

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROGER B. SMITH, JR.,

Plaintiff/Counter-Defendant,

-vs-

Case No. 12-794194-DO
HON. CHERYL A. MATTHEWS

KAY E. GREENBURY,

Defendant/Counter-Plaintiff.

ABBOTT NICHOLSON, P.C.
BY: TIMOTHY J. KRAMER (P36223)

Attorneys for Plaintiff
300 River Place Suite 3000
Detroit, Michigan 48207
(313) 566-2500

THE LAW FIRM OF JOHN F. SCHAEFER
BY: JOHN F. SCHAEFER (P19948)
B. ANDREW RIFKIN (P46147)
COLLEEN E. JOHNSON (P71417)

Attorneys for Defendant
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Birmingham, Michigan 48009
(248) 642-6655

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION
TO QUASH NOTICE OF TAKING DEPOSITION
AND FOR PROTECTIVE ORDER**

THE LAW FIRM
OF
JOHN F. SCHAEFER
PROFESSIONAL LIMITED LIABILITY COMPANY

BIRMINGHAM GROSSE POINTE
(248) 642-6655 (313) 881-1300

NOW COMES Defendant KAY GREENBURY, by her attorneys, The Law Firm of John F. Schaefer, and for *Defendant's Response To Plaintiff's Motion To Quash Notice Of Taking Deposition And For Protective Order*, she submits unto this honorable Court as follows:

1. Plaintiff ROGER SMITH, JR. ("Mr. Smith") filed this divorce action after 26 years of marriage to Defendant KAY GREENBURY ("Ms. Greenbury"), a 56-year-old non-Hodgkin's Lymphoma cancer survivor who throughout the marriage suffered from debilitating migraines. Mr. Smith filed for divorce even though Ms. Greenbury's medical and insurance records (that Mr. Smith subpoenaed) show that for more than 10 years Ms. Greenbury has suffered from long-term depression and disorganization.¹ (Please see **Exhibit A**). In light of her significant medical disabilities and severely limited career prospects, Ms. Greenbury requested from Mr. Smith information regarding the various family trusts of which he – as the son of the late General Motors Chairman Roger B. Smith, Sr. – is a beneficiary, because Ms. Greenbury likely will need this Court to invade those separate assets since the parties' minimal marital estate by itself is "... insufficient for [her] suitable support and maintenance." MCL § 552.23.²

2. On July 18, 2012, Ms. Greenbury requested copies of those documents, but in his September 11, 2012 response, Mr. Smith refused to provide them:

Before Mr. Smith filed this second action for divorce, the parties had been married for more than 26 years. He originally had filed for divorce in April of 2008, but when Ms. Greenbury was diagnosed with non-Hodgkin's Lymphoma that same year, he ended up dismissing his original filing. When Ms. Greenbury was finally well enough to move back to the marital home after her cancer treatment and recovery, Mr. Smith moved into a separate bedroom; while Ms. Greenbury very much wanted to keep the marriage intact and urged Mr. Smith to attend marriage counseling with her, Mr. Smith after a few sessions determined that he would not return to counseling. He then moved out of the marital home on March 8, 2012, and filed this divorce action the same day.

"[A] court may use *any* property of either party to achieve just and reasonable property division after considering the character and situation of the parties, and all the other circumstances of the case." *Pickering v Pickering*, 268 Mich.App 1, 8; 706 NW2d 835 (2005) (emphasis added). Where "[t]he evidence presented indicated that plaintiff was close to impoverishment and defendant was well established, with many property holdings, two expected pensions, and other income[, t]he trial court did not err in ruling that, despite defendant's claims of low net income, defendant had many other sources from which to pay alimony. The trial court did not require defendant to invade the corpus of his assets, nor did defendant present evidence that he would need to sell or mortgage properties to meet the alimony obligation." *Torakis v Torakis*, 194 Mich App 201, 205; 486 NW2d 107, 110 (1992) (citing MCL § 552.23).

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Over the years, various members of my family have created trusts and funded them with their assets. I may be a beneficiary of these trusts. I am currently a trustee of two of these trusts, one created by my father (co-trustee) and the other created for the benefit of my nephew (sole trustee). You have previously subpoenaed two years of account statements of the accounts held by these trusts and I believe you have the statements in your possession. I have contributed nothing to any of these trusts and they are not marital property. To the extent I may have information or documentation related to these trusts, I have no authority to release it an object to doing so.

