

CAUSE NO. D-1-GN-19-000432

ROBERT LANCE GIBBS,

Plaintiff,

V.

LSG SPIRITS LLC and SCOTT MURRAY,

Defendants.

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IN THE DISTRICT COURT

200TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF ROBERT LANCE GIBBS'
MOTION TO COMPEL DEFENDANTS' RESPONSES TO PLAINTIFF'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff ROBERT LANCE GIBBS files this Motion to Compel Defendants' Responses to Plaintiff's Interrogatories and Requests for Production, and respectfully shows the Court as follows:

I. Background & Procedural History

1. Plaintiff filed this suit for breach of contract, fraud in a stock transaction and for violations under the Texas Securities Act, all of which arose out of Plaintiff's investment in the Series A investment round of Defendants' vodka company, and Defendants' subsequent buy-back of that investment.

On Friday, September 7, 2018, Plaintiff sent to Defendants \$30,000.00 via an ACH three-day transfer. Plaintiff was informed by Defendant Murray that the ACH transfer would not arrive in time for the Series A closing, which was to take place on Monday, September 10, 2018. So as to not delay the closing, Plaintiff wired a second \$30,000 to be received by LSG Spirits on Monday

and requested that the initial \$30,000 ACH be promptly returned upon receipt, to which Defendant Murray agreed.

Week after week, Plaintiff followed up with Defendant Murray to inquire as to why Plaintiff's overpaid \$30,000 capital had not been returned, as it was Plaintiff's understanding that the overpaid capital would be returned by Defendant Murray immediately upon receipt. Each time Defendant Murray gave Plaintiff a different excuse for the delay. On November 14, 2018, over two months after Plaintiff wired Defendants the additional capital, Plaintiff informed Defendants that he had lost trust in them and wanted out of his investment.

On November 19, 2018, Plaintiff and the Company entered into a Unit Purchase Agreement in which the Company agreed to buy back Plaintiff's membership units for \$30,000. Defendants agreed that the overfunded capital of \$30,000.00 would be returned as a condition upon closing. Defendant Murray also informed Plaintiff that per the Unit Purchase Agreement, Plaintiff would be receiving a block of stock in the Company for Plaintiff's inconvenience.

Below are relevant sections of the Unit Purchase Agreement:

Section 4.1 Refund of overfunded capital.

Buyer agrees to refund overfunded capital of thirty thousand dollars (\$30,000.00) to Seller as part of the conditions on closing on the Unit purchase.

Section 1.4 Closing Date.

The Closing shall take place at the offices of the Company (or at such other place as the parties may designate in writing) on or before 5:00 P.M. (Central Standard time) on or before November 19, 2018.

The Agreement also contained a release barring either party from future claims against the other arising out of either the initial Series A investment or the subsequent buy-back agreement.

The parties executed the unit purchase agreement on November 19, 2018. On November 21, Plaintiff received the wire transfer for the stock purchase buy-back. However, Plaintiff's

overfunded capital was not returned until January of 2019, over four months after the capital had been sent. Defendants contend that it was the overfunded capital that was returned on November 21, 2018, and that the transaction for the buy-back of Plaintiff's stock did not close until January of 2019.

Plaintiff filed this lawsuit against Defendants claiming that Defendants breached the Unit Purchase Agreement when they failed to return Plaintiff's overfunded capital as required by Section 4.1 of the Agreement. Plaintiff also brings a claim against Defendants for fraud in a stock transaction and for violations under the Texas Securities Act. Based on the fact that Plaintiff decided to move forward with the Series A round of investments in reliance on Defendant Murray's promise that the overfunded capital would be immediately returned.

Defendants filed a counterclaim alleging that by filing this lawsuit, Plaintiff has breached the Unit Purchase Agreement. Defendants also allege that the company lost investors and the company's reputation has been damaged as a result of this suit.

Plaintiff sent Defendants Interrogatories and Requests for Production. (See Exhibit A) Defendants provided their answers, or better said primarily objections, to these discovery requests on November 22, 2019. (See Exhibit B) As shown in greater detail below, Plaintiff sought only relevant information, as defined by having a tendency in this case to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. Defendants responded to these requests with blanket objections.

On January 9, 2020, Plaintiff sent a conferral letter to counsel for Defendants in an attempt to resolve this dispute independently without having to burden this court. (See Exhibit C) The letter gave Defendants a deadline of January 15, 2020, to drop their boilerplate objections and produce responsive documents. As of the date this motion was filed, Defendants have yet to

respond or to produce a single document. Plaintiff is left with no further recourse but to file this Motion to Compel.

