

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:)	Chapter 11 (Post-Confirmation)
)	
BIRD GLOBAL, INC., <i>et al.</i> , ¹)	Case No. 23-20514-CLC
)	
Debtors.)	(Jointly Administered)
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**LIQUIDATING TRUSTEE’S MOTION FOR *IN CAMERA* REVIEW
OF DOCUMENTS WITHHELD FROM PRODUCTION BY
ERNST & YOUNG LLP BASED ON PURPORTED PRIVILEGES**

Joseph J. Luzinski (the “**Liquidating Trustee**”), not individually but solely in his capacity as the Liquidating Trustee of the Bird Global Liquidating Trust, by his undersigned counsel, hereby files his *Motion For In Camera Review Of Documents Withheld From Production By Ernst & Young LLP Based On Purported Privileges* pursuant to Rule 2004(c) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rule(s)**”) and Local Rule 2004-1(D), and states in support thereof as follows:

PROCEDURAL BACKGROUND

1. On December 20, 2023 (the “**Petition Date**”), voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) were filed by Bird Global Inc., Bird Rides Inc., Bird US Holdco LLC, Bird US Opco LLC, and Skinny Labs Inc. (together, the “**Debtors**”) with this Court.

2. On the same day, the Court entered an *Order Granting Debtors’ Ex Parte Motion for Joint Administration* (ECF No. 29) of the Debtors’ cases for procedural purposes only.

¹ The last four digits of the Debtors’ federal tax identification numbers are: (i) Bird Global, Inc. (3155); (ii) Bird Rides, Inc. (9939); (iii) Bird US Holdco, LLC (8390); (iv) Bird US Opco, LLC (6873); and (v) Skinny Labs, Inc. (8176).

3. On June 3, 2024, the Debtors filed their *Second Amended Joint Chapter 11 Plan of Liquidation* (ECF No. 802 – the “**Chapter 11 Plan**”).

4. In Article VI of the Chapter 11 Plan, the Debtors provided for (i) the establishment of a Liquidating Trust; (ii) the appointment of Joseph J. Luzinski as Liquidating Trustee; (iii) the preservation of Retained Causes of Action; and (iv) the Liquidating Trustee’s standing to prosecute Retained Causes of Action. *See also id.* at § 1.1(100). Exhibit 6 of the Chapter 11 Plan likewise stated that “[o]n and after the Effective Date ... the Liquidating Trustee ... shall have standing to and may pursue such Retained Causes of Action specifically including, but not limited to, “Claims or Causes of Action of the Debtors against any former officer or director, or any former attorney, accountant or auditor, of the Debtors who is not a Released Party.”

5. In order to facilitate the Liquidating Trustee’s investigation and prosecution of Retained Causes of Action, the Chapter 11 Plan also provided that: a) “[a]ll privileges with respect to the property of the [Debtors’] Estates, including the attorney/client privilege, to which the Debtors are entitled shall automatically vest in, and may be asserted by or waived on behalf of, the Liquidating Trustee”; and b) “[i]n connection with the transfer of such Liquidating Trust Assets, any attorney client privilege, work product privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest in the Liquidating Trust and its representatives, and the Debtors and the Liquidating Trustee are directed to take all necessary actions to effectuate the transfer of such privileges.” *See id.* at §§ 6.2 and 6.3 (the “**Privilege Provisions**”).

6. On August 2, 2024, the Court entered an *Amended Order (I) Approving the First Amended Disclosure Statement for Debtors’ Second Amended Joint Chapter 11 Plan of Liquidation on a Final Basis, (II) Confirming the Debtors’ Second Amended Joint Chapter 11 Plan*

of Liquidation, (III) Approving the Insurance Settlement Agreements, and (IV) Entering Bar Order and Channeling Injunction (ECF No. 1214 - the “**Confirmation Order**”).

7. In the Confirmation Order, the Court (i) approved the Liquidating Trust Agreement; (ii) ratified the selection of Joseph J. Luzinski as Liquidating Trustee; (iii) stated that the Liquidating Trustee shall have standing to and may pursue Retained Causes of Action after the Effective Date; and (iv) approved the Privilege Provisions. *See* Confirmation Order, Conclusion of Law at ¶¶ 9, 12, and 32.

8. On September 17, 2024, the Debtors filed their *Notice of Occurrence of Effective Date of the Debtors’ Second Amended Joint Chapter 11 Plan of Liquidation* (ECF No. 1334) and stated therein that the effective date of the Chapter 11 Plan occurred on September 17, 2024 (the “**Effective Date**”).

FACTUAL BACKGROUND

9. Since the Effective Date, the Liquidating Trustee has been investigating the causes of the Debtors’ demise.

10. E&Y was the Debtors’ independent auditor at the time Bird Global disclosed it had engaged in improper revenue recognition practices for over two years contrary to Generally Accepted Accounting Principles (GAAP). In the same disclosure, Bird Global represented that it would be filing restatements with the United States Securities and Exchange Commission (“**SEC**”) for the subject periods because the previously filed financial statements materially overstated revenues and materially understated deferred revenues, rendering them unreliable.