(Please see **Exhibit B**, answer #2a).

3. In his June 5, 2012 Affidavit Net Worth, Mr. Smith identified pensions, business interests, and trust interests which he claims are his separate property,³ but he has refused to produce copies of those trust interests (please see **Exhibit B**, answer #2a), even though Ms. Greenbury already stipulated to the entry of a confidentiality order to protect the privacy of Mr. Smith's family and any financial documents produced by Mr. Smith. (Please see **Exhibit C**).

4. Since Mr. Smith refused to produce copies of the trusts of which he is a beneficiary, Ms. Greenbury then served on Mr. Smith a notice of taking deposition *duces tecum* so that her counsel could ask him about those trusts. Rather than cooperating with that request, Mr. Smith filed this motion.

5. "The security of the family is the paramount concern, and a court may use any property of either party to achieve just and reasonable property division after considering the character and situation of the parties, and all the other circumstances of the case." *Pickering v Pickering*, 268 Mich App 1, 8; 706 NW2d 835, 840 (2005) (citing *Booth v. Booth*, 194 Mich.App. 284, 291, 486 N.W.2d 116 (1992) and *Rogner v. Rogner*, 179 Mich.App. 326, 329–330, 445 N.W.2d 232 (1989)). Ms. Greenbury must review trusts of which Mr. Smith may be a beneficiary to determine exactly what property is available to Mr. Smith to achieve a just and reasonable property division.

³ To protect the privacy of the parties, a copy of that Affidavit of Net Worth is not attached to this motion. Only Mr. Smith's Affidavit because the marital ownership of Smith Spyglass was falsified and Federal Tax Returns were used to support the false claim

6. As a matter of Michigan law, Ms. Greenbury is entitled to investigate that issue further. Michigan has a strong historical commitment to a far-reaching, open and effective discovery practice. *Daniels v. Allen Industries, Inc.*, 391 Mich. 398, 403, 216 N.W.2d 762 (1974). Discovery rules are to be liberally construed in order to further the ends of justice. *Id.* Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case. MCR 2.302(B)(1). See also, *Domako v. Rowe*, 438 Mich. 347, 353, 359, 475 N.W.2d 30 (1991). The modern tendency is to broaden the scope of discovery when necessary to facilitate preparation, to guard against surprise, and to expedite justice. *Fassihi v. St. Mary Hospital of Livonia*, 121 Mich.App. 11, 15, 328 N.W.2d 132 (1982).

7. For these reasons, any document which is relevant and not privileged is freely discoverable upon request. *Davis v. O'Brien*, 152 Mich.App. 495, 502-504 (1986). MCR 2.302(B)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.

MCR 2.302(B)(1). There is no requirement that there be good cause shown to obtain discovery of documents which are relevant and non-privileged. *Id.*

8. Even where, as here, some records relating to issues in a divorce action are held by a third person and are not privileged, those records still are discoverable. *Eyde v. Eyde*, 172 Mich.App. 49, 55 (1988). The *Eyde* court specifically required the production of documents in response to a subpoena where the records sought pertain to the nature and scope of a party's assets and were needed to verify the extent and value of the marital estate:

[The] business records and banking records [of plaintiff's brother, Louis Eyde] were relevant to the subject matter involved in defendant's divorce action. The financial status of defendant's husband is material and relevant to the subject matter of defendant's divorce. *Tomlinson v. Tomlinson*, 338 Mich. 274, 281, 61 N.W.2d 102 (1953). The husband's assets in a corporation or other businesses are considered part of the marital estate. See *Villadsen v. Villadsen*,

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123 Mich.App. 472, 473-476, 333 N.W.2d 311 (1983). Defendant's discovery so far has been inadequate to determine the true value of Louis Eyde's assets; financial statements now in defendant's possession vary widely in their estimate of Louis Eyde's net worth. The documents already in defendant's possession do not include relevant financial information regarding all of Louis Eyde's known business entities. Plaintiff's counsel had effectively blocked any estimate of Louis Eyde's net worth by deposed bank officials. Thus, the documents at issue are relevant and necessary to determine the extent and value of defendant and Louis Eyde's marital estate.