II. Argument

Below is a list of the specific discovery requests at issue, along with Defendants' objections, and Plaintiff's argument as to why the requested information should be compelled:

I. REQUEST TO COMPEL INTERROGATORY RESPONSES

A. Requests involving identities of board members.

Interrogatories Nos. 2, 3 6, 14:

These interrogatories request information relating to the identity of the members of the board that were involved in making decisions as to the timing of the refund of Plaintiff's capital, the decision to allow Plaintiff's withdrawal as an investor, the decision to grant Plaintiff a block of stock, and the timing of Plaintiff's unit purchase.

DEFENDANT'S RESPONSE (as to each of the above Interrogatories):

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's and the board members' privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Plaintiff's position in support of a Motion to Compel:

The scope of interrogatories is governed by TRCP 192 and 197, which allows a party to seek discovery of unprivileged information that is relevant to the subject of the lawsuit, including inadmissible evidence, as long as the request is reasonably calculated to lead to the discovery of admissible evidence. TRCP 192.3(a). "Evidence is relevant if `(a) it has any tendency to make a

fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *In re National Lloyds Ins. Co.*, 532 S.W.3d at 808 (quoting Tex. R. Evid. 401).

- Defendants' Objection that this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters is not a proper objection supported by the Rules.
- Defendants assert that the requested information is not relevant. The crux of Plaintiff's claim is based on Defendants' failure to timely return Plaintiff's overpaid capital after both the Series A investment round and again, per the terms of the unit purchase agreement. Only the voting board members would have information with regard to the decision to grant Plaintiff a block of stock, the unit purchase agreement, and the Board's understanding as to the timing of when the buy-back of stock was to occur as well as the return of Plaintiff's overfunded capital. Lastly, Defendants filed a counter-claim asserting that, as a result of Plaintiff's alleged breach of the unit-purchase agreement, LSG suffered damages including lost investors and damage to the company's reputation. Only the board members would have the knowledge of the information necessary to support this claim.
- Defendants' objection that the request is harassing/overbroad is conclusory and without support as required by Rule 193.2(e). *In re National Lloyds Ins. Co.*, 532 S.W.3d at 808. Plaintiff's requests are narrowly tailored to include only information related to the claims arising out of this lawsuit.
- Lastly, Defendants claim the information requested seeks confidential information regarding investors. Defendants provide no law in support of their contention that the identities of board members are confidential. Moreover, Defendants have filed a counterclaim asserting that its investors have been affected by Plaintiff's actions, thus opening the door with regard to the discovery of these individuals.

B. General objection asserting this lawsuit was improperly brought.

In response to each and every Interrogatory, Defendants object that that "this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters." Such an objection does not exist under the Texas Rules of Civil Procedure. Plaintiff requests the court to order Defendants to remove this objection.

C. Objection to identity of signors on Wells Fargo account.

Interrogatory No. 13: Identify all signor's on the LSG Wells Fargo Account and anyone with access to the account.

RESPONSE: Defendants object to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's and the board members' privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Subject to and without waiving same , none.

Plaintiff's Response in Support of Motion to Compel:

Plaintiff requests this Court to order Defendants to remove the above conclusory objections. The information sought is relevant to determine which individuals had the authority to authorize the return of Plaintiff's overfunded capital. Such individuals are likely to also have knowledge regarding the timing of the return of Plaintiff's overfunded capital and reason for the delay.

II. REQUEST TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION

A. Financial Records Regarding Wire Transfers.

Requests for Products Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20, 23, 24, 25, 26:

These requests for production include requests for emails with financial institutions and/or board members regarding the return wire transfer of Plaintiff's overfunded capital. These requests also include a request for bank records showing the status of all wire transfers initiated by Defendants to return Plaintiff's overfunded capital.

DEFENDANT'S RESPONSE: Defendant objects to these requests stating this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects because the request invades Defendants' legitimate expectation of privacy. Defendant finally objects for the reason that the Plaintiff should be required to prove allegations of gross negligence before they are entitled to discover any such financial records.