11. More specifically, Bird Global’s Form 8-K filed with the SEC on November 14, 2022 stated as follows:

On November 11, 2022, the Audit Committee of the Board of Directors (the “Audit Committee”) of Bird Global, Inc. (the “Company”), after discussion with management, determined that (i) the Company’s audited consolidated financial statements as of December 31, 2021 and 2020, and for the years then ended, and quarterly periods within those years, included in the Annual Report on Form 10-K filed with the Securities and Exchange Commission (the “SEC”) on March 15, 2022, (ii) its condensed consolidated financial statements as of March 31, 2022, and for the three months then ended, included in the Quarterly Report on Form 10-Q filed with the SEC on May 16, 2022 and (iii) its condensed consolidated financial statements as of June 30, 2022, and for the three and six months then ended, included in the Quarterly Report on Form 10-Q filed with the SEC on August 15, 2022 (collectively, the “Original Filings”, and each such quarterly or annual period covered therein, an “impacted period”), ***should no longer be relied upon***. Similarly, any previously furnished or filed reports, related earnings releases, investor presentations or similar communications of the Company describing the Company’s financial results contained in the Original Filings ***should no longer be relied upon***.

The determination results from an error identified in connection with the preparation of the Company’s condensed consolidated financial statements as of September 30, 2022, and the three and nine months then ended, related to its business system configuration that impacted the recognition of revenue on certain trips completed by customers of its Sharing business (“Rides”) for which collectability was not probable. Specifically, for certain customers with insufficient preloaded “wallet” balances, the Company’s business systems recorded revenue for uncollected balances following the completion of certain Rides that should not have been recorded. ***The Company believes the error resulted in an overstatement of Sharing revenue in the consolidated statements of operations for the impacted periods and an understatement of deferred revenue in the consolidated balance sheets as of the end of each impacted period.***

The Company intends to amend the Original Filings as soon as practicable. In connection with the restatement, management has re-evaluated the effectiveness of the Company’s disclosure controls and procedures. Management has concluded that the Company’s disclosure controls and procedures are not effective at a reasonable assurance level, due to a material weakness in its internal control over financial reporting related to the ineffective design of controls around its business systems that resulted in the recording of revenue for uncollected balances following the completion of certain Rides that should not have been recorded. The Company is in the process of designing and implementing controls to remediate these deficiencies.

The Company’s management and the Audit Committee have discussed the matters described in this Current Report on Form 8-K with the Company’s independent registered public accounting firm, Ernst & Young LLP.

(Emphasis added).

12. In an effort to investigate Retained Causes of Action, the Liquidating Trustee filed a *Notice of Rule 2004 Examination* and served a *Subpoena Duces Tecum* on Ernst & Young LLP (“E&Y”) pursuant to Local Rule 2004-1 (ECF No. 1457) on or about January 2, 2025. A true and correct copy of the Subpoena is attached hereto as Exhibit A.

13. On January 27, 2025, E&Y served its objections to the Subpoena.

14. Over the following eleven months, a series of meet and confers took place between counsel followed by several document productions by E&Y.

15. On July 18, 2025, E&Y furnished a privilege log identifying several responsive documents withheld from production to the Liquidating Trustee.² A true and correct copy of the privilege log is attached hereto as Exhibit B.

16. In the privilege log, E&Y indicated it was withholding responsive documents from the Liquidating Trustee on the basis of attorney-client privilege and/or the SOX privilege. During a meet-and-confer call on November 25, 2025, the Liquidating Trustee learned for the first time that E&Y’s attorney-client privilege assertion was based on E&Y’s privilege with its in-house counsel rather than on the Debtors’ pre-petition privilege with their counsel (which the Liquidating Trustee indisputably holds and controls).

17. The Liquidating Trustee has the good faith belief that several (if not all) of the documents logged on E&Y’s privilege log are not in fact privileged and should be produced forthwith because they concern Bird Global’s restatement of over two years of financial statements, issues underlying the restatement, and Bird Global’s annual audits.

² As set forth below, the Liquidating Trustee asserts that E&Y’s privilege log is deficient in several material respects.

18. In a good faith effort to resolve the dispute over E&Y's privilege assertions, the Liquidating Trustee proposed an *in camera* review of the subject documents. Unfortunately, E&Y has taken the position that an *in camera* review is premature because the Liquidating Trustee has failed to establish to its satisfaction that an *in camera* review is warranted.

19. Accordingly, the Liquidating Trustee requests the Court to conduct an *in camera* review of the documents E&Y is withholding from production based on claims of privilege in order to determine if the privileges have been properly asserted and, if so, whether any exception applies, and order production of all non-privileged documents.

20. On November 24, 2025 (three days after the Liquidating Trustee filed a Motion to Compel), E&Y's counsel finally provided a single date of availability for the 2004 examination of E&Y's corporate representative and the Liquidating Trustee re-noticed the examination for such date—December 19, 2025 (coincidentally the eve of the two year anniversary of the bankruptcy case). *See* ECF No. 1825.

APPLICABLE LAW

A. An *in camera* review of documents is a customary and non-controversial process to determine whether privileges have been properly asserted.

