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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: NORTHWEST SENIOR HOUSING CORPORATION, *et al*.[1] Debtors.	Chapter 11 Case No. 22-30659 (MVL)
Leif M. Clark, Trustee of the Edgemere Litigation Trust Plaintiff, v Intercity Investment Properties, Inc., and Kong Capital LLC, Defendants.	Adv. Pro. No. 22-03040 (MVL)

DEFENDANTS' SUPPLEMENTAL MOTION TO COMPEL
PRODUCTION OF THE FTI COMMUNICATIONS

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

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Come now Defendants Intercity Investment Properties, Inc. ("ICI") and Kong Capital LLC ("Kong" and, with ICI, the "Defendants") and respectfully move the Court, pursuant to Fed. R. Civ. P. 34 and 37, for entry of an order compelling the production of certain documents and the payment of costs and fees as further set forth below. In support thereof, Defendants state as follows:

1. The Court, unfortunately, is all too aware of the challenges Defendants have faced in securing the production of non-privileged, relevant communications (the "FTI Communications") involving the Debtor's financial advisor, FTI Consulting ("FTI"). Defendants will not reiterate each of its efforts here, and instead will incorporate by reference its filings at ECF 362, 363, and 442.

2. After Defendants filed their briefing at ECF 442, counsel for the Plaintiff, Leif M. Clark, reached out to counsel for Defendants by email. In that January 25, 2024 email, titled "FTI," Plaintiff's counsel advised: "we are going to make a supplemental production of documents through 12/31/21 shortly." A true and correct copy of that email is attached as Exhibit A.

3. Then, on January 29, 2024, Plaintiff represented to this Court that he had "agreed to produce the following" categories of FTI Communications, including "[a]ll FTI communications up to December 31, 2021, i.e. the date that the Forbearance Agreement expired." (ECF 471, p. 1).

4. The matter of the FTI Communications came up for hearing in February 2024. Plaintiff again represented to the Court during that hearing that all FTI Communications up to December 31, 2021 would be produced.

5. On Monday March 6, 2024, Defendants' counsel wrote to Plaintiff's counsel to "follow up about the pre-12/31/21 FTI documents" and asked that Plaintiff "send those our way

this week." In response, Plaintiff's counsel disclosed that Plaintiff was not preparing the production of those documents, but instead had outsourced the supplemental production to FTI and its outside counsel, Sidley Austin. Defendants reiterated the need for a prompt production by the "end of the week" because Plaintiff "agreed to provide those documents to [Defendants] over a month ago now and we need them to prepare for deposition." After Plaintiff's counsel again endeavored to shift responsibility to FTI—notwithstanding that Plaintiff has most, if not all, of the FTI Communications in his possession and control already[2]—Defendants' counsel insisted that Plaintiff start "taking responsibility for his discovery obligations" and explaining, again, that because of other discovery obligations Defendants "need the documents now, not in a month." A true and correct copy of the foregoing email exchange is attached as Exhibit B.

6. Defendants moved for production of the FTI Communications in October 2023. Plaintiff withdrew his objections to the production of the FTI Communications pre-dating December 31, 2021 a month-and-a-half ago on January 25, 2024. Yet he still has not produced them and offers no assurance that a production will be forthcoming.

7. Meanwhile, depositions are scheduled of Edgemere/Lifespace officers in the first week of April, and of FTI employees in the third week of April. Defendants cannot stand by while Plaintiff tries—on yet another front—to sandbag them.

8. Defendants therefore request the entry of an order (i) compelling Plaintiff immediately to produce those FTI Communications over which he withdrew his claims of privilege

[2] Many of the communications were with Edgemere or Lifespace representatives and so are in Plaintiff's possession and control that way. Many of the other communications are with Edgemere's former outside counsel, Sidley Austin, who produced all its responsive documents to Plaintiff. *See* ECF 404 (stipulation by Sidley Austin that "[a]ll of those previously-withheld documents are now in Diamond McCarthy's possession and control in unredacted form").

and work product and (ii) compelling Plaintiff to pay Defendants' costs and fees incurred in connection with this Motion.

WHEREFORE, Defendants Intercity Investment Properties, Inc. and Kong Capital LLC respectfully request entry of an order compelling Plaintiff Leif M. Clark (i) to produce to the said Defendants, within twenty-four (24) hours of the date of the entry of the said order, the FTI Communications pre-dating December 31, 2021 and (ii) to pay to the said Defendants their reasonable costs and fees incurred in connection with this Motion upon the said Defendants' submission of evidence quantifying same. The said Defendants further request such other or additional relief as the Court deems just and appropriate in the circumstances.

Dallas, Texas
March 13, 2024

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

I certify that I conferred with Plaintiff's counsel, Greg Taylor and Drew Jones, regarding the relief requested in this Motion but that the parties reached impasse. The conferences occurred via email correspondence on March 6, 7, and 11, 2024 as set forth on Exhibit B, and concluded when Plaintiff's counsel directed: "File what you want."

/s/ Ryan C. Hardy
Ryan C. Hardy

CERTIFICATE OF SERVICE

I certify that on this 13th day of March, 2024, a copy of the foregoing was filed electronically with the Clerk of Court via ECF, which caused a copy of same to be transmitted to all counsel of record.

/s/ *Michael S. Held*
Michael S. Held

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ORDER GRANTING DEFENDANTS' SUPPLEMENTAL
MOTION TO COMPEL PRODUCTION OF THE FTI COMMUNICATIONS

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CAME ON FOR CONSIDERATION, the Defendants' Supplemental Motion to Compel Production of the FTI Communications ("Motion"). The Court, having reviewed same, and any response(s) thereto, and found that notice of the Motion was proper, is of the opinion that the Motion should be granted; it is therefore

ORDERED that the Motion is hereby GRANTED in its entirety and Plaintiff shall fully comply with Defendants' request and provide the FTI Communications (as defined in the Motion) within 24 hours within entry of this Order.

###End of Order###