought it to Dana A. Dwiggins attention that another copy of the Group 1 Documents had been produced a second time on June 5, 2018.

5. On June 15, 2020, in light of the recent Nevada Supreme Court Opinion and at the request of Colby Williams, I was searching our database to confirm that the Group 1 and Group 2 documents had been purged from our system. In doing so, I ran a simple search involving the term "Renwick." During this search, I found additional potentially privileged documents. These documents were Bates labeled RESP0087490-87594. I immediately notified Dana A. Dwiggins of these documents. A true and correct copy of a recent search using the search term "Renwick" is APP001168

1 attached hereto as **Exhibit 2**. Again, this search is only an example and does not include the
2 privileged documents as they have been purged from our system.

3 6. I declare under penalty of perjury under the laws of the State of Nevada that the
4 foregoing is true and correct.

5 Executed this 29th day of June, 2020.

6 
7 ERIN L. HANSEN

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28 APP001169

EXHIBIT 1

Search Term "Acquiescence"

Bates Beg	Bates End	File Name
RESP0001278	RESP0001310	Brentwood_1_LLC_OPA.pdf
RESP0001311	RESP0001343	Bridgewater_1_LLC_OPA.pdf
RESP0001344	RESP0001376	Brookside_1_LLC_OPA.pdf
RESP0001377	RESP0001409	Canfam_Holdings_LLC_OPA.pdf
RESP0001410	RESP0001442	Carmel_Hills_LLC_-_OPA.pdf
RESP0001488	RESP0001520	Fairmont 2 LLC OPA.pdf
RESP0001535	RESP0001567	Highlands_Collection_1_LLC_OPA.pdf
RESP0001582	RESP0001613	Inverness 2010 LLC OPA.pdf
RESP0001630	RESP0001662	Kingsbridge_2_LLC_OPA.pdf
RESP0001663	RESP0001695	Lexington 1 LLC OPA.pdf
RESP0001697	RESP0001729	Lexington_2_LLC_OPA.pdf
RESP0001730	RESP0001767	Model Renting 2008 LLC OPA.pdf
RESP0001769	RESP0001806	Model Renting 2009 LLC OPA.pdf
RESP0001807	RESP0001844	Model Renting_2010_LLC_OPA.pdf
RESP0001845	RESP0001877	Model_Renting_2012_LLC_OPA.pdf
RESP0001893	RESP0001925	Newcastle_1_LLC_OPA.pdf
RESP0001926	RESP0001958	Reserve_1_LLC_OPA.pdf
RESP0001959	RESP0001991	Reserve_2_LLC_OPA.pdf
RESP0001994	RESP0002026	Silverado Summit LLC OPA.pdf
RESP0002027	RESP0002059	Silverado-Springs-2-LLC-OPA.pdf
RESP0002060	RESP0002092	Silverado-Springs-3-LLC-OPA.pdf
RESP0002118	RESP0002150	Stonebridge_1_LLC_OPA.pdf
RESP0002168	RESP0002200	Woodbridge_2_LLC_OPA.pdf
RESP0012917	RESP0012930	
RESP0020640	RESP0020794	ExecutedTerm Loan Credit Agreement 12-31-09.pdf
RESP0020998	RESP0021383	001-First Amendment to Loan Documents.pdf
RESP0021384	RESP0021423	002-Lockup Agreement.pdf
RESP0022268	RESP0022316	096-Certificate and Resolutions for Model Renting 2008.pdf
RESP0022317	RESP0022362	097-Certificate and Resolutions for Model Renting 2009.pdf

APP001171

Bates Beg	Bates End	File Name
RESP0022461	RESP0022518	102-LLC Resolutions for C&H Adams Land Investments.pdf
RESP0022519	RESP0022579	103-LLC Resolutions for CS 2005 Investments.pdf
RESP0022580	RESP0022637	104-LLC Resolutions for EH 2002.pdf
RESP0022638	RESP0022699	105-LLC Resolutions for Green Valley Aurora.pdf
RESP0022700	RESP0022757	106-LLC Resolutions for Green Valley East.pdf
RESP0022758	RESP0022815	107-LLC Resolutions for GVR King Commercial.pdf
RESP0022877	RESP0022932	109-LLC Resolutions for HC Land Investments.pdf
RESP0022933	RESP0022990	110-LLC Resolutions for Tower Road Farms.pdf
RESP0022991	RESP0023050	111-LLC Resolutions for Yampa-Telluride Land Investments.pdf
RESP0023137	RESP0023297	01a-RevIng Credit Agrmt.pdf
RESP0036168	RESP0036209	10-OPERATING AGRMNT SJSA.pdf
RESP0036596	RESP0036750	30 & 45 TERM LOAN CR AGRMNT.pdf
RESP0020111	RESP0020142	
RESP0020520	RESP0020558	
RESP0020561	RESP0020598	
RESP0037927	RESP0038081	01-Term Loan Credit Agreement.pdf
RESP0041299	RESP0041330	08-Certificate (AWH North).pdf
RESP0041331	RESP0041364	09-Certificate (AWH North NLV 2009).pdf
RESP0041389	RESP0041439	11-Certificate (Canfam Holdings).pdf
RESP0041462	RESP0041493	13-Certificate (CFT Lands).pdf
RESP0041591	RESP0041624	18-Certificate (Deferred Revenue).pdf
RESP0041672	RESP0041712	21-Certificate (Fairmont 2).pdf
RESP0041713	RESP0041744	22-Certificate (Gameday).pdf
RESP0041936	RESP0041977	31-Certificate (Lexington 1).pdf

Bates Beg	Bates End	File Name
RESP0042036	RESP0042084	34-Certificate (Model Renting 2008).pdf
RESP0042085	RESP0042130	35-Certificate (Model Renting 2009).pdf
RESP0042151	RESP0042192	37-Certificate (Newcastle 1).pdf
RESP0042219	RESP0042250	39-Certificate (Parcel NLV 1 3).pdf
RESP0042251	RESP0042282	40-Certificate (Parcel NLV 1 4).pdf
RESP0042283	RESP0042315	41-Certificate (Parcel NLV 1 13).pdf
RESP0042316	RESP0042356	42-Certificate (Promontory Estates).pdf
RESP0042666	RESP0042723	Certificate (C&H Adams Land Invests).pdf
RESP0042724	RESP0042784	Certificate (CS 2005 Investments).pdf
RESP0042785	RESP0042841	Certificate (EH 2002).pdf
RESP0042842	RESP0042902	Certificate (Green Valley Aurora).pdf
RESP0042903	RESP0042959	Certificate (Green Valley East).pdf
RESP0042960	RESP0043017	Certificate (GVR King Commercial).pdf
RESP0043018	RESP0043078	Certificate (GVR King).pdf
RESP0043079	RESP0043133	Certificate (HC Land Investments).pdf
RESP0043134	RESP0043191	Certificate (Tower Road Farms).pdf
RESP0043192	RESP0043251	Certificate (Yampa-Telluride Land Invest).pdf
RESP0044909	RESP0045063	ExecutedTerm Loan Credit Agreement 12-31-09.pdf
RESP0045338	RESP0045492	01-Term Loan Credit Agreement.pdf
RESP0048710	RESP0048741	08-Certificate (AWH North).pdf
RESP0048742	RESP0048775	09-Certificate (AWH North NLV 2009).pdf
RESP0048800	RESP0048850	11-Certificate (Canfam Holdings).pdf

Bates Beg	Bates End	File Name
RESP0048873	RESP0048904	13-Certificate (CFT Lands).pdf
RESP0049002	RESP0049035	18-Certificate (Deferred Revenue).pdf
RESP0049083	RESP0049123	21-Certificate (Fairmont 2).pdf
RESP0049124	RESP0049155	22-Certificate (Gameday).pdf
RESP0049347	RESP0049388	31-Certificate (Lexington 1).pdf
RESP0049447	RESP0049495	34-Certificate (Model Renting 2008).pdf
RESP0049496	RESP0049541	35-Certificate (Model Renting 2009).pdf
RESP0049562	RESP0049603	37-Certificate (Newcastle 1).pdf
RESP0049630	RESP0049661	39-Certificate (Parcel NLV 1 3).pdf
RESP0049662	RESP0049693	40-Certificate (Parcel NLV 1 4).pdf
RESP0049694	RESP0049726	41-Certificate (Parcel NLV 1 13).pdf
RESP0049727	RESP0049767	42-Certificate (Promontory Estates).pdf
RESP0050076	RESP0050133	Certificate (C&H Adams Land Invests).pdf
RESP0050134	RESP0050194	Certificate (CS 2005 Investments).pdf
RESP0050195	RESP0050251	Certificate (EH 2002).pdf
RESP0050252	RESP0050312	Certificate (Green Valley Aurora).pdf
RESP0050313	RESP0050369	Certificate (Green Valley East).pdf
RESP0050370	RESP0050427	Certificate (GVR King Commercial).pdf
RESP0050428	RESP0050488	Certificate (GVR King).pdf
RESP0050489	RESP0050543	Certificate (HC Land Investments).pdf
RESP0050544	RESP0050601	Certificate (Tower Road Farms).pdf
RESP0050602	RESP0050661	Certificate (Yampa-Telluride Land Invest).pdf
RESP0052326	RESP0052711	001-First Amendment to Loan Documents.pdf
RESP0052712	RESP0052751	002-Lockup Agreement.pdf

Bates Beg	Bates End	File Name
RESP0053596	RESP0053644	096-Certificate and Resolutions for Model Renting 2008.pdf
RESP0053645	RESP0053690	097-Certificate and Resolutions for Model Renting 2009.pdf
RESP0053789	RESP0053846	102-LLC Resolutions for C&H Adams Land Investments.pdf
RESP0053847	RESP0053907	103-LLC Resolutions for CS 2005 Investments.pdf
RESP0053908	RESP0053965	104-LLC Resolutions for EH 2002.pdf
RESP0053966	RESP0054027	105-LLC Resolutions for Green Valley Aurora.pdf
RESP0054028	RESP0054085	106-LLC Resolutions for Green Valley East.pdf
RESP0054086	RESP0054143	107-LLC Resolutions for GVR King Commercial.pdf
RESP0054205	RESP0054260	109-LLC Resolutions for HC Land Investments.pdf
RESP0054261	RESP0054318	110-LLC Resolutions for Tower Road Farms.pdf
RESP0054319	RESP0054378	111-LLC Resolutions for Yampa-Telluride Land Investments.pdf
RESP0054465	RESP0054625	01a-Revlng Credit Agrmt.pdf
RESP0060355	RESP0060769	22a-Cert and Resolutions New NV Entities.pdf
RESP0060770	RESP0061075	22b-Cert and Resolutions New NV Entities.pdf
RESP0061076	RESP0061512	23a-Cert and Resolutions CO Entities.pdf
RESP0061513	RESP0061642	23b-Cert and Resolutions CO Entities.pdf
RESP0061715	RESP0061755	26-Cert and Resolutions SJA Acquistions.pdf
RESP0061756	RESP0061790	27-Cert and Resolutions H L Mgmt LLC.pdf
RESP0071990	RESP0072022	Brentwood_1_LLC_OPA.pdf
RESP0072023	RESP0072055	Bridgewater_1_LLC_OPA.pdf
RESP0072056	RESP0072088	Brookside_I_LLC_OPA.pdf
RESP0072089	RESP0072121	Canfam_Holdings_LLC_OPA.pdf
RESP0072122	RESP0072154	Carmel_Hills_LLC_-OPA.pdf

