

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
SORRENTO THERAPEUTICS INC., <i>et al.</i>	)	
	)	Case No. 23-90085 (DRJ)
Debtors.	)	
	)	(Jointly Administered)
	)	

**PARTY IN INTEREST, TIMOTHY CULBERSON’S, RESPONSE TO LATHAM & WATKINS,
LLP’S SECOND MOTION FOR PROTECTIVE ORDER REGARDING TIMOTHY
CULBERSON’S SECOND REQUEST FOR PRODUCTION**

COMES NOW, Party in Interest, Timothy Culberson, Esq. and respectfully files this Response to Latham & Watkins, LLP’s Second Motion for Protective Order Regarding Timothy Culberson’s Second Request for Production and will respectfully show unto the Court as follows:

I.

ARGUMENT

**A SELF-SERVING ATTORNEY AFFIDAVIT ON A RELEVANT CONTESTED MATTER
DOES NOT CLOSE THE DOOR TO DISCOVERY TO CONTEST THE SAME ISSUE**

On June 10, 2024, LW filed their final fee application for final approval of over 26 million in total fees charged against the Sorrento bankruptcy estate. [Docket No. 2245]. Party in Interest, Mr. Culberson, filed his objections to LW’s final fee application on July 2, 2024. [Docket No. 2278]. Until Mr. Culberson’s objection was filed, there was no pending contested matter through which discovery could be served. On July 11, 2024, Party in Interest served a request for production reasonably calculated to lead to the discovery of admissible evidence on this newly contested matter. [Docket No. 2289]. Party in Interest is primarily seeking all communications in email, text, or written form between anyone employed with Latham & Watkins, LLP (“LW”) and Elizabeth Freeman or that discuss Elizabeth Freeman from January 1, 2023 to the present. **Latham admits in their motion, this information could be relevant to the issue of whether LW knew of Elizabeth Freeman’s romantic relationship before it became public.** [Docket No. 2311;

Page 9; Paragraph 20] Party in Interest agrees wholeheartedly. This issue is absolutely central to the final fee application hearing because at the time LW submitted their application for retention such knowledge would have compelled LW to disclose such relationship and disqualified them from matters before Judge Jones since they were soliciting Ms. Freeman’s “advice” as a “friend”¹ on critical matters before the court including “litigation strategy”, “retention matters”, “mediation”, and “pending rulings.”²

LW makes a circular argument in their effort to obstruct this relevant discovery. They claim that the relevant factual issue of whether they knew of Ms. Freeman and Judge Jones’ intimate relationship before it became public has already been settled. They rely solely on a self-serving affidavit/declaration of Ms. Reckler. In that affidavit, Ms. Reckler denies knowing about the relationship and then proceeds to testify for everyone else in her firm stating she polled her fellow co-workers and none of them said yes. LW argues Ms. Reckler’s declaration on behalf of herself and her firm precludes discovery because there is no controverting evidence. However, there is no controverting evidence because LW has, to date, successfully blocked any discovery served on them. And round and round it goes.

Simply being an officer of the court does not cloak such person in immunity from challenge. Certainly, being an officer of the court does require an attorney to be truthful and candid before a tribunal. However, this duty does not in and of itself grant every attorney’s sworn statement sacrosanct status. To do so, would ignore the many times that unfortunately members of the bar have not been so truthful with the Court. Ironically, the very issue we are faced with concerning Judge Jones and Elizabeth Freeman centers around this sad reality. Therefore, Party in Interest should be allowed to contest an attorney’s affidavit testimony only *after* limited discovery on the issue is completed.

LW also argues that Mr. Culberson had ample opportunity to cross-examine Ms. Reckler at the Rule 60b hearing and thus, her testimony settles the matter. Any cross-examination at that hearing was

¹ At the 2004 hearing argued by the equity committee, Ms. Freeman’s attorney admitted on the record that she was providing consultation and advice to “friends” when she was consulted by Latham & Watkins, LLP as previously demonstrated in the Latham billing records. [Docket No. 2311; Page 67, Lines 11-12]

² These facts have been fully briefed to the court and no exhibits attached to this motion in the interest of brevity and efficiency.