Id. The *Eyde* court therefore required the subpoenaed records to be produced because “Louis Eyde's financial records held by Michigan National Bank are not privileged.” *Id.* at 55-56.

9. A trial court abuses its discretion when denying discovery of documents that “might reveal pertinent information” concerning a claim in a divorce case. *Woodington v Shokoohi*, 288 Mich App 352, 363; 792 NW2d 63, 73 (2010). In *Woodington*, the Court of Appeals reversed and remanded back to the trial court its denial of the plaintiff-wife’s request for records which potentially were relevant to a valuation issue in that case:

Plaintiff should have been allowed the opportunity to examine the documents to investigate the actual nature of defendant's status with the P.C.

* * *

The pertinent question ... is whether the financial records contained information that might have enabled [plaintiff’s expert] to better assess whether defendant had an ownership interest, and whether that information could have led to a different or stronger analysis.

* * *

In granting the P.C.'s motion to quash, the trial court stated that the records were not relevant to proving defendant's income. We agree with plaintiff that this ruling was off-point. Plaintiff needed the records to investigate the P.C.'s basis for determining defendant's income, and to investigate whether this method reflected any understanding between [defendant’s brother] and defendant concerning possible ownership status. Such information would have been highly relevant to [plaintiff’s expert’s] analysis of the value of defendant's “holder's interest” in his practice.

Plaintiff has offered concrete, specific reasons why the P.C.'s records might reveal pertinent information concerning defendant's interest in the P.C.

Accordingly, we remand to the trial court to enable plaintiff to examine the records sought in the subpoena. After examining the records subject to an appropriate protective order, plaintiff may move for appropriate relief on the basis of information in the records that could lead to a different outcome in regard to defendant's interest in the P.C. as a marital asset.

Id. at 362-63.

10. The trust documents sought by Ms. Greenbury are not privileged, nor does his desire to hide those trust documents somehow make them privileged or secret. Mr. Smith is not allowed simply to pick and choose what he wishes to disclose or not disclose in this divorce case *that he filed*, and then leave his wife destitute after this case is over. Mr. Smith apparently wants to take advantage of this Court's rules and oversight when doing so benefits him, but at the same time, he does not want to participate with discovery which might reveal the extent to which he may benefit from his family's business interests and trusts.

11. Trial is scheduled for January 14, 2013, and Ms. Greenbury needs this information immediately to prepare for the parties' further scheduled mediation and settlement discussions, and if necessary, a trial of this divorce matter.

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WHEREFORE, Plaintiff respectfully requests that (1) Plaintiff's motion be denied, and (2) Plaintiff be ordered to pay Defendant's costs and attorneys fees incurred in bringing this motion response before the Court.

Respectfully submitted,

THE LAW FIRM OF JOHN F. SCHAEFER

BY: 

B. ANDREW RIFKIN (P46147)

Attorneys for Defendant

380 North Old Woodward Avenue Suite 320

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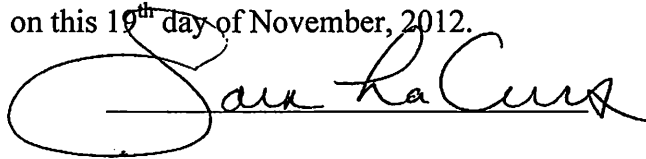
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Proof of Service

I hereby affirm that a copy of the foregoing document was served on all counsel of record at the address(es) shown above via:

- E-Mail
- Hand-delivery
- U.S. Mail (first class, postage prepaid)
- Facsimile transmission

on this 19th day of November, 2012.



A handwritten signature in cursive script, appearing to read "Sarah LaCura", is written over a horizontal line.