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Bates Beg	Bates End	File Name
RESP0072197	RESP0072229	Fairmont 2 LLC OPA.pdf
RESP0072244	RESP0072276	Highlands_Collection_1_LLC_OPA.pdf
RESP0072291	RESP0072322	Inverness 2010 LLC OPA.pdf
RESP0072338	RESP0072370	Kingsbridge_2_LLC_OPA.pdf
RESP0072371	RESP0072403	Lexington 1 LLC OPA.pdf
RESP0072404	RESP0072436	Lexington_2_LLC_OPA.pdf
RESP0072437	RESP0072474	Model Renting 2008 LLC OPA.pdf
RESP0072475	RESP0072512	Model Renting 2009 LLC OPA.pdf
RESP0072513	RESP0072550	Model Renting_2010_LLC_OPA.pdf
RESP0072551	RESP0072583	Model_Renting_2012_LLC_OPA.pdf
RESP0072598	RESP0072630	Newcastle_1_LLC_OPA.pdf
RESP0072631	RESP0072663	Reserve_1_LLC_OPA.pdf
RESP0072664	RESP0072696	Reserve_2_LLC_OPA.pdf
RESP0072697	RESP0072729	Silverado Summit LLC OPA.pdf
RESP0072730	RESP0072762	Silverado-Springs-2-LLC-OPA.pdf
RESP0072763	RESP0072795	Silverado-Springs-3-LLC-OPA.pdf
RESP0072821	RESP0072853	Stonebridge_1_LLC_OPA.pdf
RESP0072869	RESP0072901	Woodbridge_2_LLC_OPA.pdf
RESP0080466	RESP0080502	OPA.04.25.07.doc
RESP0080503	RESP0080539	OPA.05.21.07.doc
RESP0080540	RESP0080576	OPA.10.30.08.doc
RESP0080577	RESP0080613	OPA.ORI.12.12.06.doc
RESP0080614	RESP0080650	OPA.Red.12.05.06.doc
RESP0080651	RESP0080687	OPA.Red.II.12.05.06.doc
RESP0080746	RESP0080784	OPA.05.24.07.DOC
RESP0080785	RESP0080821	OPA.08.23.06.doc
RESP0080822	RESP0080858	OPA.ORI.09.22.06.doc
RESP0080859	RESP0080895	OPA.RED.09.21.06.doc
RESP0080947	RESP0080971	OPA.06.14.07.doc
RESP0081088	RESP0081119	OPA.pdf
RESP0083293	RESP0083323	Scott LGC LLC - OPA.PDF
RESP0083616	RESP0083652	OPA.04.25.07.doc
RESP0083653	RESP0083689	OPA.05.21.07.doc

Bates Beg	Bates End	File Name
RESP0083690	RESP0083726	OPA.10.30.08.doc
RESP0083727	RESP0083763	OPA.ORI.12.12.06.doc
RESP0083764	RESP0083800	OPA.Red.12.05.06.doc
RESP0083801	RESP0083837	OPA.Red.II.12.05.06.doc
RESP0083895	RESP0083933	OPA.05.24.07.DOC
RESP0083934	RESP0083970	OPA.08.23.06.doc
RESP0083971	RESP0084007	OPA.ORI.09.22.06.doc
RESP0084008	RESP0084044	OPA.RED.09.21.06.doc
RESP0084096	RESP0084120	OPA.06.14.07.doc
RESP0084238	RESP0084269	OPA.pdf
RESP0091132	RESP0091189	Certificate (C&H Adams Land Invests).pdf
RESP0091190	RESP0091250	Certificate (CS 2005 Investments).pdf
RESP0091251	RESP0091307	Certificate (EH 2002).pdf
RESP0091308	RESP0091368	Certificate (Green Valley Aurora).pdf
RESP0091369	RESP0091425	Certificate (Green Valley East).pdf
RESP0091426	RESP0091486	Certificate (GVR King).pdf
RESP0091487	RESP0091544	Certificate (Tower Road Farms).pdf
RESP0094400	RESP0094433	CanfamOPAwithMembershipTransfer.pdf
RESP0095167	RESP0095199	brentwood2OPA.pdf
RESP0095206	RESP0095238	Bridgewater3-OPA.pdf
RESP0095265	RESP0095297	HC3_OPA.pdf
RESP0095304	RESP0095336	Inverness 2010 OPA.pdf
RESP0095341	RESP0095372	Inv 2015 - OPA.pdf
RESP0095373	RESP0095405	JonesCrossing1OPA.pdf
RESP0095412	RESP0095444	JonesCrossing2-OPA.pdf
RESP0095478	RESP0095510	Reserve4-OPA.pdf
RESP0095511	RESP0095543	Southbrook1LLC-OPA.pdf
RESP0095550	RESP0095582	woodbridge3opa (2).pdf
RESP0095589	RESP0095621	Woodbridge4-OPA.pdf
RESP0107004	RESP0107037	CanfamOPAwithMembershipTransfer.pdf
RESP0111813	RESP0111913	01a-New Secured Loan Agrmnt.pdf

Bates Beg	Bates End	File Name
RESP0111958	RESP0112149	RESP0111958 - Blackline of Credit Agreement.pdf
RESP0112150	RESP0112310	RESP0112150 - CB&T American West Refinancing Senior Secured Revolving Credit Agmt_17779489_4.pdf
RESP0112333	RESP0112500	RESP0112333 - CB&T American West Refinancing Blackline of Credit Agreement_18033799_1.pdf
RESP0112501	RESP0112661	RESP0112501 - CB&T American West Refinancing Senior Secured Revolving Credit Agmt_17779489_5.pdf
RESP0112664	RESP0112831	RESP0112664 - CB&T American West Refinancing Blackline of Credit Agreement_18033799_1.pdf
RESP0112832	RESP0112992	RESP0112832 - CB&T American West Refinancing Senior Secured Revolving Credit Agmt_17779489_5.pdf
RESP0112995	RESP0113155	RESP0112995 - Blackline of Credit Agreement.pdf
RESP0113175	RESP0113335	RESP0113175 - Blackline of Credit Agreement.pdf

EXHIBIT 2

SEARCH RE RENWICK

Bates Beg	Bates End	Document Title	File Name
RESP0013263	RESP0013267	2013-11-01 Email from Ed Lubbers to Teresa O'Malley re In re Scott Canarelli	
RESP0076832	RESP0076832	1998-02-24 Notice of Hearing re District Court Clark County	Notice of Hearing.pdf
RESP0078727	RESP0078728	2013-12-06 Letter from J Colby Williams to Mark A Solomon re Scott Canarelli Trusts-Case Nos P-13-078912-T P-13-078913-T P-13-078919-T	2013.12.06 - Email from Colby to Mark Solomon and Brian Eagan.pdf
RESP0079050	RESP0079056	2013-10-16 Trustee Edward C Lubbers Response to Petition re SCIT	2013.10.16 - Trustee Edward C. Lubbers' Response to Petition to Assume Jurisdiction.pdf
RESP0079061	RESP0079067	2013-10-29 Notice of Entry of Order re SCIT	2013.10.29 - Notice of Entry of Order.pdf
RESP0079068	RESP0079079	2013-10-31 Trustees Objection to Order Granting Petition re SCIT	2013.10.31 - Trustee's Objection to Order Granting Petition to Assume Jurisdiction.pdf
RESP0079084	RESP0079089	2013-12-03 Notice of Entry of Stipulation and Order re SCIT	2013.12.03 - Notice of Entry of Stipulation and Order.pdf
RESP0079090	RESP0079094	2013-12-11 Substitution of Attorneys re SCIT	2013.12.11 - Substitution of Attorneys.pdf
RESP0080144	RESP0080235	2017-08-09 Objection to Petition to Surcharge Trustee and for Additional Relief re SCIT	LVEGAS-#156389-v2-Objection_to_Petition_to_Surcharge_Trustee_and_for_Additional_Relief.PDF
RESP0080406	RESP0080407	2013-10-15 Letter from Charlene N Renwick to Mark A Solomon re In the Matter of the SCIT-Secondary Trust In the Matter of the Scott Canarelli Protection Trust our Client Edward C Lubbers	M Solomon 10 15 13 (rep of Lubbers).docx
RESP0087490	RESP0087594	Various email communications between Charlene Renwick, Stephen Nicolatus, SDF, Ed Lubbers re valuation	Undated - Canarelli Emails.pdf
RESP001180			

SEARCH RE RENWICK

Bates Beg	Bates End	Document Title	File Name
RESP0078820	RESP0078822	2013-10-30 Email from Charlene Renwick to Steve Nicolatus, Brian P Eagan and Mark Solomon re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078823	RESP0078825	2013-10-30 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078826	RESP0078828	2013-10-29 Email from Charlene Renwick to Steve Nicolatus re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078829	RESP0078830	2013-10-29 Email from Charlene Renwick to Steve Nicolatus re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078831	RESP0078832	2013-10-29 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078833	RESP0078834	2013-10-29 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078835	RESP0078836	2013-10-29 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078837	RESP0078838	2013-10-29 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078839	RESP0078842	2013-10-30 Email from Charlene Renwick to Brian P Eagan re In re Scott Canarelli	Undated - Canarelli Emails.pdf