Courts routinely grant motions for *in camera* review because it is the most effective way to resolve disputes over privilege assertions without prejudicing the position of either party. *See, e.g., United States v. Zolin*, 491 U.S. 554, 563, 109 S. Ct. 2619, 2626 (1989) (well established practice of disclosing allegedly privileged materials to the court for purposes of determining the merits of a claim of privilege does not have the legal effect of terminating the privilege); *accord Kerr v. United States District Court for N. District of Cal.*, 426 U.S. 394, 404-405 (1976)). *See also Bennett v. Sprint Nextel Corp.*, No. 11-9014, 2012 WL 4829312, at *1 (W.D. Mo. Oct. 10, 2012) (court conducted *in camera* review of documents withheld from production on the basis of

the SOX privilege and entered order partially granting the plaintiffs' motion to compel production). Since an *in camera* review of documents is a customary and non-controversial process to resolve privilege assertions, E&Y should be ordered to submit the subject documents to the Court for *in camera* review forthwith.

B. E&Y should be ordered to provide a legally compliant privilege log before the *in camera* review.

Prior to any *in camera* review, E&Y should be ordered to provide a legally compliant privilege log in readable format.³ Currently, E&Y's privilege log is deficient because it (i) does not identify the name and position/job title/capacity of the author of the document and the name and position/job title/capacity of each recipient; and (ii) fails to provide a sufficient description of the subject matter of the documents and communications. A privilege log must identify each document and the individuals who were parties to the communications *with sufficient detail* to permit the compelling party or court to determine if the privilege is properly claimed. *Arthrex, Inc., v. Parcus Medical, LLC*, No. 2:11-CV-694-FTM-29SPC, 2012 WL 3778981, at *4 (M.D. Fla. Aug. 31, 2012) (emphasis added and citing *CSX Transportation, Inc., v. Admiral Insurance Co.*, No. 93-132-CIV-J-10, 1995 WL 855421, at *3 (M.D. Fla. July 20, 1995)). Thus, a proper privilege log must contain the following information:

- (1) the name and job title or capacity of the author of the document;
- (2) the name and job title or capacity of each recipient of the document;
- (3) the date the document was prepared and if different, the date(s) on which it was sent to or shared with persons other than the author(s);
- (4) the title and description of the document;
- (5) the subject matter addressed in the document;
- (6) the purpose(s) for which it was prepared or communicated; and
- (7) the specific basis for the claim that it is privileged.

³ E&Y's privilege log must be enlarged to 800% in order to read sections thereof.

In re Denture Cream Products Liab. Litig., 2012 WL 5057844, at *8–10 (S.D. Fla. 2012); *Roger Kennedy Construction, Inc. v. Amerisure Insurance Co.*, 2007 WL 1362746, at *1 (M.D. Fla. May 7, 2007) (detailing the information needed in a proper privilege log). Without this basic information, the Liquidating Trustee cannot determine if the privilege is properly claimed. Accordingly, E&Y should be ordered to furnish a legally compliant privilege log in readable format prior to any *in camera* review of the subject documents.

C. The Liquidating Trustee’s narrowly tailored document requests and deposition topics in the Subpoena are well within the broad scope of Bankruptcy Rule 2004.

“Legitimate goals of Rule 2004 examinations include ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred.’” *In re Washington Mut., Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002)); *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citing *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)). In light of these goals, the courts have uniformly held that the scope of an examination under Rule 2004 is unfettered and broad. *See, e.g., In re GHR Energy Corp.*, 33 B.R. 451, 453 (Bankr. D. Mass. 1983); *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984); *In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983). Indeed, the examination can “legitimately be in the nature of a fishing expedition.” *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Johns-Manville Corp.*, 42 B.R. 362, 364 (S.D.N.Y. 1984) (same); *Matter of Frigitemp Corp.*, 15 B.R. 263, 264 n. 3 (Bankr. S.D.N.Y. 1981) (noting that examinations under the predecessor to Rule 2004 have been likened to “fishing expeditions” and “inquisitions”).

Typically, Rule 2004 is used to examine the debtor. However, this examination is not limited to the debtor or his agents “but may properly extend to creditors and third parties who have had dealings with the debtor.” *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803,

810-11 (Bankr. S.D.N.Y. 2018) (“[I]n the proper context the Court may authorize the examination of third parties that possess knowledge of the debtor’s acts, conduct, liabilities, or financial condition which relate to the administration of the bankruptcy estate.”) (quoting *In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002)). Summed up, “an inquiry pursuant to Rule 2004 may ‘cut a broad swath through the debtor’s affairs, those associated with him, and those who might have had business dealings with him.’” *Id.* (quoting *In re Mantolesky*, 14 B.R. 973, 976 (Bankr. D. Mass. 1981) (emphasis in original)).