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EXHIBIT A



Underwriter Notes Report

Company: JNL
Policy Number: 0071108850
Insured Name:

Note Date Time: 08/27/2002
Note Level: Confidential

Note Text:

***On pg. 38....I will finish in morn.....AB

***Have reviewed medical records which end 5/02 noting next time to discuss Bipolar influences. Need f/up visit. Records reveal long term hx of tx-Depr which as remained stable for the most part until 4/02 flare. Have long term tx for migraines, on seve

ral meds. Abortive meds used as needed are Maxalt, Percocet & Vioxx. It is mentioned on more than one occasion that PI tends to overuse meds. Currently, per Exam, PI is taking Calan, Paxil, Pamelor & Duratuss. Would prefer to discuss case history w/ou

r staff md, but he is not in the office this week. Will discuss w/Steve Brown & go from there.....Annette/STARS UW

***Steve...This is the case I just talked to you about where I am just not certain on the severity of the meds issue pertaining to tx for migraines. The symptoms do not seem all that severe, but the Dr's have precautinary measures in place to keep tigh

t control on med refills, etc. I would really appreciate your thoughts on this one. I am considering btw T-2-4 range subj to f/up info. Please advise, thanks.....Annette/UW

Annette: Hx major depression with recurrence, also headaches and fibromyalgia. Many meds, with pain meds being closely monitored by doctor to avoid overdose. As I was reading APS, my thiought was probably Table 3, which fits right in with what you have su

ggested. Would go with Table 3. -Steve

Currently being successfully treated with Aimovig. Qualified by manufacturer for low income plan thanks to the "terrific" work by the "Super Lawyer" firm of John F. Schaefer. Aimovig is administered to patients with chronic migraines - 15 or more days per month. That's a lot of lost time to migraines. I still get them but they aren't ruining my quality of life like they were before.

MICHIGAN HEAD-PAIN & NEUROLOGICAL INSTITUTE
Joel R. Saper, M.D., F.A.C.P., Director
3120 Professional Drive
Ann Arbor, Michigan 48104
(734) 677-6000

STARS

CHART NOTE-BEHAVIORAL MEDICINE
Behavioral Medicine Session
(File in Outpatient Medical Section)

NAME: GREENBURY, KAY E.
DOB: 11/1/56
DATE: 8/22/02

45 minute clinical psychotherapy session.

The patient was late for her appointment. She indicated that she did lose a horse due to peritonitis. This was difficult as it is like losing a beloved family pet. She had taken the horse to Michigan State University and the decision was to perform euthanasia during surgery.

The patient feels that she is under a great deal of stress. She noticed that her house was quite dysfunctional and full of clutter although because of the size of the house it can handle the clutter.

Interventions:

- Next time: Discuss the clutter.
- Next time: Discuss her mood.
- Next time: Discuss the downsizing of her horse farm.

Barbaranne Branca, Ph.D., DABFE, DABFM
BB:hjp DD: 8/22/02 DT: 9/2/02

Chronic tardiness and clutter are also signs of ADHD. More towards the Inattentive - ADD symptoms. I was always late yet no therapist ever brought this up. Its highly genetic and I have younger Family members who with different forms of it. I made the connection after researching it for another person.

EXHIBIT B

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

"OAKLAND"
"COUNTY" 12-794194-DO



JUDGE CHERYL A. MATTHEWS
SMITH, ROGER, B v GREENBURY, KAY

ROGER B. SMITH, JR.,

Plaintiff/Counter-Defendant,

vs.

Case No. 12-794194-DO
Hon. Cheryl A. Matthews

KAY E. GREENBURY,

Defendant/Counter-Plaintiff.

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**PROTECTIVE ORDER FOR RELEASE OF
CONFIDENTIAL RECORDS AND FILES**

At a session of said Court held in the Oakland County Circuit Court,
City of Pontiac, State of Michigan, on: JUL 16 2012.

PRESENT: THE HONORABLE CHERYL A. MATTHEWS
Circuit Court Judge

The parties hereto, through their counsel of record, stipulate to the entry of this Protective Order relative to the production of information related to Roger B. Smith, the father of the Plaintiff/Counter-Defendant herein.

1. Defendant/Counter-Plaintiff has or may Subpoena or request documents related to Roger B. Smith and/or his estate. Roger B. Smith is the father of the Plaintiff/Counter-

Defendant herein. The parties agree these documents shall remain confidential and shall mark them "Confidential – subject to a Protective Order."