SEARCH RE RENWICK

Bates Beg	Bates End	Document Title	File Name
RESP0078843	RESP0078846	2013-10-30 Email from Charlene Renwick to Brian P Eagan re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078847	RESP0078849	2013-10-30 Email from Charlene Renwick to Steve Nicolatus re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078850	RESP0078853	2013-10-31 Email from Charlene Renwick to Brian P Eagan re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078854	RESP0078857	2013-10-31 Email from Charlene Renwick to Brian P Eagan re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078858	RESP0078859	2013-11-01 Email from Charlene Renwick to Brian P Eagan re In the Matter of the SCIT Irrevocable Trust Secondary Trust and the Scott Canarelli Protection Trust	Undated - Canarelli Emails.pdf
RESP0078860	RESP0078863	2013-11-00 Stipulation and Order Appointing Valuation Expert and Clarifying Order re District Court County of Clark Nevada	Undated - Canarelli Emails.pdf
RESP0078864	RESP0078864	2013-11-08 Email from Brian P Eagan to Charlene Renwick re Canarelli Revised SAO	Undated - Canarelli Emails.pdf
RESP0078867	RESP0078868	2013-11-12 Email from Charlene Renwick to Stefani Johnston re In re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078869	RESP0078869	2013-11-12 Email from Charlene Renwick to Brian P Eagan re Canarelli Revised SAO	Undated - Canarelli Emails.pdf
RESP0078870	RESP0078871	2013-11-08 Email from Charlene Renwick to Brian P Eagan re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0078872	RESP0078873	2013-11-08 Email from Charlene Renwick to Brian P Eagan, Steve Nicolatus and Ed Lubbers re Scott Canarelli	Undated - Canarelli Emails.pdf

RESP001182

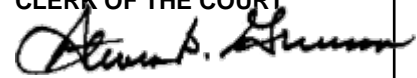
SEARCH RE RENWICK

Bates Beg	Bates End	Document Title	File Name
RESP0078874	RESP0078875	2013-11-08 Email from Charlene Renwick to Steve Nicolatus, Ed Lubbers and beagan@sdfnlaw.com re Scott Canarelli	Undated - Canarelli Emails.pdf
RESP0088970	RESP0088970	2013-12 Signature page for substitution of counsel	corr. note. memo.pdf
RESP0090273	RESP0090274	2013-10-15 Letter from Charlene Renwick to SDF re accounting documents	M Solomon 10 15 13 (rep of Lubbers).docx
RESP0105226	RESP0105228	2013-11-09 Email from Stephen J Nicolatus to Ed Lubbers re Scott Canarelli	000000000C9F5B8E4FD95B4A8969BB3DF38B98B7C4D72000.msg
RESP0105231	RESP0105236	2014-04-01 Email from Edward C Lubbers to Cheryl Corley re Canarelli: Dropbox Access	000000000C9F5B8E4FD95B4A8969BB3DF38B98B724222300.msg
RESP0105237	RESP0105242	2013-12-04 Email from Brian P Eagan to Ed Lubbers re Canarelli: December 9th Meeting	000000000C9F5B8E4FD95B4A8969BB3DF38B98B704722500.msg
RESP0105243	RESP0105247	2013-12-04 Email from Brian P Eagan to Ed Lubbers re Canarelli: December 9th Meeting	000000000C9F5B8E4FD95B4A8969BB3DF38B98B784DF2A00.msg
RESP0105522	RESP0105528	2013-12-04 Email from Steve Nicolatus to Ed Lubbers re Canarelli: December 9th Meeting	000000000C9F5B8E4FD95B4A8969BB3DF38B98B7C4F92800.msg
RESP0105900	RESP0105901	2013-11-09 Email from Brian P Eagan and Ed Lubbers to Steve Nicolatus re Scott Canarelli	000000000C9F5B8E4FD95B4A8969BB3DF38B98B7E4F22400.msg
RESP0105906	RESP0105908	2013-11-12 Email from Steve Nicolatus to Ed Lubbers re Scott Canarelli	000000000C9F5B8E4FD95B4A8969BB3DF38B98B7C4F2700.msg
RESP0111574	RESP0111574	2013-10-24 Letter from Charlene Renwick to SDF re agreement to use Nicolatus for valuation.	Solomon, M. 10.24.13.pdf

SEARCH RE RENWICK

Bates Beg	Bates End	Document Title	File Name
RESP0111596	RESP0111597	2013-10-15 Letter from Charlene Renwick to SDF re agreement related to the accountings	Solomon, M. 10.15.13 (Representation Letter).pdf

APP001184



1 ANS

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 *In the Matter of the Trust of:*

6 **Scott Lyle Graves Canarelli Irrevocable**
7 **Trust**, dated February 24, 1998.
8
9

CASE NUMBER: P-13-078912-T
DEPT: XXVI

**ANSWER TO RESPONDENTS
MOTION TO DISQUALIFY JUDGE
GLORIA STURMAN**

10 COMES NOW, the Honorable GLORIA J. STURMAN, and hereby files her Answer to
11 Defendant's Motion to Recuse Judge Gloria Sturman Re: The above Captioned Case.

12 The Motion to Disqualify was filed on June 8, 2020, and transferred to Chief Judge Linda
13 Bell, pursuant to NRS 1.235. The clerk's office subsequently set the matter for hearing before Chief
14 Judge Linda Bell on July 14, 2020 at 9:00am.

15
16 **FACTS AND PROCEDURAL HISTORY**

- 17
- 18 1. The above captioned matter is the lead case in a number of consolidated petitions filed by
19 Scott Lyle Graves Canarelli against the former trustees of various family trusts
20 established by his parents Lawrence and Heidi Canarelli benefiting their children, funded
21 by various assets related to the family business, America West Development, a
22 residential community real estate developer.
 - 23 2. The original settlors/trustees were Lawrence and Heidi Canarelli; they were succeeded by
24 their attorney Edward Lubbers. Mr. Lubbers passed away in April 2018 before he could
25 be deposed in this matter.
 - 26 3. A discovery dispute arose when Mr. Lubbers' notes (both handwritten and typed) of a
27 consultation between him and his trust counsel were inadvertently produced. Then
28 Discovery Commissioner Bonnie Bulla found that the common law fiduciary duty

1 exception to the attorney client privilege applied and the documents were discoverable,
2 except for those portions that appeared to be opinions regarding allegations contained in
3 the Petition. This finding was reduced to a Report and Recommendation which
4 Respondents objected to, and upon hearing the matter the Discovery Commissioner's
5 findings were mostly upheld by Judge Sturman.

- 6 4. Respondents sought a Writ of Mandamus from the Nevada Supreme Court, which
7 granted the Writ in an en banc decision finding, as a matter of first impression, that the
8 common law fiduciary exception does not exist in Nevada, because only statutorily
9 defined exceptions to the attorney client privilege are recognized. See, Canarelli ex rel
10 Eighth Judicial District Court, 136 Nev. Adv. Op. 29 (May 28, 2020)
11 5. The Canarellis now seek to disqualify Judge Sturman on the grounds that the Judge,
12 having seen the inadvertently produced notes and after finding that the material was not
13 privileged under the fiduciary exception which was later overturned by the Supreme
14 Court, is now biased or otherwise unable to be fair to the Canarellis.

15 **LEGAL ISSUES**

16 Judges are often called upon to review evidence to determine whether a privilege protects the
17 documents from discovery. As the inadvertent production of documents occurs on occasion, a
18 process has evolved to "claw back" documents. In the instant matter, the claw back was objected to
19 on the grounds that the common law fiduciary exception to the attorney client privilege applied, and
20 that because Lubbers was Scott's trustee too, the attorney client privilege did not protect the
21 documents from disclosure. Usually, a judge's ruling on a privilege issue would not be resolved
22 until an appeal was taken, and if the case was remanded for a new trial, the trial judge who heard the
23 manner initially would hear the matter on remand.

24 In the instant matter, the Canarelli's successfully sought a Writ of Mandamus. The legal
25 issue involved in the ruling addressed in the Writ of Mandamus was a matter of first impression in
26 Nevada. The Supreme Court rejected the concept of a common law exception to the attorney client
27 privilege, holding as the evidence code is a creature of statute only statutory exceptions will be
28

1 recognized. Typically, the Supreme Court will decline to consider a trial judge's ruling on a
2 discovery matter unless the "challenged discovery order is likely to cause irreparable harm and a
3 later appeal would not effectively remedy an improper disclosure of information." Specifically, a
4 writ of prohibition is appropriate to prevent disclosure of privileged information. See, Matter of
5 William J Raggio Family Trust, 136 Nev. Adv Op. 21, 460 P.3d 969, 972-973 (2020).

6 In Raggio the Court did not explain the irreparable harm that would result from the
7 disclosure, which was the basis for Justices Cadish and Pickering's dissent. The Court granted the
8 Writ to protect Mrs. Raggio from disclosing information requested by her step-daughters about one
9 of two trusts to which they were not beneficiaries. The trial court found that the court improperly
10 applied the exception in NRS 163.4175 that required the trustee to consider other sources of income.
11 The Supreme Court found this analysis improper, that NRS 163.4175 applies only if expressly
12 invoked in the trust instrument. *Id.*, 460 P.3d 974-975

13 The opinion granting the Writ in the instant matter builds on the protection the Raggio
14 opinion extended to trustees. The decision herein, however, was a unanimous en banc decision with
15 the grounds for accepting the Writ defined by Justice Stiglich as irreparable harm from the
16 disclosure of privileged information, finding that only statutory exceptions to the privilege are to be
17 recognized:
18

19 This court has not had the opportunity to address whether there is a fiduciary
20 exception to the attorney-client privilege, whereby a fiduciary such as a trustee is
21 prohibited from asserting the attorney-privilege against a beneficiary on matters of
22 trust administration.

23 The two opinions when read together provide significant guidance in probate matters with
24 respect to the duty of a trustee to disclose certain information in litigation brought by a beneficiary.
25 The ruling in Canarelli, however, extends beyond probate to establish that only statutory exceptions
26 to the attorney client privilege are recognized.

27 In other Writ cases the Court has directed reassignment of the case on remand where
28 warranted. See, Nadler v Eighth judicial District Court 136 Nev. Ad Op 24, 462 P.3d 677, 686

1 (2020):

2
3 (I)ssue a writ of mandamus instructing the district court to vacate its order granting
4 UAIC's motion to consolidate Case Nos. ...and to reassign Case No....to Judge
Kephart

5 Similarly in State Dept. of Motor Vehicles v Eighth Judicial District Court, 113 Nev. 1338, 1343,
6 948 P.2d 261, 263 (1997) a district judge had denied a peremptory challenge and ordered the clerk's
7 office to return the case to her department. The Court granted the writ of prohibition preventing the
8 judge from presiding over the case.
9

10 In writ cases involving discovery issues, the Court will often issue instructions to the trial
11 judge on how to proceed upon remand. For example, in granting a writ regarding the production of
12 privileged documents, the Court instructed the trial judge to review the documents *in camera* and
13 determine which were privileged and which were not. See Wynn Resorts Ltd. V Eighth Judicial
14 District Court, 133 Nev. 369, 399 P3d 374, 386 (2017)

15 (B)ecause the work-product privilege may apply to some of the documents compiled
16 in the preparation of the Freeh Report, we grant the petition in part and direct the
17 clerk of this court to issue a writ of prohibition directing the district court to consider,
consistent with this opinion, whether the work-product privilege applies.