In an effort to investigate the Retained Causes of Action, the Liquidating Trustee issued a Subpoena for Rule 2004 Examination *Duces Tecum* to E&Y on or about January 2, 2025 (ECF No. 1457). As reflected therein, the Liquidating Trustee sought 16 narrowly tailored categories of documents and testimony from E&Y’s representative concerning seven examination topics related to the disclosure and restatements referenced above. Indeed, E&Y identified documents which were responsive to the Liquidating Trustee’s Subpoena, produced some, and withheld others on the basis of privilege. If the privileges have not been properly asserted as to some or all of the documents withheld from production, E&Y is unquestionably required to produce such documents to the Liquidating Trustee pursuant to Bankruptcy Rule 2004.

D. Privileges are narrowly construed because they frustrate the truth-seeking process which is essential to the fair adjudication of suits on their merits.

The Supreme Court has acknowledged the “fundamental maxim of discovery that [m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.” *Wultz v. Bank of China Ltd.*, 61 F. Supp. 3d 272, 281 (S.D.N.Y. 2013), *reconsideration denied*, 291 F.R.D. 42 (S.D.N.Y. 2013) (citing *SEC v. Rajaratnam*, 622 F.3d 159, 180–81 (2d Cir. 2010) and quoting *Société Nationale Industrielle Aérospatiale v. United States Dist. Court for the S. Dist. of Iowa*, 482 U.S. 522, 540 n. 25, 107 S. Ct. 2542, 96 L. Ed. 2d 461 (1987)). This is because “[c]ourts

cannot fairly decide cases if they cannot have access to the information needed for a fair, objective decision.” See *In re Bankers Trust Co.*, 61 F.3d 465, 472 (6th Cir. 1995) (Merritt, C.J., concurring opinion). “To that end, either party may compel the other to disgorge whatever facts [it] has in [its] possession.” *Wultz*, 61 F. Supp. 3d at 281 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct. 385, 91 L. Ed. 451 (1947)).

Privilege “is not a favored evidentiary concept in the law since it serves to obscure the truth, and it should be construed narrowly as is consistent with its purpose.” *United States v. Suarez*, 820 F.2d 1158, 1160 (11th Cir. 1987). The burden to sustain a claim of privilege “is heavy because privileges are not lightly created nor expansively construed, for they are in derogation of the search for the truth.” *Bridgewater v. Carnival Corp.*, 286 F.R.D. 636, 639 (S.D. Fla. 2011).

The burden of demonstrating that a privilege applies to a particular communication, i.e., that the confidentiality of the communication is more important than the public interest in transparency, is on the proponent of the privilege, by a preponderance of the evidence. *United States v. Noriega*, 917 F.2d 1543, 1550 (11th Cir. 1990). “A party does not satisfy its burden of proving that a privilege applies by merely asserting a privilege, nor does a party satisfy its burden by simply asking that the court conduct an in camera review of documents which the party hopes to keep confidential—instead, the party first must present some evidence to convince the court that the privilege might apply.” *MapleWood Partners, L.P. v. Indian Harbor Ins. Co.*, 295 F.R.D. 550, 584 (S.D. Fla. 2013).

E. Not all Communications or Documents between Attorney & Client are privileged.

Consistent with the foregoing, the attorney-client privilege must be strictly and narrowly construed because it obstructs the truth-seeking process. *Univ. of Pa. v. EEOC*, 493 U.S. 182, 189

(1990) (recognizing that “testimonial exclusionary rules and privileges contravene the fundamental principle that the public . . . has a right to every man’s evidence,” and therefore must be “strictly construed”) (internal quotations and citations omitted).

The attorney-client privilege has long been understood to protect from compelled disclosure those confidential communications between a client and the client’s attorney *made for the purpose of obtaining or rendering legal advice*. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (emphasis added). The attorney-client privilege applies to a communication if it was made between an attorney and his client and is: “(1) intended to remain confidential *and* (2) under the circumstances was *reasonably* expected and understood to be confidential.” *United States v. Noriega*, 917 F.2d at 1550 (quoting *United States v. Bell*, 776 F.2d 965, 971 (11th Cir. 1985) (emphasis in original)).

Courts in this district have ruled that “not all internal communications with in-house counsel are privileged.” *Jackson v. Gen. Elec. Cap. Corp. (In re Fundamental Long Term Care, Inc.)*, 509 B.R. 387, 395 (Bankr. M.D. Fla. 2014). Case law is clear that merely copying an attorney does not make communications among non-lawyers privileged. *Tyne v. Time Warner Entmt. Co.*, 212 F.R.D. 596, 600 n. 4 (M.D. Fla. 2002) (ruling that distributing carbon copies of emails to attorneys does not prove privilege). Likewise, if the document was prepared for purposes of simultaneous review by legal and non-legal personnel, it cannot be said that the *primary purpose of the document is to secure legal advice*. *In re Seroquel Products Liab. Litig.*, No. 606MD1769-ORL-22DAB, 2008 WL 1995058, at *4 (M.D. Fla. May 7, 2008) (“When the business “simultaneously sends communications to both lawyers and nonlawyers, it usually cannot claim that the *primary purpose of the communication was for legal advice or assistance* because the communication served both business and legal purposes”); *United States v. International Bus.*

Machines Corp., 66 F.R.D. 206, 213 (S.D.N.Y. 1974) (“If the document was prepared for purposes of simultaneous review by legal and non-legal personnel, it cannot be said that the *primary purpose of the document is to secure legal advice.*”). Consequently, the privilege does not protect such communications. *In re Vioxx Products Liab. Litig.*, 501 F. Supp. 2d 789, 805 (E.D. La. 2007) (“the privilege does not protect the communications” where a corporation “simultaneously sends communications to both lawyers and non-lawyers, it usually cannot claim that the *primary purpose of the communication was for legal advice or assistance* because the communication served both business and legal purposes”).⁴

F. The Liquidating Trustee is entitled to a broad range of documents currently being withheld by E&Y on the basis of the SOX privilege.