2. The only persons to whom the documents and information therein, subject to this Order, may be disclosed either verbally, visually or otherwise, are as follows:

- (a) Counsel of record for the parties and any employees of the law firms associated with the counsel for the parties that have a need to know for purposes of pursuing this litigation;
- (b) Plaintiff/Counter-Defendant to this litigation and Defendant/Counter-Plaintiff to this litigation, limited to any key employees that have a need to be privy to such information, but only as a result of consultation with their counsel of record for purposes of pursuing or defending this litigation, and in no event shall Plaintiff/Counter-Defendant or Defendant/Counter-Plaintiff use the documents and information covered by this Order for any other purpose, other than for said purpose stated herein;
- (c) Outside experts not otherwise associated with Plaintiff/Counter-Defendant or Defendant/Counter-Plaintiff or their counsel of record who are retained by Plaintiff/Counter-Defendant's or Defendant/Counter-Plaintiff's counsel for purposes of pursuing this litigation;
- (d) Any person indicated on the face of a document covered by this Order to be the author, addressee or person copied on the document, but only as to said document;
- (e) Any other person agreed upon by the counsel of record for all parties, with such agreement being confirmed in writing and signed by each such counsel; and
- (f) The Court, and in conjunction with motions, hearings, case evaluation, mediation, facilitation, discovery and/or trial, but only after the party seeking to use such confidential documents, notifies the other party of the intended use so that they may discuss how best to maintain their confidentiality.

3. All persons designated in paragraph 2 above, shall be required to acknowledge their obligation of maintaining in the strictest confidence any documents or information produced pursuant to this Order, by being advised by Plaintiff/Counter-Defendant's or Defendant/Counter-

Plaintiff's attorney of this Order and its terms and conditions before having access to any such information. Plaintiff/Counter-Defendant's or Defendant/Counter-Plaintiff's attorneys, as applicable, shall then make a written notation for later review by the other party upon request, of those persons advised about this Order, and the date so advised.

4. The parties specifically agree that they will, at all times while this Order is in effect and after it expires or otherwise terminates, maintain the strictest confidence with regard to the documents produced by the parties pursuant to this Order, including information they learn from such documents, and they agree not to use such documents or information other than to pursue this litigation.

5. Entering into, agreeing to and/or complying with the terms of this Order shall not operate as an admission by any party that any particular document or discovery material contains or reflects trade secrets, proprietary or commercial information or other confidential matters or diminish, abrogate or waive (a) any party's obligations to abide by any obligation to produce documents or other discovery material; (b) any applicable discovery or testimonial privilege; and/or (c) any party's right (vis-à-vis any other party, person or entity, including third parties) to audit, inspect, review or otherwise obtain access to the books, records, data and/or other documents or information held by any party, person or entity (including third parties).

6. Entering into, agreeing to and/or complying with the terms of this Order shall not prejudice in any way the right of a party (a) to seek a determination by the Court of whether any particular documents or discovery material should be produced or, if produced, whether it should be subject to the terms of this Order; (b) to interpose an objection to a request for discovery on any ground; (c) to seek relief from any part of this Order, either generally or with respect to any particular information, document or other discovery material including the right to use any

information covered by this Order in a related proceeding; or (d) to seek protection greater than that provided by this Order.

7. Notwithstanding any provision of this Order, the Court may make such further orders as it sees fit regarding the use and designation of documents or other discovery material or other information.

8. Upon termination of this litigation, all documents and other information which have been produced pursuant to this Order and all copies thereof shall be returned to the party that produced them or otherwise disposed of by the parties' counsel as verified by documents signed by Plaintiff/Counter-Defendant and his counsel of record and by Defendant/Counter-Plaintiff and her counsel of record.

IT IS SO ORDERED.

~~CHERYL A. MATTHEWS~~
HON. CHERYL A. MATTHEWS
CIRCUIT COURT JUDGE

Approved as to form and substance:



B Andrew Bellini / by TJK
re: [unclear]

information covered by this Order in a related proceeding; or (d) to seek protection greater than that provided by this Order.

7. Notwithstanding any provision of this Order, the Court may make such further orders as it sees fit regarding the use and designation of documents or other discovery material or other information.

8. Upon termination of this litigation, all documents and other information which have been produced pursuant to this Order and all copies thereof shall be returned to the party that produced them or otherwise disposed of by the parties' counsel as verified by documents signed by Plaintiff/Counter-Defendant and his counsel of record and by Defendant/Counter-Plaintiff and her counsel of record.