18
19 Similarly, in Cotter v Eighth Judicial Court, 134 Nev. 247, 416 P.3d 228, 233 (2018) the Court
20 instructed the trial court to "refrain from compelling disclosure of the emails until it reviews the
21 emails *in camera* to evaluate whether" the work-product privilege applied.

22 Implicit in these rulings is that the Court anticipates the trial judge will review potentially
23 privileged documents in following in the directions in the writ, but there is no indication in any of
24 these decisions that the trial court will be disqualified after reviewing the documents and ruling on
25 the privilege issues. Here, the writ prohibits compelling production of the privileged documents.
26

27 The grounds for disqualification of a judge are found in NRS 1.230:
28

1 1. A judge shall not act as such in an action or proceeding when the judge entertains
2 actual bias or prejudice for or against one of the parties to the action....

3 The petition to disqualify a judge must be filed before trial, or any pretrial hearing. NRS 1.235 (1).
4 Here the case has been ongoing for some time, and a number of hearings have been conducted, and
5 the exception of NRS 1.235(2) does not appear to apply.¹ Therefore, the Motion refers to the
6 Canons of Judicial Ethics. Canon 2, 2.11:

7 (A) A judge shall disqualify himself or herself in any proceeding in which the judge's
8 impartiality might reasonably be questioned, including but not limited to the
9 following circumstances:

10 (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer,
or personal knowledge of facts that are in dispute in the proceeding.

11 It is unclear how "personal knowledge of facts" giving rise to grounds for disqualification
12 would result from reviewing documents to determine privilege. Both the Discovery Commissioner
13 and I recognized the privilege, although we disagreed on certain portions of one document. The
14 issue of first impression presented herein was whether Nevada would adopt the common law
15 fiduciary exception to the attorney-client privilege. With its decision in the Raggio case and the
16 instant case, the Supreme Court has established limits on discovery in probate cases. Further, the
17 Supreme Court held in this matter that only statutory exceptions to the attorney-client privilege will
18 be recognized.
19

20 As the cases cited above show, the Supreme Court often directs a trial court to review
21 documents to evaluate claims of privilege. Further, the Supreme Court will direct reassignment of a
22 case when deemed appropriate. No such instructions were given here.
23
24

25
26 ¹ NRS 1.235(2) If "the facts upon which disqualification of the judge is sought are not known to the party *before the*
27 *party is notified of the assignment of the judge* or before any pretrial hearing is held, the affidavit may be filed not later
28 than the commencement of the trial or hearing of the case.

1
2 I know of no reason why my review of the privileged documents over a year ago, which were
3 then destroyed, has given rise to any “personal knowledge” of disputed facts. Nor do I believe my
4 prior review of the documents, which have now been excluded, have or hereafter would, influence
5 my impartiality in these proceedings. Finally, I know of no bias or prejudice for or against any party
6 or attorney in this matter.
7

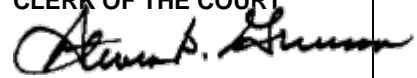
8 Dated this 6th day of July, 2020.
9

10
11 
12 _____
13 Gloria Sturman, Department XXVI
14 District Court Judge
15

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on or about the date signed, this document was served to all
18 actively registered parties and a copy of this Answer was mailed to:
19
20
21

22 /s/ Linda Denman
23 Linda Denman, Judicial Executive Assistant
24
25
26
27
28



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Heidi Canarelli, and Frank Martin,
Special Administrator of the Estate of
Edward C. Lubbers, Former Trustees*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the

THE SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE TRUST,
dated February 24, 1998.

Case No. P-13-078912-T
Dept. No. XXVI (VII)

**RESPONDENTS' REPLY IN SUPPORT
OF MOTION TO DISQUALIFY THE
HONORABLE GLORIA STURMAN
AND OPPOSITION TO
COUNTERMOTION FOR WAIVER OF
THE ATTORNEY CLIENT
PRIVILEGE**

Hearing Date: July 28, 2020
Hearing Time: 9:00 a.m.

INTRODUCTION

The Former Trustees' motion presents a serious, but straightforward question: is the Honorable Gloria Sturman subject to disqualification for reviewing and analyzing privileged notes prepared by Edward Lubbers—notes which, among other classic attorney-client topics, expressly describe Lubbers' beliefs as to how the district court may view the merits of the case—

1 where Judge Sturman is sitting as the trier of fact in this action and was alerted to the privileged
2 and unique nature of the notes before she decided to review them. Subscribing to the adage that
3 the best defense is a good offense, Petitioner Scott Canarelli and his counsel seek to obscure this
4 issue by spending twenty-four pages of their 30-page opposition and counter-motion (“Opp’n”)
5 arguing that the Former Trustees have waived the attorney-client privilege through alleged
6 reckless inadvertent disclosures of documents such that Judge Sturman’s review of Lubbers’
7 notes was a non-event. This misdirection fails for multiple reasons.

8
9 First, other than a misleading footnote, Scott conveniently fails to disclose to Her Honor
10 that he previously presented this exact waiver argument (and others) to Judge Sturman in the
11 underlying privilege dispute. Judge Sturman rejected these arguments when she denied Scott’s
12 objections in their entirety, and affirmed the discovery commissioner’s finding that Lubbers’
13 notes were at least partially protected by the attorney-client privilege without exception. If Scott
14 wanted to challenge that portion of the district court’s ruling, he could have (i) pursued his own
15 writ relief from the Nevada Supreme Court, (ii) sought to file a cross-petition in response to the
16 Former Trustees’ writ petition, or (iii) better developed the waiver argument in his answering
17 brief before the Nevada Supreme Court. He did none of those things, apparently comforted in
18 the knowledge that Judge Sturman had ordered (erroneously) disclosure of the portion of Lubbers’
19 notes Scott was most interested in. It is simply too late to resurrect this issue now that the Nevada
20 Supreme Court has unanimously held the notes are privileged in their entirety.

21
22 Even if Scott’s arguments were not barred by law of the case principles and laches, they
23 are nonetheless foreclosed by the ESI Protocol governing the production of discovery material in
24 this action. That document, which is an enforceable contract, expressly precludes the parties from
25 arguing waiver of the attorney-client privilege based on the inadvertent production of documents
26 in discovery. Scott’s counsel acknowledged as much before the discovery commissioner, but
27
28

1 reversed course and extensively argued waiver to the district court after the discovery
2 commissioner found that Lubbers' notes were at least partially privileged. Again, Judge Sturman
3 rejected this argument when she affirmed the notes were partially privileged since a finding of
4 privilege, even if partial in nature, cannot exist in the face of a waiver.

5 In the few pages Scott devotes to the central issue presented here, the potential
6 disqualification of Judge Sturman, he largely gets the law wrong. Scott's primary argument is
7 that disqualification under the procedure articulated in *Towbin Dodge* can only arise from bias or
8 partiality that is extra-judicial in nature, not something the judge learned participating in the case.
9 But the Nevada Supreme Court, relying on United States Supreme Court precedent, has
10 repeatedly recognized that an event "occurring in the course of the current proceedings . . .
11 constitutes a basis for a bias or partiality motion" where it "would make fair judgment
12 impossible." See, e.g., *Kirksey v. State*, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996) (quoting
13 *Liteky v. United States*, 510 U.S. 540, 555 (1994)). That is exactly the situation here.

14 This is not a situation like the cases Scott relies upon where a court improperly admitted
15 or considered prejudicial evidence during a bench trial, and a party later sought disqualification
16 based on that evidentiary ruling. Here, Judge Sturman, despite being forewarned, reviewed and
17 analyzed Lubbers' privileged notes discussing the strengths and weaknesses, strategies to be
18 employed, and the Court's potential views of the merits in this very case. With all due respect to
19 the principle that judges are presumed to be impartial and to Judge Sturman's statements that she
20 does not believe her review of the disputed notes has given rise to any personal knowledge of
21 disputed facts, bias or prejudice under NCJC 2.11(A)(1), abundant legal authorities support the
22 Former Trustees' position that these actions would cause a reasonable person to harbor doubts
23 about Judge Sturman's impartiality and her ability to continue sitting on this case.

24 After supplying the Court with a few additional facts to put Scott's countermotion in
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context, we return the disqualification issue to the forefront below before explaining why Scott's waiver arguments fail across the board.

SUPPLEMENTAL FACTUAL BACKGROUND¹

In hopes of persuading Her Honor that disqualification of Judge Sturman is not necessary despite her review and digestion of Lubbers' undisputedly privileged notes, Scott and his counsel take the Court on seven-plus page journey of document productions, clawbacks, and revisionist justifications to support their contention that the Former Trustees have waived the attorney-client privilege. *See* Opp'n at 3:1-10:5. The Former Trustees will not waste the Court's time with a line-item rebuttal of each point. Instead, the Court need only focus on two central facts related to Scott's countermotion. First, Scott already presented this exact waiver argument to Judge Sturman and incorporated it in his answering brief before the Nevada Supreme Court. Second, the parties entered an ESI Protocol that expressly prevents Scott from making the very waiver argument he is now advancing (for the second time). Though Scott makes passing reference to both issues in his countermotion, he outright misrepresents the facts regarding the former, and conveniently omits reference to the dispositive provisions of the latter.

A. Scott Raised His Waiver Arguments Previously.

Scott preemptively tries to justify the ability to raise his waiver arguments at this late stage in a single footnote. *See* Opp'n at 2:24-28. The footnote, however, blatantly misrepresents the record in several respects. It begins with the statement that "Petitioner contended the Respondents

¹ While EDCR 2.20(h) permits Scott to file a reply in support of his countermotion, he should be limited to addressing the Former Trustees' opposition thereto (*i.e.*, Point II, *infra*), not their reply arguments in support of the original disqualification motion (*i.e.*, Point I, *infra*). If not so limited, Scott would essentially obtain an improper surreply and the last word on the Former Trustees' motion. *See, e.g., Leavitt v. Wickham*, 2015 WL 430463, at *3 (D. Nev. Feb. 3, 2015) (recognizing that surreplies "are highly disfavored, as they are usually a strategic effort by the nonmovant to have a last word on a matter.") (quotation omitted).