The Sarbanes-Oxley (or SOX) privilege is set forth at SOX Section 105(b)(5) (or 15 U.S.C. § 7215(b)(5)(A)) and provides as follows:

Except as provided in subparagraphs (B) and (C), *all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation under this section*, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

⁴ See also *Zelaya v. Unicco Serv. Co.*, 682 F. Supp. 2d 28, 39 (D.D.C. 2010) (“Also, carbon copying some emails to in-house counsel will not provide the basis for attaching the attorney-client privilege.”) (Citing *Mineba Co. v. Papst*, 228 F.R.D. 13, 21 (D.D.C. 2005) (“A corporation cannot be permitted to insulate its files from discovery simply by sending a ‘cc’ to in-house counsel.”)); *Thompson v. Chertoff*, No. 3:06-CV-004 RLM, 2007 WL 4125770, *4 (N.D. Ind. Nov. 15, 2007) (“Merely carbon copying an attorney, or listing an attorney as one of many recipients, on widely circulated emails is insufficient to create privileged communications.”); *Loftin v. Bande*, 258 F.R.D. 31, 34 (D.D.C. 2009) (“[D]ocuments prepared by non-attorneys and addressed to non-attorneys with copies routed to counsel are generally not privileged since they are not communications made primarily for legal advice.”) (internal quotation omitted); Attorney-Client Privilege § 7.2.1 (“Because of the ease with which e-mail technology allows inhouse counsel to be brought into discussions, counsel are contacted far more frequently, and through those contacts, are likely encouraged to participate in *regular business matters* far more frequently and broadly than was the case in the past.”).

(Emphasis added). Specifically, the SOX privilege applies to the Public Company Accounting Oversight Board's ("PCAOB") official reports, findings, and deliberations.⁵ Notably, however, the SOX privilege does not preclude the Liquidating Trustee (who indisputably holds the Debtors' pre-petition privileges) from obtaining production of raw factual data such as the underlying corporate documents, facts, and communications upon which a PCAOB investigation or report is based. Additionally, if E&Y disclosed non-public PCAOB findings with one or more of the Debtors (or their pre-petition management), E&Y will be deemed to have waived the SOX privilege with regard to reports and related internal communications.⁶

In *Bennett v. Sprint Nextel Corp.*, No. 11-9014, 2012 WL 4829312, at *1 (W.D. Mo. Oct. 10, 2012), the court first conducted an *in camera* review of 468 documents withheld from production to securities plaintiffs on the basis of the SOX privilege and then entered an order partially granting the plaintiffs' motion to compel production of certain documents relating to a PCAOB investigation of KPMG. In analyzing the statute, the Court stated as follows: "[t]he second aspect of the privilege protects those who are under investigation from being required to divulge their responses to that investigation. Notably, however, the privilege does not extend to documents from the underlying transaction or work that is the subject of the investigation as such documents are not prepared for the Board. When those underlying documents are given to the Board, the fact they were delivered is privileged, but the documents themselves are not." *Id.* at *2. After conducting the *in camera* review, the court determined that "substantive information, documents, spreadsheets, or forms that were compiled specifically for Sprint, but nevertheless

⁵ At the same time, the Liquidating Trustee asserts that E&Y is required to produce documents containing references to PCAOB reports, findings, and deliberations if and to the extent those references can be redacted before being produced.

⁶ This point magnifies the importance of a compliant privilege log because the precise identity and role of the corporate employees who received the privileged information must be thoroughly scrutinized to assess the extent of the waiver.

used to respond to the Board’s inquiries, [were] not privileged.” *Id.* at *4. The court also concluded that documents labeled as “Internal KPMG documents that constitute or reveal deliberations of the Board” were not in fact “deliberations of the Board,” and thus KPMG was ordered to produce them (unless they revealed privileged information including, but not limited to, spreadsheets including data prepared specifically for the Board or any information revealing specific questions or inquiries from the Board and drafts and final versions of KPMG responses to those questions or inquiries). *Id.* at *5. Finally, the court concluded that the plaintiffs had failed to satisfy their burden of proving waiver of the SOX privilege resulting from KPMG’s voluntary sharing of some of the information relating to the PCAOB investigation to Sprint employees and/or named defendants in the securities fraud suit because the documents did not reflect disclosure of the details or substance of the investigation. *Id.*

As the foregoing illustrates, the Liquidating Trustee is entitled to a broad range of documents currently being withheld by E&Y on the basis of the SOX privilege and the Court may conduct an *in camera* review of such documents in order to determine if the privilege has been properly claimed.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests the Court to enter an Order (1) granting this Motion; (2) requiring E&Y to provide a legally compliant privilege log in readable format; (3) requiring E&Y to submit all documents withheld on the basis of privilege to the Court for *in camera* review; and (4) providing such further relief as the Court may deem just and proper.