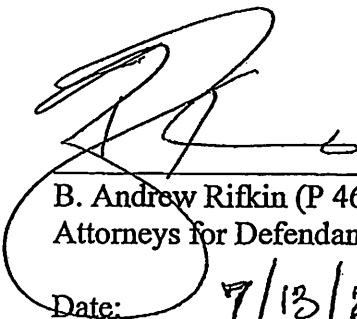
IT IS SO ORDERED.

HON. CHERYL A. MATTHEWS
CIRCUIT COURT JUDGE

Approved as to form and substance:

Timothy J. Kramer (P 36223)
Attorneys for Plaintiff/Counter-Defendant

Date: _____



B. Andrew Rifkin (P 46147)
Attorneys for Defendant/Counter-Plaintiff

Date: 7/13/2012

EXHIBIT C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

ROGER B. SMITH, JR.,

Plaintiff/Counter-Defendant,

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RESPONSE TO DISCOVERY REQUEST

RESERVATIONS

The objections set forth by Roger B. Smith, Jr. ("Smith") below are without prejudice to his right to assert additional grounds for objection, or otherwise amend his objections, should he discover additional information or grounds for objections.

DEFINITIONS

As used herein:

1. "Burdensome" means that the request requires an unduly burdensome search for information or documents that are of little value or no value to this lawsuit, so that any value derived from production is far outweighed by the incumbent burden required to produce the document.

2. "Overbroad" means that the request seeks information that is not relevant to any present or potential issues in this litigation.

3. "Vague" means that the request is drafted in such a way that it does not convey, with reasonable clarity, what is requested of Smith, with the effect that Smith is required to guess the intended meaning of the request.

GENERAL OBJECTIONS

1. Relevance. Smith objects to each request to the extent that it seeks information or documents that are not relevant to the subject matter or issues involved in this action or information or documents not reasonably calculated to lead to the discovery of admissible evidence.

2. Overbroad and Unduly Burdensome. Smith objects to each request to the extent that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

3. Excessive Time Frame Parameter. Smith objects to each request to the extent that it requests information or documents not limited by a proper time frame. Such request seeks information that is not relevant to this action, which would be unduly burdensome to produce, or is overbroad, and is not reasonably calculated to lead to the discovery of admissible evidence.

4. Privilege. Smith objects to each request to the extent that it calls for disclosure of information that is protected by the attorney/client privilege or work product privilege or both. Smith also objects to each request to the extent it calls for disclosure of information prepared in anticipation of litigation for trial preparation material.

5. Vague. Smith objects to each request to the extent that it is ambiguous and too vague to adequately apprise the requesting party of what information is being sought or permit Smith to furnish such information with reasonable effort.

6. Accessibility. Smith objects to each request to the extent that the requesting party seeks information which is already in the requesting party's possession, or which is as accessible to the requesting party as it is to Smith.
7. Confidential and Proprietary/Sensitive Business Information. Smith objects to each request to the extent that the requesting party seeks disclosure of confidential, proprietary, and/or sensitive business information and asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by law. To the extent that this objection has been stated, Smith will not disclose any such information without the entry of a protective order.
8. Speculative. Smith objects to each request to the extent that it calls for Smith to speculate in order to respond.
9. Argumentative. Smith objects to each request to the extent that it uses argumentative terms or otherwise implies facts which Smith denies. Smith also objects to the manufactured and sometimes incorrect definitions of words used in the requests. Smith has attempted to give words their usual, commonly understood meanings.
10. Redundant. Smith objects to each request to the extent that it is repetitive of a prior or subsequent request, and it is neither practical nor feasible to answer such a request.
11. Elaboration on Documents. Smith objects to each request to the extent that it calls for an elaboration on documents, statements and/or facts which otherwise speak for themselves.
12. Attorney Disclosure. Smith objects to each request to the extent that it calls for disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. MCR 2.302(B)(3)(a).

Subject to these Objections and in response to the July 18, 2012 letter of B. Andrew Rifkin regarding the above-captioned matter, Smith states as follows:

1. a. Smith Spyglass.

- I currently own twenty percent (20%).
- My interest was acquired in 1994.
- There is no foreign ownership.
- Tax returns and relevant information provided in my Affidavit of June 5, 2012. 2011 tax returns attached as Exhibit A.

b. Avalon Farms, Inc.