1 waived the attorney-client privilege before the Discovery Commissioner.” *Id.* at 2:24-25. Yes
2 and no. Scott did raise a waiver argument before the discovery commissioner, but it was premised
3 on Lubbers’ allegedly taking his notes in the presence of and sharing them with representatives
4 of American West Development (“AWD”).² The discovery commissioner expressly found there
5 was no waiver based on the common interest doctrine.³

6 Scott’s initial motion was devoid of any argument the Former Trustees had waived the
7 attorney-client privilege based on inadvertent disclosure(s). To the extent the discovery
8 commissioner inquired of undersigned counsel what steps had been taken to guard against
9 inadvertent disclosures, Scott’s counsel expressly disavowed that she was making a waiver
10 argument premised on the inadvertent disclosure itself:
11

12 Mr. Williams: Inadvertent productions are going to happen. There is no question
13 about that. And that’s why we put in the [ESI] protocol that if there
14 ends up being an inadvertent production, *you can’t argue that is
the basis for waiver or why you get the document.* . . .

15 Ms. Dwiggins: *And I have not argued that.*

16 Mr. Williams: Right. But – but the commissioner is focused on it. And that’s –
17 that’s why I’m addressing it.⁴

18
19 ² See Mot. for Priv. Determin. at 14:17-15:14 (dated 7/13/18 and re-filed with redactions on
20 10/18/18), true and correct excerpts of which are attached hereto as Exhibit 1; *see also* Reply ISO
21 Mot. for Priv. Determin. at 22:3-29:21 (dated 8/24/18 and re-filed with redactions on 10/18/18),
true and correct excerpts of which are attached hereto as Exhibit 2.

22 ³ See Discovery Commissioner’s Report and Recommendations dated Dec. 6, 2018 (“DCRR”)
23 at 6:25-7:6, a true and correct copy of which is attached hereto as Exhibit 3.

24 ⁴ See Opp’n, Appendix (“App.”) at 96:17-24 (Ex. 11) (Hr’g Tr. dated 8/29/18). Notably, Scott
25 quoted this same passage in his countermotion, but conveniently omitted his counsel’s
26 acknowledgement that she was not arguing waiver based on inadvertent production at that time.
27 See Opp’n at 8:1-5. Moreover, when previously defending why he waited to raise this argument
28 until he was before Judge Sturman, Scott argued below he could not have raised this waiver
argument before the discovery commissioner because he was purportedly unaware of it then. See
Exhibit 6 (identified below) at 23:10-25:2. The amount of revisionist history in Scott’s five-
sentence footnote is truly remarkable.

The footnote next states “the Discovery Commissioner, despite strongly suggesting waiver may have occurred, never ruled on the issue of waiver because she held that the documents were not privileged in the first place.” Opp’n at 2:25. This, too, is demonstrably false. The DCRR expressly found that “from the beginning of RESP0013285 [*i.e.*, part of the Group 1 documents], including the handwritten notes, to the indented paragraph starting with the word “1st” is both work product and protected under the attorney-client privilege *without an applicable exception*.”⁵ Thus, the discovery commissioner found that a portion of Lubbers’ notes was absolutely attorney-client privileged. If, as Scott posits, the discovery commissioner did not need to rule on his present waiver argument “because she held that the documents were not privileged in the first place,” then she likewise would not have needed to rule on the waiver issue related to Lubbers’ alleged sharing of the documents with AWD personnel. That the DCRR addressed (and rejected) the AWD waiver argument demonstrates the fallacy of Scott’s position. Were that not enough, the Nevada Supreme Court likewise recognized the discovery commissioner “*concluded that a portion of the Group 1 documents were [sic] protected by the attorney-client privilege and the work-product doctrine*, but that other portions were discoverable.” *Canarelli v. Eighth Judicial Dist. Court*, 136 Nev. Adv. Op. 29, 464 P.3d 114, 118 (2020) (emphasis added).

Precisely because the discovery commissioner found portions of Lubbers’ notes attorney-client privileged without exception, Scott objected to the DCRR, and presented his waiver arguments to Judge Sturman. Scott not only argued waiver related to the AWD issue, he also reversed course from the discovery commissioner proceedings and extensively argued waiver based on the same inadvertent production issue he is now re-arguing before Her Honor.⁶ The

⁵ See Ex. 3 (DCRR) at 4:7-10 (emphasis added).

⁶ See Petitioner’s Objections to the DCRR (dated 12/17/18) at 26:20-40:2, true and correct excerpts of which are attached hereto as Exhibit 4.

Former Trustees opposed Scott's waiver arguments in their papers below, and Scott filed a supporting reply.⁷ Between his objections and reply brief, Scott devoted more than fifteen pages to arguing that the former Trustees had waived the attorney-client privilege based on "reckless disclosure" of documents.⁸ The parties thereafter argued the waiver issues at the hearing before Judge Sturman who affirmed the DCRR in all respects except for ruling that one of Lubbers' notes was entitled to *more* protection than that recommended by the discovery commissioner.⁹ Contrary to the representations in Scott's footnote, Judge Sturman specifically affirmed that a portion of Lubbers' Group 1 notes was attorney-client privileged without exception.¹⁰ Judge Sturman also ruled that "Petitioner's Objections to the DCRR are DENIED."¹¹ This ruling necessarily encompassed Scott's waiver arguments as no portion of Lubbers' notes could be deemed privileged had there been any waiver.

B. The Parties' ESI Protocol.

Scott acknowledges, as he must, that the parties entered an ESI Protocol to govern the production of discovery materials in this litigation.¹² Despite that acknowledgement, Scott disregards or otherwise tries to explain away the relevant provision of the parties' written

⁷ See Respondents' Opp'n to Petitioner's Objections to the DCRR (dated 1/14/19) at 33:9-40:2, true and correct excerpts of which are attached hereto as Exhibit 5; Reply ISO Petitioner's Objections to DCRR (dated 3/21/19) at 19:6-32:12, true and correct excerpts of which are attached hereto as Exhibit 6.

⁸ See Ex. 4 at 34:13-40:2; Ex. 6 at 23:8-31:12.

⁹ See Hr'g Tr. (dated 4/11/19) at 105:1-110:1, true and correct excerpts of which are attached hereto as Exhibit 7; *see also*, Order on the Parties' Objections to the DCRR (dated 5/31/19), a true and correct copy of which is attached hereto as Exhibit 8.

¹⁰ See Ex. 8 at 2:20-23; 3:20-22.

¹¹ *Id.* at 3:12.

¹² See Opp'n, App. at 21-34 (Ex. 2) (ESI Protocol).

agreement that governs the manner in which inadvertent disclosures are to be addressed. That provision provides as follows:

21. Effect of Disclosure of Privileged Information. The Receiving Party hereby agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced by Disclosing or Producing Party upon request by Disclosing or Producing Party regardless of whether the Receiving Party disputes the designation of Privileged Information. The Receiving Party may sequester (rather than return or destroy) such Privileged Information only if it contends that the information itself is not privileged or otherwise protected, and it challenges the privilege designation, in which case it may only sequester the information until the claim of privilege or other protection is resolved. . . . In the event that the parties do not resolve their dispute, the Objecting Party may bring a motion for determination of whether a privilege applies within ten (10) court days of the meet and confer session, *but may only contest the asserted privileges on ground [sic] other than the inadvertent production of such document(s).* In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected material. *The failure of any party to provide notice or instructions under this Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Disclosing or Producing Party would be entitled in this action.*¹³

The Former Trustees will address Scott's efforts to extricate himself from the ESI Protocol in Point II(C), *infra*.

ARGUMENT

I. DISQUALIFICATION OF JUDGE STURMAN IS WARRANTED HERE.

A. Judge Sturman May Be Subject to Disqualification Based on Her Review of Privileged Information During the Course of Judicial Proceedings.

Relying on an inflexible and inaccurate version of what is commonly referred to as the "extrajudicial source doctrine," Scott contends that Judge Sturman cannot be subject to disqualification because she reviewed Lubbers' notes in her capacity as the sitting judicial officer

¹³ *Id.* at 30 (emphases added).

in this matter.¹⁴ See Opp’n at 24:8-25:18. In other words, Scott argues this Court is prohibited from disqualifying Judge Sturman unless she received the notes from a source outside of these judicial proceedings. Scott finds support for this position in *Lindsey v. City of Beaufort*—which was cited by the Nevada Supreme Court in *Towbin Dodge*—where the court stated as follows: “The alleged bias must be ‘personal’ as distinguished from judicial in nature. The bias must stem from an extra judicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case.” 911 F. Supp. 962 (D. S.C. 1995).

While Scott accurately cites this passage from *Lindsey*, he fails to recognize it is a misstatement of the law. Indeed, in analyzing the application of the “extrajudicial source doctrine” to the federal analogue of Rule 2.11(a)—28 U.S.C. § 455(a)—the United States Supreme Court rejected the *Lindsey* court’s dogmatic description of the law as follows:

It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that ‘extrajudicial source’ is the *only* basis for establishing disqualifying bias or prejudice. It is the only *common* basis, but not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable disposition can also deserve to be characterized as ‘bias’ or ‘prejudice’ because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment.

Litecky, 510 U.S. 540, 551 (1994) (emphases in original); see also *Arkansas Teacher Retirement Sys. v. State Street Bank and Trust Co.*, 404 F. Supp. 3d 486, 497 (D. Mass. 2018) (“A

¹⁴ Scott also suggests the motion must be denied because it is not premised on any of the specific circumstances identified in Rule 2.11(A)(1)-(6). See Opp’n at 24:17-25:28. Judge Sturman’s Answer likewise focuses on NCJC 2.11(A)(1), and disclaims any application thereof because she knows of no reason why her review of Lubbers’ notes would result in any personal knowledge of disputed facts, bias, or prejudice. See Sturman Ans. at 6:1-7. Respectfully, both contentions miss the mark. As explained in the Former Trustees’ motion, Comment 1 to Rule 2.11 plainly states that “a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, **regardless of whether any of the specific provisions in paragraphs (A)(1) through (6) apply.**” See Mot. at 10:26-28 (emphasis added); see also NCJC 2.11(A) (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, **including but not limited to** the following circumstances. . . .”) (emphasis added).

disqualifying appearance of bias or prejudice under § 455(a) can be based on information the judge acquires in the litigation, but only if it is so extreme as to display clear inability to render fair judgment.”).