premature without the benefit of written discovery to effectively cross-examine the witness. LW tried to force Mr. Culberson's hand knowing the information needed to test Ms. Reckler's testimony was being withheld. Therefore, Mr. Culberson reserved the right to question Ms. Reckler at a later date once discovery was completed. [Docket No. 2311; page 161 – line 23 through page 162 – line 13]. This Court ultimately denied Mr. Culberson's first discovery requests as to LW relating to the 60b motion which had a higher "extraordinary circumstances" hurdle to jump. However, the current request for production is pursuant to a final fee application objection under Rules 327 and 330. LW incorrectly tries to use the ruling from the 60b matter to preclude discovery in this separate contested matter under Rules 327, 330 and 2014. The standards to be successful are significantly different.

Under Rule 327, the disclosure requirement is broad and sweeping to protect the integrity of the bankruptcy system and avoid even the *appearance of impropriety*. *In re Vascular Access Ctrs., L.P.*, 613 B.R. at 623; *In re Nilhan Developers, LLC*, 2021 WL 1539354, (Bankr. N.D. Ga. April 19, 2021); *In re US Bentonite, Inc.*, 536 B.R. 948, 957-58 (Bankr. D. Wy. 2015). Specifically, Rule 327(a) is intended to broadly prohibit the employment of a professional person not only when there is an actual conflict, but also when there is a potential conflict or an appearance of a conflict. *See In re Rabex Amuru of North Carolina, Inc.*, 198 B.R. 892, 895-97 (Bankr.M.D.N.C. 1996); *In re Garza*, 1994 Bankr. LEXIS 1273, 1994 WL 282570, at *2 (Bankr.E.D.Va. Jan. 19, 1994); *In re WVS, Investment Joint Venture*, 1990 U.S. Dist. LEXIS 20222, 1990 WL 191864, at *2 (D.Colo. Jan. 4, 1990). Section 327(a) is intended to address the appearance of impropriety as much as its substance, to remove the temptation and opportunity to do less than duty demands. It is intended to prevent even the appearance of conflict, irrespective of the integrity of the person or firm under consideration. (citations omitted); *but see In re Marvel Entm 't Group, Inc.*, 140 F.3d 463, 476 (3d Cir. 1998) (holding that while a court may disqualify a professional under 327(a) for a potential conflict of interest, "the court has no authority to disqualify a professional solely on the basis of an appearance of a conflict"). *Johnson v. Richter, Miller & Finn (In re Johnson)*, 312 B.R. 810, 820 n.10 (E.D. Va. 2004).

As LW admitted in their motion for protection, communications between LW and Elizabeth Freeman could be relevant as to whether LW knew of Ms. Freeman's connection to Judge Jones and any potential conflicts that could arise as a result of that influence when Ms. Freeman was consulting on the Sorrento matter before Judge Jones. To assume there is no contradicting evidence in LW possession simply because Ms. Reckler denies LW knew about Freeman and Jones sets a very dangerous precedent. It encourages violations of Rules 327 and 2014 if the parties know they simply can file an affidavit denying any wrongdoing without the fear of responding to discovery to prove otherwise. Mr. Culberson is entitled to seek this limited discovery. Especially in light of the very serious allegations surrounding Judge Jones and Elizabeth Freeman, including a US Justice Department investigation. Both Ms. Freeman and Judge Jones were active participants at critical stages of this bankruptcy proceeding when the die was being cast that affected both creditors and shareholders of the Debtor. LW should be more than willing to provide the information given the circumstances, if nothing else than to exculpate LW once and for all. This would serve to restore some faith in the integrity of this process.

LW should be compelled to comply with Rule 26(b)(5) of the Federal Rules of Civil Procedure if they claim a privilege to this otherwise discoverable information. A privilege log is required that describes the specific documents being withheld without disclosing the alleged privileged information with sufficiency to allow the parties and the Court to access such alleged privilege. *See generally* FRCP §26(b)(5). It is also important to note that LW incorrectly argues that the attorney-client privilege applies here. It does not. The attorney client privilege belongs to the client, not the attorney. *In re White*, 659 B.R. 68, 83 (Bankr. D.S.C. 2024). LW no longer represents the Debtor and cannot assert any privilege on their behalf. Mr. Culberson served similar discovery on both counsel for Sorrento and the liquidation trustee who represent the Debtor's interests currently. Both counsels did not raise any concerns about attorney-client confidentiality on behalf of the Debtor in recent telephone conferences.