Plaintiff's Response in Support of Motion to Compel:

Plaintiff and Defendant Murray engaged in three months of email correspondence in which Murray promised the return of Plaintiff's funds by a certain date, and then blamed the delay on various issues with the bank. The timing of the transfer and the reasons for Defendants' delay, including administrative delays by the bank, are relevant to establish the fact that Plaintiff's capital was not refunded in a timely manner due to the fault of Defendants. The requests are narrowly limited to only those records relating to the return of Plaintiff's overfunded capital. Plaintiff is not at this time seeking account information for purposes of establish punitive damages under a gross negligence claim.

B. Request for Company Documents.

Requests for Production Nos. 19, 17, 18, 21, 22, 29:

The above referenced requests seek emails to/from Defendant LSG's board members regarding Plaintiff's initial investment, the return of Plaintiff's overpaid capital, the unit purchase agreement, and the Board's determination to grant Plaintiff a block of stock.

DEFENDANTS' RESPONSE: Defendants object to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant objects that this requests seeks information obtained. Material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information

of materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client privilege. Defendant objects to this discovery request because it is harassing.

Plaintiff's Response in Support of Motion to Compel:

The information requested is necessary to determine if in fact the delay was on the side of the bank or due to the fault of LSG in returning Plaintiff's overfunded capital. Additionally, the requested information is relevant to understand the board's decisions as to when the overfunded capital would be returned and why it took so long for the board to return the funds, as well as whether LSG converted the funds to its own use before the refund.

C. Confirmation of Fed Ex Attempted Delivery and Wire Transfer Confirmation.

Request for Production No. 27:

On December 20, 2018, in an email to Plaintiff Defendant Murray stated: "Just got a notice that fedex attempted delivery of the envelope to my house again. I am not home and won't be until tomorrow. I just submitted a wire from my trust at Chase to cover the 29750 to not delay it again." Produce the notice from fedex referenced in this email. Please also produce confirmation that you "submitted a wire from my trust at Chase to cover the 29750."

RESPONSE: Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant objects that this requests seeks information obtained. Material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information of materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client privilege. Defendant objects to this discovery request because it is harassing.

Plaintiff's Response in Support of Motion to Compel:

Plaintiff is quite frankly at a loss at to how any of the above objections might apply to a fed ex notice or wire confirmation. Plaintiff requests this Court to order that all of the above objections be removed and the requested documents be produced.

III. CONCLUSION

"Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even though it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.'" *In re National Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003)). Regardless of the admissibility of the above-requested information, the information requested is directly related to Plaintiff's claims and his defense of counter-claims, and therefore is relevant and should be provided.

IV. EXPENSES OF MOTION

Plaintiff has incurred expenses in preparing and filing this motion to obtain relief. Defendants made no attempt at making a good faith response and failed to produce a single document. Under Texas Rule of Civil Procedure 215.1(d), Plaintiff is entitled to reasonable expenses incurred in obtaining the order, including attorney's fees. (See Exhibit D, Affidavit on Attorney's Fees)

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court grant this motion to compel Defendants to file adequate responses to Plaintiff's discovery requests and order Defendants to pay Plaintiff \$2,700.00 for reasonable expenses incurred in filing this motion, including attorney fees.

Respectfully submitted,
JONES & SPROSS, PLLC
1605 Lakecliff Hills Ln., Suite 100
Austin, TX 78732
(512) 693-7835



By: _____
Jennifer Trillsch
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Ann Cardenas
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served via email on the attorney listed below, in accordance with the Texas Rules of Civil Procedure on this 17th day of January, 2020:

Amy C. Welborn
awelborn@hpylaw.com

/s/ Ann Cardenas
Ann Cardenas

CERTIFICATE OF CONFERENCE

I certify that a reasonable effort was made to resolve the dispute without the necessity of court intervention, and the effort failed. Tex. R. Civ. Proc. 191.2.

I certify that I sent a detailed conferral letter to opposing counsel and requested a response by January 15, 2020. As of the time this Motion is filed on January 17, 2020, I have not received a response.

Submitted: January 17, 2020

/s/ Ann Cardenas
Ann Cardenas

EXHIBIT A

Unofficial copy Travis Co. District Clerk Velda L. Price

LANCE GIBBS

Plaintiff,

V.

LSG SPIRITS LLC AND
WILLIAM SCOTT MURRAY

Defendants.

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IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: Defendants, LSG Spirits LLC and William Scott Murray, by and through their attorney of record, Amy C. Welborn.