The United States Supreme Court continued its analysis as follows:

For all these reasons, we think the “extrajudicial source” doctrine, as we have described it, applies to § 455(a). As we have described it, however, there is not much doctrine to the doctrine. The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a *necessary* condition for ‘bias or prejudice’ recusal, since predispositions developed during the course of a trial will sometimes (albeit rarely) suffice. Nor is it a *sufficient* condition for ‘bias or prejudice’ recusal, since *some* opinions acquired outside the context of judicial proceedings (for example, the judge’s view of the law acquired in scholarly reading) will *not* suffice. Since neither the presence of an extrajudicial source necessarily establishes bias, nor the absence of an extra judicial source necessarily precludes bias, it would be better to speak of the existence of a significant (and often determinative) “extrajudicial source” *factor*, than of an “extrajudicial source” *doctrine* in recusal jurisprudence.

Litecky, 510 U.S. at 554 (emphases in original).

The United States Supreme Court thereafter clarified the types of recusal challenges typically barred by the “extrajudicial source factor.” “First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Id.* at 555. “Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of current proceedings, or of prior proceedings, do not constitute a basis for a bias or impartiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.*¹⁵ Finally, “judicial remarks during the course of a trial that are critical or disapproving of, or even

¹⁵ Notably, the Nevada Supreme Court has repeatedly cited *Litecky* for the principle that a judge may be disqualified based on information learned during the course of a judicial proceeding if it would make fair judgment impossible. *See, e.g., Kirksey v. State*, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996) (citing *Litecky* but finding that there was no evidence the judge formed an opinion about the defendant that displayed deep-seated antagonism or made fair judgment impossible); *Williams v. State*, 463 P.3d 468, 2020 WL 2617885, *2 (Nev. May 22, 2020) (unpublished disposition) (citing *Litecky* as grounds for reassigning case upon remand due to statements made by the judge during sentencing hearing).

1 hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality
2 challenge” unless “they reveal a high degree of favoritism or antagonism as to make fair judgment
3 impossible.” *Id.*

4 Here, the Former Trustees do not contend Judge Sturman should be disqualified based on
5 her rulings or statements made during the course of judicial proceedings. Rather, as demonstrated
6 in their moving papers and below, they submit Judge Sturman’s review of the unique and highly
7 prejudicial attorney-client protected information contained in Lubbers’ notes—which was
8 injected into this case multiple times by Scott’s counsel—has placed her impartiality in question,
9 tainted the fact-finding process, and rendered fair judgment on Scott’s claims impossible. To that
10 end, multiple courts have recognized that recusal may be required in this exact scenario, which
11 contradicts Scott’s contention that the prejudicial information must come from an “extrajudicial
12 source.” *See, e.g., Lund v. Myers*, 305 P.3d 374, 377 (Ariz. 2013); *In re Marriage of Decker*, 606
13 N.E.2d 1094, 1107 (Ill. 1992); *In re St. Johnsbury Trucking Co., Inc.*, 184 B.R. 446, 455 n. 17
14 (D. Vt. 1995); *Reilly by Reilly v. Se. Penn. Transp. Auth.*, 479 A.2d 973, 991 (Pa. Sup. Ct. 1984).

15 Thus, the fact that Judge Sturman reviewed the notes in her judicial capacity does not
16 constitute a *per se* bar to the Former Trustees’ request for disqualification pursuant to Rule
17 2.11(A). To the contrary, the extremely prejudicial nature of the privileged information reviewed
18 by Judge Sturman in her capacity as the ultimate trier of fact elevates this matter to one of the
19 unique instances where a judge may be disqualified based on information learned during the
20 course of a judicial proceeding.

21
22
23 **B. The Former Trustees Have Adduced Sufficient Facts to Demonstrate that**
24 **Judge Sturman’s Impartiality Might Reasonably Be Questioned.**

25 The Former Trustees bear the burden of submitting “facts and reasons sufficient to cause a
26 reasonable person to question [Judge Sturman’s] impartiality.” *Towbin Dodge, LLC v. Eighth*
27
28

Judicial Dist. Ct., 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005). Proof of actual bias is *not* required. *See People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 431, 436-47, 894 P.2d 337, 340-41 (1995) (“*PETA*”) ([T]he test for whether a judge’s impartiality might reasonably be questioned is objective; whether a judge is actually impartial is not material. This conclusion is in accordance with the great weight of authority.”); *see also In re Bulger*, 710 F.3d 42, 46 (1st Cir. 2013) (it is “understood that a reasonable person may question impartiality without the presence of evidence that a judge is subjectively biased.”) (Souter, J.); *In re Kensington, Ltd.*, 353 F.3d 211, 220 (3d Cir. 2003) (“It is of no consequence that the judge is not *actually* biased because § 455(a) concerns not only fairness to individual litigants, but, equally important, it concerns the public’s confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who *appears* to be tainted.”) (emphases in original).

Accordingly, that the Former Trustees have not cited to specific examples of Judge Sturman’s actual bias or impartiality as a result of her review of the notes is patently irrelevant, particularly when all proceedings related to the notes or Scott’s supplemental petition have been stayed for more than a year.¹⁶ Moreover, the only evidence necessary to raise serious doubts about Judge Sturman’s impartiality is the undisputed fact that she, as the trier of fact, reviewed and digested Lubbers’ notes containing his views about how the district court would assess the merits of the case along with other privileged information concerning case strategy. This Court will be able to review the notes for itself, but Scott can hardly downplay the significance of the information contained therein as he previously contended—repeatedly—that “any denial to

¹⁶ *See* Order Granting in Part Respondents’ Motion to Stay Proceedings (dated 5/31/19) (on file).

Petitioner utilizing Lubbers' admissions [in the notes] will thwart Petitioner's ability to prove fraud, conspiracy, fraudulent concealment, etc."¹⁷

For her part, Judge Sturman does not contradict any of the facts upon which the Former Trustees' motion is premised. She does, however, express the view that her prior review of Lubbers' privileged notes has not given rise to any personal knowledge of disputed facts or any bias or prejudice concerning any party or counsel under NCJC 2.11(A)(1). *See* Sturman Ans. 6:1-7. Judge Sturman also advises that the notes have been "destroyed" and "believe[s]" that her prior review of Lubbers privileged notes would not influence her impartiality in the litigation. *See id.*¹⁸ The Former Trustees appreciate Judge Sturman's subjective beliefs. As explained above, however, the applicable standard is an objective one that asks whether grounds exist to cause an objective observer reasonably to question the judge's impartiality. *See, e.g., PETA*, 111 Nev. at 437, 894 P.2d at 341 ("The objective standard not only ignores the judge's personal views of [her] own impartiality, but it also ignores the litigants' necessarily partisan views.") (citations omitted). Given the content and significance of Lubbers' notes, the Former Trustees submit that any "well-informed, thoughtful observer," *see* Opp'n at 26:7-8, would reasonably question Judge Sturman's impartiality when sitting as the trier of fact at trial.¹⁹

¹⁷ *See* Ex. 1 at 21:6-8; *see also* Ex. 2 at 21:11-22:1 (same). Even after the Supreme Court's unanimous opinion declaring Lubbers' notes privileged and inadmissible, Scott still characterizes Lubbers' notes as "a key piece of evidence." *See* Opp'n at 1:26.

¹⁸ While the notes may have been "destroyed," that does not mean their presence has vanished from the case. As outlined in the Former Trustees' motion, the notes were attached to and quoted in Scott's supplemental petition and thereafter used again by Scott in his opposition to the Former Trustees' motion to dismiss to dismiss that pleading. *See* Mot. at 6:20-7:14. The motion to dismiss remains pending and, thus, further resolution of matters impacted by the notes is required.

¹⁹ The remainder of Judge Sturman's Answer discusses some recent appellate decisions in the probate area (including *Canarelli*), the fact that the Supreme Court sometimes includes instructions when it remands a case, and that judges are often called upon to conduct in camera privilege reviews. *See* Sturman Ans. 2:16-4:26. The Former Trustees take no position on the

C. Scott's Suggestion that Judge Sturman Can Simply Disregard Lubbers' Notes Is Decidedly Misplaced.

Scott contends that disqualification is not required because “where inadmissible evidence has been received by the court, sitting without a jury, and there is other substantial evidence upon which the court based its findings, the court will be presumed to have disregarded the improper evidence.” Opp’n at 28:6-8 (quoting *McMonigle v. McMonigle*, 110 Nev. 1407, 1409, 887 P.2d 742, 744 (1994)). The Former Trustees do not quibble with this general principle, but it has no application here as Lubbers’ notes are not just inadmissible, but also protected by the attorney-client privilege.

Tellingly, Scott did not cite a single case where the court, sitting as the trier of fact, reviewed highly prejudicial information protected by the attorney-client privilege let alone privileged information that directly addressed a party’s beliefs on how the court would view the merits of the case. *See McMonigle*, 110 Nev. at 1408-09, 887 P.2d at 743 (finding the court improperly considered spouse’s move to Kansas City and continued residence there but that error was harmless); *State v. Medina*, 793 A.2d 68, 79-80 (N.J. App. 2002) (finding the trial judge did not err by declining to recuse after considering pretrial motions and reviewing grand jury transcripts);²⁰ *State v. Read*, 53 P.3d 26, 29 (Wash. 2002) (affirming conviction where trial court considered irrelevant lay testimony on issue of self-defense); *State v. Pickering*, 473 S.W.3d 698,

case law analysis as it does not impact the disqualification question. They obviously agree that appellate courts sometimes provide instructions upon remand, but submit the question of whether this case should be reassigned or the district judge disqualified was not ripe until the threshold privilege determination was made. Finally, the Former Trustees have readily acknowledged that courts often conduct in camera privilege reviews, but have likewise explained what distinguishes this situation. *See* Mot. at 11:10-16; *see also* Point I(c), *infra*.

²⁰ Notably, the *Medina* court recognized that “a judge should be sensitive to the perception of the litigants, counsel, or the informed public that his exposure to inflammatory material might irredeemably preclude him from serving as a neutral and impartial arbiter of the facts.” 793 A.2d at 80

703 (Mo. App. 2015) (finding trial court improperly considered inadmissible breath alcohol test results but remanding for further proceedings because sufficient evidence existed to support conviction); *C.W. v. State*, 793 So.2d 74, 75 (Fla. App. 2001) (trial court’s review of probable cause affidavit containing hearsay statements did not require recusal). Because Scott’s cases address disqualification in the context of evidence improperly considered or admitted under the evidence code—a judicial function generally governed by an abuse of discretion standard—they are clearly distinguishable from the situation presented here.