- My wife has all records in her possession with respect to Avalon Farms, Inc.

c. Air Monitors, Inc.

- I currently own forty-four percent (44%).
- **I am the Director of Operations.** Originally the Treasurer, until \$0 Purchase Orders used w/ main customer.
- My interest was acquired in March of 2009.
- There is no foreign ownership.
- Tax returns provided in my Affidavit of June 5, 2012. 2011 tax returns will be provided when completed.
- Air Monitors, Inc. pays for the insurance on my Avalanche automobile.

d. HRF Exploration and Production, LLC.

- I have a fractional ownership interest.
- I have no responsibilities.
- I do not recall when this interest was acquired.

- I do not know if there is any foreign ownership.
 - See records provided in my Affidavit of June 5, 2012.
- e. The Pacific Equity Corporate Group.
- I own 244 shares.
 - I have no responsibilities.
 - My interest was acquired in 1997 and 1998 with Roger B. Smith, Sr.
One-half of the purchase price was paid for by Roger B. Smith, Sr.
 - I do not know if there is any foreign ownership.
 - I do not have financials.
 - See records provided in my Affidavit of June 5, 2012.
- f. Alliance Bernstein Holding LP.
- Any ownership interest is in my Wells Fargo account.
 - I have no responsibilities.
 - My interest was acquired some time in 2000.
 - I do not know if there is any foreign ownership.
 - All information is available on the internet as this is a publicly traded company.
 - See records provided in my Affidavit of June 5, 2012.
- g. Geist Pharmaceuticals, LLC.
- I have no interest in this company.
- h. Fruehauf 96-A Oil and Gas Working Interest.
- See HRF Exploration and Production, LLC.

Google: www.sunbiz.org Then do a search on the Corporate Database under the Name Smith Spyglass Ltd. The LLC was initiated in 1998. Kay Greenbury is listed as a General Partner with a 10% share. **Smith Spyglass was a MARITAL ASSET**

- i. Fruehauf 97 Oil and Gas Working Interest.
 - See HRF Exploration and Production, LLC.

- j. Fruehauf 98-A Oil and Gas Working Interest.
 - See HRF Exploration and Production, LLC.

2. Trusts.

a. My Trust

- I have my own revocable trust. I am the trustee of this trust. All assets in it have been disclosed in my Affidavit of June 5, 2012. My revocable trust is attached (Exhibit B). There are no tax returns.

b. Other Trusts

- Over the years, various members of my family have created trusts and funded them with their assets. I may be a beneficiary of these trusts. I am currently a trustee of two of these trusts, one created by my father (co-trustee) and the other created for the benefit of my nephew (sole trustee). You have previously subpoenaed two years of account statements of the accounts held by these two trusts and I believe you have these statements in your possession. I have contributed nothing to any of these trusts and they are not marital property. To the extent I may have information or documentation related to these trusts, I have no authority to release it and object to doing so.

3. Separate Properties. Properties described as separate have been identified in my Affidavit of June 5, 2012. These separate properties were given to me by my parents.


4. Foreign Investments. To the best of my knowledge I do not have any property, investments, assets or interests in any assets outside of the United States. Those entities that I have

referenced in my Affidavit of June 5, 2012 may have such holdings, but I have no personal knowledge of this.

5. Deposits. With respect to my own personal funds deposited into accounts I have an interest in, I do not have records for all of them for the past three (3) years. Those records I have are provided below, are in the possession of my wife, or have been subpoenaed by my wife. These accounts are:

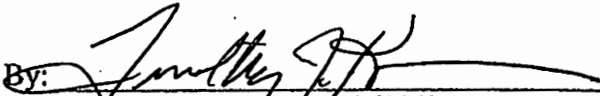
- Air Monitors, Inc. – 2009, 2010, 2011 and 2012 records attached (Exhibit C)
- Wells Fargo IRA – Records in your possession per prior Subpoena
- Joint Chase Account – Records in possession of my wife
- Ally Bank Account – Records in your possession per prior Subpoena

I declare the statements above are true to the best of my knowledge, information and belief.



ROGER B. SMITH, JR.
Dated: 9/11/12, 2012

ABBOTT NICHOLSON, P.C.

By: 

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Dated: September 12, 2012