Plaintiff, Robert Lance Gibbs, serves these interrogatories and requests for production on Defendants, LSG Spirits LLC and William Scott Murray, as allowed by Texas Rules of Civil Procedure 196 and 197. Defendants must answer each interrogatory separately, fully, in writing, and under oath, within 30 days after service. Defendants must produce all requested documents (as they are kept in the ordinary course of business or organized and labeled to correspond with categories in each request) for inspection and copying, not more than 30 days after service, at the law office of Jennifer Trillsch, Jones & Spross, 1605 Lakecliff Hills Ln., Suite 100, Austin, Texas 78732.

Respectfully submitted,
JONES SPROSS
1605 Lakecliff Hills Ln., Suite 100
Austin, TX 78732
(512) 693-7835

By: /s/ Jennifer Trillsch
Jennifer Trillsch
State Bar No. 24045571
Jennifer.Trillsch@jonesspross.com
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served via email on the attorney listed below, in accordance with the Texas Rules of Civil Procedure on this 10th day of April, 2019:

Amy C. Welborn
amywelbornlaw@gmail.com

/s/ Jennifer Trillsch
Jennifer Trillsch

DEFINITIONS

As used herein:

1. "Plaintiff" means Robert Lance Gibbs, and his agents, employees, representatives and his current and former attorneys.
2. "Defendant Murray" or "Murray" means Defendant William Scott Murray and his agents, employees, representatives and attorneys.
3. "LSG Spirits LLC" or "LSG Spirits" or "LSG" means Defendant LSG Spirits LLC.
4. "Wire transfer" refers to Defendants' attempts to return the \$30,000 funds owed to Plaintiff, originally sent by Plaintiff to Defendants on September 7, 2018 via ACH transfer, as part of Plaintiff's investment in LSG Spirits.
5. "Documents" and "Documents and tangible things" mean any and all manner and form of written, printed, stenographic, photographic, computerized or electronically recorded data or information of any kind, specifically including, but not limited to, any and all data or information that exists in electronic or magnetic form (Note: in accordance with TEX. R. CIV. P. 196.4, Plaintiff does hereby specify that all such electronic or magnetic data be produced in the following form: printed out on 8 1/2" by 11" paper and identified by exact source [i.e., "Defendant's iCloud storage" or "Defendant's DropBox storage" or "Defendant's personal computer" or "Defendant's cell phone" or "Defendant's thumb drive" or "Defendant's smart phone" or "Defendant's iPad" or "Laptop computer of Defendant," etc.], emails and attachments and enclosures to emails, text messages and attachments and enclosures to text messages, Facebook pages and postings, Twitter messages or "tweets", photographic negatives, Power Point presentations, photographs, slides, audio recordings, video recordings, audio-video recordings, movies, cassettes, tapes, computer records, computer programs, computer disks, computer

memory, data recorded or stored in computers or computer servers or CDs or DVDs or thumb drives or the cloud or laptop computers or cell phones or iPhones or iPads or tablets, calendar, letters, opinion letters, books, papers, summaries, outlines, communications, copies, photocopies, telegrams, telephone logs, telephone bills, appointment books, sign-in sheets, agreements, contracts, proposed contracts or agreements, schedules, progress reports, drawings, bills, invoices, bonds, sureties, liens, releases, deeds, conveyances, deeds of trust, quitclaim deeds, transfers, leases, subleases, files, minutes of meetings, promissory notes, security agreements, financing statements, financial statements, income statements, balance sheets, profit and loss statements, signature cards, loan or credit statements, account statements, records of payment, guarantees, guaranties, pledges, corporate minutes, studies, environmental studies, environmental impact statements, work rules, safety rules, investigation reports, investigation records, pleadings, briefs, interrogatories and answers thereto, requests for admissions and responses thereto, requests for production and responses thereto, depositions, transcripts of hearings, transcripts of trials, transcripts of testimony, ordinances, laws, position papers, books, magazines, newspapers, newspaper articles, press releases, memoranda, files, file folders, reports, resumes, expert reports, minutes or notes of any and all meetings, studies, work papers, mock-ups, models, exhibits, experiments, witness statements, evidence, demonstrative evidence, calendar or diary entries, minutes, pamphlets, maps, plats, surveys, payments, tribulations; records and/or minutes of meetings, conferences, and telephone or other conversations or communications; charts, graphs, statements, orders, telexes, messages, notes, notations, commentary, margin notations, date stamps, pictures, scribbles, doodles, and any reproductions, copies or photocopies of same which are not identical duplicates of the originals, or which contain any commentary, marginal notation or other mark that does not appear on the original, and any reproductions, copies or photocopies of same of which the originals are not available. The term “Documents” and “Documents and Tangible Things” also includes any documents or other tangible things considered privileged. If the document or other tangible thing is considered privileged, such document or other tangible thing shall be identified by the type of document or other tangible thing, its subject matter, its author, the present location of the custodian of the document or tangible thing, the date of the document or tangible thing, and the grounds alleged for the claim of privilege, if any.