Unlike Scott’s inapposite legal authority, the Former Trustees submitted ample case law standing for the proposition that a judge, sitting as the trier of fact, who reviews privileged material *in camera* may be forced to recuse as a result. *See* Mot. at 11-12 (listing cases).²¹ That is not to say, as Scott suggests, that the Former Trustees contend Judge Sturman was absolutely barred from reviewing the notes or absolutely required to assign the task to a different judicial officer. To the contrary, Judge Sturman was entitled to exercise her discretion and review Lubbers’ notes *in camera* but, as the Former Trustees forewarned, proceeding in such a manner was not without potential consequences if the notes were ultimately determined to be entirely privileged, which is exactly what the en banc Nevada Supreme Court unanimously found. *See Lund*, 305 P.3d at 312 (“If the trial judge conducts an *in camera* review and upholds the privilege claim, the judge should consider whether recusal is then necessary.”).

Given the content of the notes, it is difficult to imagine a privileged document that would be more prejudicial and worthy of recusal than Lubbers’ notes, the significance of which Scott

²¹ Scott makes a weak attempt to distinguish the Former Trustees’ authorities by either asserting that the purpose of the privilege review was different than the instant action or that the subject information was not identical to Lubbers’ notes. This argument misses the point. The general principle espoused in the case law is that a judge’s *in camera* review of privileged information may expose the judge, where sitting as the trier of fact, to information so prejudicial that it taints the fact-finding process and requires recusal.

has repeatedly acknowledged through his protestations that the claims alleged in his supplemental petition rise and fall on their admission. For all of these reasons, Judge Sturman’s impartiality and ability to render fair judgment—when viewed objectively by a reasonable person—is clearly in question. Scott’s position that the parties should just wait and see what happens at trial is both naive and wholly untenable. Disqualification is proper and warranted here.

II. SCOTT’S COUNTERMOTION SHOULD BE DENIED.

A. Law of the Case and Related Principles Bar Scott’s Countermotion and Resurrected Waiver Argument.

Scott contends he is permitted to “renew” his “motion as to the waiver of privilege as it is no longer a moot issue.” *See* Opp’n at 2:27-28. Scott’s so-called renewal rights are premised on the fiction that the discovery commissioner and district court never addressed his waiver arguments because they found the documents were not privileged in the first place. *See id.* at 1:24-28. The Former Trustees have already demonstrated the factual inaccuracy of Scott’s foundational premise as both the discovery commissioner and the district court found that portions of Lubbers’ notes *were* attorney-client privileged without exception, which determination could only be made in the absence of any waiver. *See supra* at 6:1-7:12. Undeterred by the facts, Scott claims the Supreme Court’s reversal on the privilege issue now allows him to re-argue the waiver issue anew for a second time. The law provides otherwise.

“The law of the case doctrine ‘refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher court in earlier phases.’” *Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (quoting *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C. Cir. 1995)). The doctrine bars reconsideration of a court’s explicit decisions, as well as those issues decided by necessary implication. *See Huckabay Properties*,

1 *Inc. v. NC Auto Parts, LLC*, 386 P.3d 984, 2016 WL 7324144, at *1 (Nev. Dec. 15, 2016)
2 (unpublished disposition) (citing *Zhang*). Law of the case principles apply to Supreme Court writ
3 proceedings. *See, e.g., Righetti v. State*, 439 P.3d 392, 2019 WL 1772303, at *2 (Nev. Apr. 19,
4 2019) (unpublished disposition) (applying law of the case doctrine based on petition for writ of
5 prohibition that was rejected on its merits) (citing *Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30,
6 173 P.3d 724, 728 (2007)).

7
8 One of the “family of rules” encompassed in the law of the case context is known as the
9 waiver doctrine. Waiver in the law of the case setting applies “when the trial court has expressly
10 or impliedly ruled on a question and there has been an opportunity to challenge that ruling on a
11 prior appeal.” *Zhang*, 130 Nev. at 9, 317 P.3d at 819 (quoting *Crocker*, 49 F.3d at 740-41 n.2).
12 As the Court of Appeals for the Fifth Circuit has explained:

13 [T]he waiver doctrine is a consequence of a party’s inaction. The waiver doctrine
14 holds that an issue that could have been decided but was not raised on appeal is
15 forfeited and may not be revisited by the district court on remand. The doctrine
16 also prevents us from considering such an issue during a second appeal. The
17 doctrine promotes procedural efficiency and prevents the bizarre result that a party
who has chosen not to argue a point on a first appeal should stand better as regards
the law of the case than one who had argued and lost.

18 *Lindquist v. City of Pasadena Texas*, 669 F.3d 225, 239-40 (5th Cir. 2012) (internal quotations
19 and footnotes omitted); *see also United States v. Frias*, 521 F.3d 229, 234 (2d Cir. 2008) (“And
20 where an issue was ripe for review at the time of an initial appeal but was nonetheless foregone,
21 it is considered waived and the law of the case doctrine bars the district court on remand and an
22 appellate court in a subsequent appeal from reopening such issues.”).

23
24 The waiver doctrine applies here. Scott extensively argued in his objections to the DCRR
25 before Judge Sturman that the Former Trustees had waived the attorney client privilege based on
26 their alleged “reckless” inadvertent disclosures. Judge Sturman expressly ruled that “Petitioner’s
27 Objections to the DCRR are DENIED.” Judge Sturman also affirmed the discovery
28

commissioner's findings that a portion of Lubbers' notes were protected by the attorney-client privilege without exception, a ruling that could only be made if all of Scott's waiver arguments were rejected. This portion of the district court's ruling was obviously adverse to Scott who could have challenged it in several ways. He could have promptly sought writ relief as the Former Trustees did in response to the portion of the district court's ruling that was adverse to them; he could have sought to file a cross-petition once the Supreme Court directed him to answer the Former Trustees' writ petition on the same subject matter; or he could have better developed his waiver arguments in his answering brief when responding to the Former Trustees' writ petition. Scott, however, did none of those things. He chose inaction—presumably because the district court had ordered disclosure of the portion of Lubbers' notes he was most interested in and had already quoted in his supplemental petition. Now that the Nevada Supreme Court reversed the portion of the district court's order Scott found favorable, he is not permitted to revive arguments before the district court that he consciously chose to forego when he had the opportunity to raise them in the appellate court.²²

The Former Trustees expect Scott to argue in his counter-motion reply that Judge Sturman “never opined on the waiver issue” such that the law of the case waiver doctrine cannot apply

²² After all, Scott acknowledged before the Nevada Supreme Court that he could have filed his own writ petition, but did not on the purported grounds he would not have gained a direct benefit therefrom. *See* Answer to Pet. for Writ of Mandamus or Prohibition (dated 7/15/19) at 49 and n.143, true and correct excerpts of which are attached hereto as Exhibit 9. Scott likewise recognized his ability to raise his waiver argument in response to the Former Trustees' writ petition as he incorporated by reference his objections and supporting reply addressing the Former Trustees' alleged “reckless conduct with respect to discovery,” *see id.* at 13 and n.45, and repeatedly argued that the Former Trustees had inadvertently produced Lubbers' typed notes “not once but twice.” *See id.* at 13; 57. While Scott may now wish he had pursued his waiver arguments in more detail or in a different manner, the law of the case doctrine “cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 789-90 (1975).

here. *See* Opp’n at 2:26. This is wrong for multiple reasons. To begin, Judge Sturman’s order expressly states that “Petitioner’s Objections are DENIED.”²³ Scott cannot dispute that one of his objections to the DCRR was that the Former Trustees had allegedly engaged in reckless inadvertent disclosures such that they had waived the attorney-client privilege. The order does not exclude any objections from its ambit or reserve any for future determination. Scott’s counsel, moreover, approved the form of the order.²⁴ Next, even if Judge Sturman did not expressly rule on Scott’s waiver objections, and she did, she impliedly ruled on the issue by affirming that a portion of Lubbers’ notes was attorney-client privileged without exception as an enforceable privilege cannot exist if it has been waived. *See Zhang*, 130 Nev. at 9, 317 P.3d at 819 (waiver in the law of the case setting applies to questions expressly or impliedly decided). Lastly, that Judge Sturman did not make detailed findings on the waiver issue is irrelevant. The law of the case doctrine “turns on whether a court previously decided upon a rule of law . . . not whether, or how well, it explained the decision.” *United States v. Real Prop. Located at Incline Vill.*, 958 F. Supp. 482, 487-88 (D. Nev. 1997) (quotation omitted) (“[e]ven ‘summary’ treatment of a legal or factual issue becomes law of the case.”).

B. The Laches Doctrine Bars Scott’s Countermotion.

“Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable.” *Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 610–11, 836 P.2d 633, 636–37 (1992). Writ petitions are subject to laches where (1) there was an unexcusable delay in seeking the petition, (2) an implied

²³ *See* Ex. 8 at 3:12.

²⁴ *Id.* at 4:9-14.

1 waiver arose from petitioner's knowing acquiescence in existing conditions, and (3) there were
2 circumstances causing prejudice to the opposing party. *Id.* at 611, 836 P.2d at 637 (applying
3 laches where party waited for over a month after competitor was awarded contract before seeking
4 writ relief); *State v. Eighth Judicial Dist. Ct.*, 116 Nev. 127, 135, 994 P.2d 692, 697 (2000)
5 (denying petition for writ of mandamus where party waited 11 months following entry of district
6 court order to pursue relief).

7
8 Because Scott's countermotion is nothing more than a belated attempt to obtain the same
9 relief he could have pursued through a prior writ petition but chose not to, the Former Trustees
10 submit it can be independently denied based on laches. First, Scott never pursued his own writ
11 relief despite Judge Sturman's denial of his objections more than a year ago in May 2019. Second,
12 as explained above, the decision to forego an issue that was ripe for appellate review constitutes
13 waiver when the party tries to revive the issue before the district court post-appeal. And third,
14 Scott's attempt to resurrect the waiver-by-reckless-disclosure issue prejudices the Former
15 Trustees by forcing them, *inter alia*, to spend time and resources re-arguing an issue that was
16 decided long ago.

17
18 **C. The Parties' ESI Protocol Bars Scott's Countermotion.**

19 The written ESI Protocol agreed to by the parties in this action is a binding contract. *See*
20 *Great-West Life & Annuity Ins. Co. v. American Economy Ins. Co.*, 2013 WL 5332410, at * 5 (D.
21 Nev. Sept. 23, 2013) ("[A] protective order based on a written agreement between the parties is
22 subject to the rules of contractual interpretation, including that the agreement should be enforced
23 in accordance with the ordinary meaning of the language used in the agreement."); *see also id.* at
24 *2 (parties' agreements regarding privilege and/or trial-preparation material protection
25
26
27
28

“ordinarily control if they adopt procedures different than those in [FRCP] 26(b)(5)(B).”
(quoting Advisory Comm. Notes to 2006 Amendments).²⁵

The plain language of the ESI Protocol provides that a party who disputes a claim of privilege after an inadvertently produced document has been clawed back under the agreement may bring a motion seeking a determination of whether a privilege applies, “*but may only contest the asserted privileges on ground[s] other than the inadvertent production of such document(s).*”²⁶ Scott’s countermotion is premised entirely on the argument that the Former trustees have waived the attorney-client privilege based on their inadvertent disclosures in this action. Accordingly, the Court’s analysis of Scott’s countermotion should end here as it falls squarely within the foregoing contractual prohibition.