LOCAL RULE 7026-1(F) CERTIFICATION

Prior to filing this Motion, the Liquidating Trustee's counsel conferred with E&Y's counsel on multiple occasions in a good faith effort to resolve by agreement the issues raised and has been unable to do so.

Respectfully submitted this 3rd day of December, 2025.

FOX ROTHSCHILD LLP

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Counsel to Joseph J. Luzinski, not individually but solely in his capacity as the Liquidating Trustee of the Bird Global, Inc. Liquidating Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2025, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF System. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this notice as service of this document by electronic means. On the same day, a copy was also forwarded via first class and electronic mail to E&Y’s counsel, (Michelle D. Nasser, Esq. & James F. Bennett, Esq., Dowd Bennett LLP, 7676 Forsyth Boulevard, Suite 1900, St. Louis, Missouri 63105; mnasser@dowdbennett.com & jbennett@dowdbennett.com).

/s/ Robert F. Elgidely
Robert F. Elgidely

EXHIBIT A - SUBPOENA

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:)	Chapter 11
)	
BIRD GLOBAL, INC., <i>et al.</i> ,)	Case No. 23-20514-CLC
)	
Debtors.)	(Jointly Administered)
_____)		

NOTICE OF RULE 2004 EXAMINATION AND SUBPOENA DUCES TECUM

☒ *Testimony:* Pursuant to Federal Rule of Bankruptcy Procedure 2004 and Local Rule 2004-1, Joseph J. Luzinski, as the Liquidating Trustee of the Bird Global Liquidating Trust (the “Liquidating Trustee”) pursuant to the Debtors’ Second Amended Joint Chapter 11 Plan of Liquidation dated June 3, 2024 in the above-captioned jointly administered bankruptcy cases will examine Ernst & Young LLP under oath on **March 3, 2025 at 9:00 a.m. (prevailing Eastern Time)**. The examination will be conducted via video conference with link to follow, will be recorded by stenographic means and may be videotaped. The examination may continue from day to day until completed.

☒ *Production:* Pursuant to Federal Rule of Bankruptcy Procedure 2004 and Local Rule 2004-1, the Liquidating Trustee requests that Ernst & Young LLP produce the documents, electronically stored information, or objects described on the attached subpoena, and must produce or permit inspection, copying, testing, or sampling of the materials on or before **February 3, 2025 at 5:00 p.m. (prevailing Eastern Time)**, at Fox Rothschild LLP, c/o Sidney S. Liebesman, Esq., 1201 N. Market St., Suite 1200, Wilmington, DE 19801.

If the examinee receives this notice less than 14 days before the scheduled examination date, the examination will be rescheduled upon timely request to a mutually agreeable time. The scope of the examination will be as described in Bankruptcy Rule 2004. Pursuant to Local Rule 2004-1 no order is necessary. If the examination is of a witness other than the debtor, the Local Form “Subpoena for Rule 2004 Examination” is included with this notice.

Dated: January 2, 2025

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Attorneys for the Liquidating Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2, 2025, I electronically filed the foregoing Notice of Rule 2004 Examination with the Clerk of the Court using the CM/ECF System. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this notice as service of this document by electronic means and a copy was also served on the examinee.

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on (*date*) _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

RIDER TO SUBPOENA FOR RULE 2004 EXAMINATION AND SUBPOENA DUCES

TECUM OF ERNST & YOUNG LLP

**INSTRUCTIONS, DEFINITIONS, DOCUMENTS
REQUESTED AND DEPOSITION TOPICS**

I. INSTRUCTIONS

A. This document request is continuing in nature. When new knowledge or information comes to your attention you shall supplement the information supplied in the answers to the document request forthwith.

B. This request calls for the production of all responsive documents in your possession, custody or control or available to you, your employees, accountants, attorneys, auditors or other persons acting on your behalf, in your employment, and/or under your direction or the direction of your agents and representatives.

C. For each and every Request herein, you shall produce documents in your possession, custody, or control which shall include, but not be limited to, documents, objects or articles described that are in your possession or for which you have the right to secure the original or a copy from another person or entity. The fact that your investigation is continuing or discovery is incomplete is not an excuse for your failure to respond to each request as fully and completely as possible. Your responses should consist of information known to you through yourself, your agents, your attorneys, your employees, or your representatives. If copies or drafts exist of a document, the production of which has been requested herein, produce and submit for inspection and copying each and every copy and draft which differs in any way from the original document or from any copy or draft.

D. Please organize and label (without permanently marking the item produced) the documents being produced to correspond with the numbered paragraph and each subset thereof to which such documents are responsive. If a document is responsive to more than one document request, each document request to which it is responsive should be identified.