The only conceivable privilege that might apply would be the attorney work-product privilege. However, it is premature to make any rulings on privilege until LW is ordered to comply with Rule 26(b)(5) and provide the required privilege log. Once this is completed, there may be in a need for an *in camera*

inspection of the withheld documents to make sure the work-product privilege is not being abused in light of these very serious allegations.

II.

MOTION FOR CONTINUANCE OF EVIDENTIARY HEARING

In addition to the necessary steps that still need to be taken as to the discovery to LW, Party in Interest has pending discovery to Debtor's counsel and the liquidation trustee. Party in Interest has had discussions with both counsels in a spirit of cooperation and expects responses shortly. Jackson Walker is also in the process of producing responsive documents that relate to this contested matter pursuant to Judge Rodriguez discovery control plan. It is, therefore, likely that the September 16 hearing currently set will not give Party in Interest sufficient time to complete the pending discovery and review the documents to analyze his position going forward. Party in Interest asks this Court to reschedule this evidentiary hearing on the merits of his objections until at least October 1, 2024.

III.

PRAYER FOR RELIEF

WHEREFORE, Timothy L. Culberson, party in interest, respectfully requests that this Court order (1) Latham & Watkins, LLP produce all responsive non-privileged documents within 20 day; (2) and LW shall also produce for all responsive documents being withheld, a privilege log compliant with the rules of procedure within 10 days; (3) all documents produced shall be in their original electronic form containing all original metadata; (4) all original paper documents shall be scanned into pdf format for production; (5) the hearing on the final fee applications be continued until at least October 1, 2024 and (6) for such further relief as this court deems proper.

(SIGNATURE FOLLOWS ON NEXT PAGE)

Respectfully submitted,

THE CULBERSON LAW OFFICE, PLLC

//S// Timothy L. Culberson //S//

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PRO SE PARTY IN INTEREST

CERTIFICATE OF SERVICE

By my electronic signature above, I hereby certify that the above foregoing instrument was served on all counsel of record and all parties appeared herein on this the 8th day of August 2024 by the Court's CM/ECF system.

**IN THE UNITED STATES BANKRUPTCY COURT
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**ORDER ON LATHAM & WATKINS, LLP'S SECOND MOTION FOR PROTECTIVE ORDER
REGARDING TIMOTHY CULBERSON'S SECOND REQUEST FOR PRODUCTION**

I.

ORDER

This Court, having considered LATHAM & WATKINS, LLP'S SECOND MOTION FOR PROTECTIVE ORDER REGARDING TIMOTHY CULBERSON'S SECOND REQUEST FOR PRODUCTION and PARTY IN INTEREST, TIMOTHY CULBERSON'S, RESPONSE TO LATHAM & WATKINS, LLP'S SECOND MOTION FOR PROTECTIVE ORDER REGARDING TIMOTHY CULBERSON'S SECOND REQUEST FOR PRODUCTION_and related filings; the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; it appearing that this motion and request for relief is in the best interest of the Debtors' estates, their creditors, and parties in interest; and after due deliberation and sufficient cause appearing herein, it is HEREBY ORDERED THAT:

Latham & Watkins, LLP's ("LW") Second Motion for Protective Order is hereby DENIED. IT IS FURTHER ORDERED THAT;

LW produce all responsive non-privileged documents within 20 days of this order; IT IS FURTHER ORDERED THAT;

LW shall also produce for all responsive documents being withheld, a privilege log compliant with the rules of procedure within 10 days; IT IS FURTHER ORDERED THAT;

All documents produced shall be in their original electronic form containing all original metadata.

IT IS FURTHER ORDERED THAT;

All original paper documents shall be scanned into pdf format for production.

Signed _____, 2024.

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM ONLY

Respectfully submitted,

THE CULBERSON LAW OFFICE, PLLC

//S// Timothy L. Culberson //S//

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PRO SE PARTY IN INTEREST

CERTIFICATE OF SERVICE

By my electronic signature above, I hereby certify that the above foregoing instrument was served on all counsel of record and all parties appeared herein on this the 8th day of August, 2024 by the Court's CM/ECF system.