²⁵ As Scott correctly notes, Federal Rule of Evidence 502 (along with FRCP 26(b)(5)(B)) now address the effect of inadvertent disclosures of privileged information and waiver in federal proceedings. See Opp’n at 10:8-10. Federal courts, though, have long recognized the enforceability of clawback agreements prior to the enactment of FRE 502, see, e.g., *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 290 and n.81 (S.D.N.Y. 2003) (“many parties to document-intensive litigation enter into so-called ‘claw-back’ agreements that allow the parties to forego privilege review altogether in favor of an agreement to return inadvertently produced privilege documents”), and FRE 502(e) expressly contemplates them post-enactment. See Advisory Comm. Explanatory Note, Rev. 11/28/2007 (“Subdivision (e) codifies the well-established proposition that parties can enter an agreement to limit the effect of waiver by disclosure between or among them.”). Nevada has not adopted any counterpart to FRE 502, but it did recently adopt a counterpart to FRCP 26(b)(5)(B) that imposes notification and clawback procedures when protected information is inadvertently produced. See NRCP 26(b)(5)(B) (eff. 3/1/19). The obligations and procedures set forth in the Rule are nearly identical to those contained in the parties’ ESI Protocol.

²⁶ See Opp’n, App. at 30 (ESI Protocol ¶ 21) (emphasis added). Scott obviously took advantage of this procedure when he challenged the privileged nature of Lubbers’ Group 1 and Group 2 notes before the discovery commissioner, Judge Sturman, and the Nevada Supreme Court—the latter of which conclusively held that all of Lubbers’ notes were entirely protected and undiscoverable. See *Canarelli*, 464 P.3d at 123 (Conclusion). Beginning at the district court level, Scott’s privilege challenge included arguments based on the inadvertent production itself, see Point II(A), *supra*, which was improper then and is even more so now.

To extricate himself from a contract he no longer likes, Scott asks the Court to impose obligations and terms on the Former Trustees that do not exist in the parties' agreement. These include pre-production review obligations, a new category for "reckless" productions, post-production review obligations, *de facto* limits on the timing and number of clawbacks, *et cetera*. Scott additionally claims the Former Trustees have breached the ESI Protocol by failing to provide a privilege log and that undersigned counsel has failed to comply with RPC 1.6(c) requiring attorneys to take reasonable precautions to avoid inadvertent disclosures. Each argument is meritless.

Protocol terms. Scott is certainly not the first party who has sought to rewrite a deal once it no longer finds the terms favorable. Magistrate Judge Hoffman (Ret.) addressed a similar situation in *Great-West Life, supra*. There, the parties agreed to a scheduling order and protective order that established procedures for inadvertent disclosures, clawbacks, non-waivers, and methods of challenging privilege assertions. *See id.*, 2013 WL 53332410, at *11. After one of the parties (AEI) clawed back two different sets of documents on grounds they had been inadvertently produced, the other party (Great West) challenged the privilege assertions under FRE 502 claiming that at least one of the disclosures was not inadvertent as the documents had been provided to a testifying expert, AEI failed to take reasonable steps to prevent disclosure, AEI unreasonably delayed exercising its initial clawback, and the need for a second clawback was further evidence of AEI's carelessness. *Id.* at *2-4. AEI responded that the parties' binding agreements supplanted the stricter analysis under FRE 502(b) and that "the only challenge available to a party that received inadvertently produced information is whether the information is privileged in the first instance." *Id.* at *11.

Judge Hoffman agreed with AEI's arguments on this point. As threshold matter, Judge Hoffman found "[t]here is no requirement that, in order to supplant rule 502(b), an agreement

1 provide adequate detail regarding what constitutes inadvertence, what precautionary measures are
2 required, and what the parties' postproduction responsibilities are to escape waiver." *Id.* at *12.
3 Nor were parties required to include "specific opt-out language" in order to supplant Rule 502(b).
4 *Id.* That said, Judge Hoffman acknowledged such agreements should include "plain language"
5 articulating the parties' desire to supplant Rule 502(b). *Id.*

6 After analyzing the plain language of the parties' agreement in *Great West Life*, Judge
7 Hoffman concluded as follows:

8
9 Ultimately, the common sense interpretation of the claw back provisions at issue
10 supports the conclusion that the parties had an agreement that inadvertently
11 produced documents subject to a claim of privilege may be challenged as to the
12 claim of privilege. However, it is the Court's view that the parties' agreement
13 clearly provides that inadvertently produced documents, upon a determination that
14 the documents are privileged, must be returned without waiver to the disclosing
15 party regardless of the care taken by the disclosing party. Rule 502 contemplates
16 that parties may enter such agreements and that courts will enforce them. Well
crafted claw back agreements are a critical tool utilized, in large part, to avoid
excessive costs and avoid unnecessary disputes. The undersigned is not willing to
permit a party that has entered into such an agreement to use a linguistic scalpel to
excise itself from provisions of an agreement willfully entered that the party no
longer viewed as beneficial. Such agreements are intended to benefit all parties
thereto and should not be casually cast aside.

17 *Id.* at *14. Courts interpreting similar agreements, both pre- and post-enactment of Rule 502,
18 have reached the same results.²⁷

22 ²⁷ See, e.g., *In re Testosterone Replacement Therapy Prods. Liability Litig.*, 301 F.Supp.3d 917,
23 925-26 (N.D. Ill. 2018) (finding that parties' agreement supplanted provisions of FRE 502 and,
24 thus, court was not required to determine whether party took reasonable steps to prevent
25 disclosure or took prompt action to rectify the error as the Advisory Committee Notes to FRE 502
26 recognize the parties can enter agreements that "may provide for the return of documents without
27 waiver irrespective of the care taken by the disclosing party"); *In re Sulfuric Acid Antitrust Lit.*,
28 235 F.R.D. 407, 418, 419 (N.D. Ill. 2006) (applying plain meaning of protective order such that
party seeking to claw back inadvertently produced documents had to do so within 30 days after
actual (not constructive) discovery of the mistake as "the obvious purpose of the protective order
was to avoid the uncertainty that would have existed without it.").

Because Nevada has no equivalent to FRE 502, there is obviously no state evidentiary rule and corresponding jurisprudence to supplant regarding inadvertent disclosures, clawbacks, and waiver limitations. *Great-West Life* is nonetheless instructive because it reaffirms the unremarkable proposition that agreements between parties to limit the effect of waivers should be enforced according to their plain language regardless of one party's subsequent desire to disavow the contract or otherwise impose obligations and language that do not exist therein. Here, the ESI Protocol expressly prohibits privilege challenges based on a party's inadvertent disclosure of documents. Scott's countermotion violates the plain language of the parties' agreement and, hence, should be summarily denied.

Privilege Log. Seeking to deflect attention from his own violations of the ESI Protocol, Scott repeatedly claims the Former Trustees have violated the protocol by failing to provide (or update) a privilege log after their various productions. *See, e.g.*, Opp'n at 15:28; 19:20-21. As an initial matter, the plain language of the protocol only requires a party to "produce a privilege log within 120 days after the completion of its document production."²⁸ It says nothing about producing privilege logs every time a party makes a discrete production. Regardless, the undersigned advised Scott's counsel in writing that it would not agree to log privileged communications between the Former Trustees and counsel that occurred after litigation commenced in September 2013.²⁹ This position is consistent with applicable law. *See, e.g.*, *Grider v. Keystone Health Plan Central, Inc.*, 580 F.3d 119, 139 n.22 (3d Cir. 2009) (agreeing that a rule requiring creation of an ongoing log of all post-complaint privileged communications would have a chilling effect on the attorney-client relationship, and underscoring that "a privilege

²⁸ *See* Opp'n, App. at 29 (ESI Protocol ¶ 17).

²⁹ *See* Email from C. Williams to D. Dwiggins dated 6/28/18, a true and correct copy of which is attached hereto as Exhibit 10.

log may not be required for communications with counsel that take place after the filing of a law suit.”); *In re Snap Inc. Securities Litigation*, 2018 WL 7501294, at *1 (C.D. Cal. 2018) (denying motion to compel and noting that “[c]ourts in this circuit routinely deny a motion to compel a privilege log of attorney-client communications or work product dated after commencement of litigation.”). While Scott’s attorneys may have disagreed with the date litigation commenced,³⁰ they never brought the matter to the Court, and they certainly have not logged any post-litigation communications with their own client.

RPC 1.6(c). In a final effort to import additional provisions into the ESI Protocol, Scott argues the protocol’s language preserving the “applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently or otherwise privileged information” means the Former Trustees’ counsel were obligated to conduct a pre-production review per RPC 1.6(c), and the alleged failure to do so authorizes Scott to circumvent the plain language of the ESI Protocol and pursue his waiver argument. *See* Opp’n at 14:16-15:6. Scott’s claim that the Former Trustees “admitted that no pre-production review was implemented” is nonsense. *See id.* at 12:6; 14:6-14. When Scott improperly raised this argument the first time before Judge Sturman, the Former Trustees opposed it and explained the steps their counsel had taken in connection with the subject document productions.³¹ Suffice it to say, a purported “admission” about the lack of a pre-production review is nowhere to be found. In any event, the implementation of the ESI Protocol was designed to effectuate the provisions of RPC 1.6, not undermine them, by ensuring that if inadvertent productions of potentially protected information did occur despite reasonable efforts, there would be no waiver unless the protections never applied in the first place.

³⁰ *See* Email from D. Dwiggin to C. Williams dated 6/28/18, a true and correct copy of which is attached hereto as Exhibit 11.

³¹ *See* Ex. 5; *see also*, Declaration of J. Colby Williams ¶ 15.

CONCLUSION

Based on the foregoing, the Former Trustees respectfully request that their motion be granted, and Scott's counter-motion denied.

DATED this 13th day of July, 2020.

CAMPBELL & WILLIAMS

By /s/ J. Colby Williams

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2020, I caused a true and correct copy of the foregoing **Reply In Support of Respondents' Motion to Disqualify the Honorable Gloria Sturman and Opposition to Countermotion for Waiver of the Attorney-Client Privilege** to be served through the Eighth Judicial District Court's electronic filing system, to the following parties:

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