E. If you object to any of these Requests, state in writing with specificity the grounds for your objections. If you object to a particular portion of any Request, you shall respond to any other portion of such Request as to which there is no objection and state with specificity the grounds of the objection.

F. If at any time you had possession, custody, or control of any document requested herein, and such document has been lost, destroyed, discarded, or is not presently in your possession, any such documents shall be identified as completely as possible by providing the following information:

1. The name(s) of the author(s) of the document;
2. The name(s) of the person(s) to whom the documents or copies were sent;

3. The date of the document;
4. The date on which the document was received by each addressee, copyee, or its recipients;
5. A complete description of the nature and subject matter of the document;
6. The date on which the document was lost, discarded, or destroyed; and
7. The manner in which the document was lost, discarded, or destroyed.

G. With respect to any document that you withhold under claim of privilege, you shall number such documents, hold them separately, and retain them intact pending a ruling by the Court on the claimed privilege. In addition, you shall provide a statement, signed by an attorney representing you, setting forth as to each such document:

1. The name(s) of the sender(s) of the document;
2. The name(s) of the author(s) of the document;
3. The name(s) of the person(s) to whom the document or copies were sent;
4. The job title of every person named in subparagraphs 1, 2 and 3 above;
5. The date of the document;
6. The date on which the document was received by each addressee, copyee, or its recipient;
7. A brief description of the nature and subject matter of the document; and
8. The statute, rule, or decision which is claimed to give rise to the privilege.

H. If, after exercising due diligence to secure or produce the document(s) requested, you cannot secure responsive documents, you must identify which Request(s) for which you do not have a responsive document, and answer the request for production to the fullest extent possible, specifying your inability to produce the document(s), and providing the identity of the person who has possession, custody, or control of the requested document(s).

I. All words, names, and terms in this request for production shall have their plain and ordinary meanings unless specifically defined in Part II herein.

J. Copies of documents which are identical duplicates of other documents which have already been produced for inspection and copying in this case need not be produced again, except that the duplicates must be produced if handwritten or any other type of notes or similar intelligence appear thereon or are attached thereto, including markings on slips indicating the routing of the document to individuals or organizations.

K. The singular and plural forms shall be construed interchangeably so as to bring within the scope of this document request any information which might otherwise be construed as being outside of the scope of such request.

L. “And” and “or” shall be construed interchangeably so as to bring within the scope of this document request any information which might otherwise be construed as being outside of the scope of such request.

M. “Any” and “all” and “each” and “every” shall be construed to bring within the scope of this request any information which might be construed to relate to the subject matter of the request.

N. The use of the singular form of any word includes the plural and vice versa.

O. Unless otherwise stated herein, the time period encompassed by this Request shall be January 1, 2019 to the present.

II. DEFINITIONS

Unless otherwise specified, the following terms and phrases as used herein shall, when utilized, mean as follows:

1. The term “**Bird**” means Bird Global, Inc., including its wholly owned subsidiaries and affiliates, including Bird Rides, Inc., Bird US Holdco, LLC, Bird US Opco, LLC and Skinny Labs, Inc.

2. The term “**Communication(s)**” means any written or oral statement, dialogue, colloquialism, discussion, conversation or agreement of any kind or character, including, by way of example and without limitation, any act or instance whereby messages, facts, data or any other information is transmitted orally, visually, in writing, electronically or by any other means or media from natural person or firm to another (e.g., personal conversations, telephone conversations, letters, e-mails, meetings, memoranda, telegraphic and telex communications or transmittals of documents), any manner or form of information, memorandum or notes or message transmission, however produced or reproduced, whether by “document” as herein defined or orally or otherwise, which was distributed or circulated between or among persons, or data storage or processing units and any and all documents containing, consisting of, or relating or referring, in any way, either directly or indirectly to, a communication.

3. The terms “**Concern**” or “**Concerning**” means relating to, referring to, connected with, commenting on, responding to, supporting, mentioning, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, comprising or constituting.

4. The term “**Document(s)**” shall have a synonymous meaning equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and shall include, but shall not be limited to, the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not approved, signed, sent, received, re-drafted or executed, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notation, indication of copies sent or received, or otherwise), including, without limitation, any E-mails, paper, letter, correspondence, memoranda (including interoffice and intraoffice memoranda), notes, memoranda for files, memoranda of telephone or other conversation, announcement, bulletin, press release, newspaper or magazine article, pamphlet, circulars, advertising material, studies, analysis, statistics, surveys, drawing, sketch, schematic, chart, graph, investigation, study, working paper, summary, report, opinion, table, schedule, extract, blueprint, portfolio, ledger, worksheet, prospectus, financial projection, financial

statement, financial schedule, book, note, notation, message slip, telegram, telex and telecopier message, agreement, contract, object, record, transcript, hearing, meeting, diary, or other communication, chronological data, minutes, agendas, transcriptions, record, report, invoice, receipt, return, computer printout or other computer derived data, schedule, affidavit, cancelled check, check stub, delivery ticket, bill of lading, graph or aural records or representations of any kind, including without limitation, photographic matter, microfiche, microfilm, video-tape, motion picture and electronic, all mechanical or electronic sound recordings or transcripts thereof (including without limitation tapes, cassettes, discs and recordings) in your possession, custody, and/or control, or your agents, representatives or attorneys, unless privileged, or of which you have knowledge.

5. The phrase “**Electronic Data**” or the term “**Data**” means the original (or identical duplicate when the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description whether inscribed by mechanical, facsimile, electronic, magnetic, digital, or other means. Electronic Data includes, by way of example only, computer programs (whether private, commercial, or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, Database files, charts, graphs and outlines, electronic mail, operating systems, source code of all types, peripheral drivers, TIF files, batch files, ASCII files, .pdf (portable document format) files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists in an active file, deleted file or file fragment. Electronic Data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROMs, removable media such as Zip disks, Jaz cartridges, Bernoulli Boxes and their equivalent, magnetic tapes of all types, microfiche, punched cards, punched tape, computer chips, including, but not limited to EPROM, PROM, RAM and ROM, on or in any other vehicle for digital data storage and/or transmittal. The term Electronic Data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with each original and/or copy.

6. The term “**E&Y**” means Ernst & Young LLP, including, without limitation, any current or former Director, officer, partner, agent, employee, investigator, independent adjusting company, affiliate (including tax, consulting or financial advisory services or any other specialist consulted with or whose services were provided to E&Y as part of its services provided to Bird), subsidiary, or other person or entity acting on behalf of E&Y.

7. The acronym “**ESI**” means data including writings, drawings, emails, graphs, charts, photographs, sound recordings, images, and other data or data compilations – stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

8. The term “**Person**” includes natural persons, proprietorships, partnerships, firms, corporations, institutions, bodies, joint ventures, estates, trusts, receivers, public corporations, other forms of legal entity, municipal corporations, federal, state and local governments, all

departments and agencies thereof, and any other governmental agencies, political subdivisions, groups, associations or organizations, and any other group or combination acting as an entity.

9. The terms “**Possession**,” “**Custody**,” or “**Control**” include the joint or several possession, custody or control not only by the person or entity to whom these requests are directed, but also the joint and several possession, custody or control by each or any other person or entity acting or purporting to act on behalf of said person or entity, whether as an employee, attorney, accountant, agent, sponsor, spokesperson, or otherwise.

10. The phrase “**Related to**” means directly or indirectly, concerning, referring to, reflecting, describing, evidencing, constituting, pertaining to, arising out of or in connection with, or in any way legally, logically or factually connected with the matter discussed.

11. The term “**You**” means E&Y.

III. DOCUMENTS REQUESTED

IMPORTANT- (REFER TO ABOVE DEFINITIONS FOR MEANING OF TERMS).

1. All working papers Concerning E&Y’s audits of Bird’s financial statements.
2. All audit planning documents concerning Bird, including the contents of each planning binder related to or associated with the Bird engagement.
3. All Documents and Communications concerning E&Y’s fees related to Bird audits and other services provided to Bird including, but not limited to, E&Y invoices and documents evidencing payment of such fees and all E&Y timekeeping and billing records Concerning E&Y’s audits of Bird’s financial statements and other services.
4. All Documents and Communications between E&Y and Bird, including engagement letters or management representation letters.
5. All Documents and Communications between E&Y and any third party relating to Bird, including the U.S. Securities & Exchange Commission or Moss Adams LLP.
6. All personnel files of all E&Y employees who worked on or billed for any Bird audit.
7. All Documents and Communications between Bird audit team members Concerning E&Y’s audits of Bird’s financial statements, including any and all specialists from other E&Y entities included as part of the audits.
8. All Documents and Communications between any Bird audit team member and E&Y’s National Office Concerning E&Y’s audits of Bird’s financial statements.
9. All Documents and Communications between E&Y and any Bird audit committee member.
10. All Documents Concerning the restatement of Bird’s financials.

11. All Documents Concerning E&Y's independent analysis of Bird's going concern analysis.
12. All Documents Concerning E&Y's independent analysis of Bird's revenue recognition policies and practices.
13. All Documents and Communications Concerning communications internally within E&Y Concerning Bird.
14. All Documents and Communications Concerning the credibility, truthfulness, or competency of any person in Bird management.
15. All E&Y document preservation policies in effect during the relevant time period as defined above.
16. All Documents or Communications Relating to auditing, accounting, tax, valuation and/or advisory services provided by you to Bird including but not limited to:
 - a. Tax returns
 - b. Audits
 - c. Valuations
 - d. Working papers
 - e. Consulting

IV. DEPOSITION TOPICS

1. E&Y practices and procedures for each audit of Bird's financial statements.
2. E&Y's billing and accounts receivables in connection with each audit of Bird's financial statements.
3. E&Y's audit team members and relationship partners.
4. Bird's revenue recognition practices, policies and procedures.
5. The quality, or lack thereof, of Bird's internal financial controls.
6. Bird's restatement of financial statements and reasons underlying same.
7. E&Y's document preservation policies and practices during the relevant time period.

The Liquidating Trustee reserves the right to modify or amend these deposition topics within the broad scope of Rule 2004 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1.

EXHIBIT B – PRIVILEGE LOG