6. The terms “you” and “your” mean Defendant William Scott Murray and your agents, representatives, former attorneys, and attorneys.

7. “Wells Fargo” means the bank that you refer to in various emails to Plaintiff through which you attempted to make a wire transfer to Plaintiff.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify the names of the persons with whom you communicated at Wells Fargo regarding the wire transfer at issue in this case.

RESPONSE:

INTERROGATORY NO. 2:

Identify the members of the board that voted to allow Plaintiff's withdrawal as an investor and granted Plaintiff a block of stock worth \$5000 "for the inconvenience" as referenced in your November 15, 2018 email to Plaintiff.

RESPONSE:

INTERROGATORY NO. 3:

Identify all board members, owners, stockholders, and/or employees of LGS with whom you have discussed the wire transfer and the excess \$30,000 sent to LGS.

RESPONSE:

INTERROGATORY NO. 4:

In an email from you to Plaintiff, dated December 3, 2018, you state that you walked into the bank and submitted the wire transfer. Please identify the name and title of the bank employee who assisted you with the wire transfer submittal.

RESPONSE:

INTERROGATORY NO. 5:

Identify all individuals at Wells Fargo who at any time assisted you with the wire transfer in this case.

RESPONSE:

INTERROGATORY NO. 6:

Identify all board members involved in discussions with you regarding the return of the \$30,000 ACH transfer to Plaintiff.

RESPONSE:

INTERROGATORY NO. 7:

On November 27, Defendant Murray informed Plaintiff via email that he had just left Wells Fargo, and according to Murray "If not this afternoon deadline than first thing in the morning. Hallelujah, it's done." Describe what you meant by your statement "Hallelujah, it's done." What specifically was "done?"

RESPONSE:

INTERROGATORY NO. 8:

On December 11, Defendant Murray informed Plaintiff that he was going to send Plaintiff a cashier's check for the ACH transfer amount that was owed, stating, "[he] should have done that the first time!" Defendant said he would personally deliver the check to Plaintiff the following day. Explain why was the check was not delivered the following day as stated.

RESPONSE:

INTERROGATORY NO. 9:

Please identify each and every reason the money at issue was not returned to Plaintiff until after this lawsuit was filed, including the dates for every delay, the reason for every delay, and the persons involved in every delay.

RESPONSE:

INTERROGATORY NO. 10:

Explain why the money owed to Plaintiff was not returned to him until after this lawsuit was filed

RESPONSE:

INTERROGATORY NO. 11:

Identify those persons in charge of day-to-day operations of LSG Spirits, including each person's name and title.

RESPONSE:

INTERROGATORY NO. 12:

Describe what title is at LSG Spirits and what responsibilities your role entails.

RESPONSE:

INTERROGATORY NO. 13:

Identify all signor's on the LSG Wells Fargo account and anyone with access to the account.

RESPONSE:

INTERROGATORY NO. 14:

Identify all persons from LSG involved in returning Plaintiff's \$30,000 ACH transfer.

RESPONSE:

INTERROGATORY NO. 15:

On November 21, you informed Plaintiff that you received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. What is your understanding as to why the transfer was not made?

RESPONSE:

INTERROGATORY NO. 16:

On November 8, 2018, you wrote, "The Wells Fargo transfer that I submitted yesterday afternoon was co-signed electronically mid-morning. Every transfer requires two authorizations. She did not get my vm until this morning. I have a call tonight with the attorney for the estate of the lead investor and our chase banker on the treasury side to understand why it has not been completed yet as we both approved it same day." Describe what was said in the conversation referenced in this email.

RESPONSE:

INTERROGATORY NO. 17:

In an Oct 9, 2018 email to Plaintiff you wrote, "Just spent 90 min at WF today with our banker. The direct pay had a glitch last week and reset all payees back to verify. They let me know that today!" Identify the name and phone number of the banker with whom you had this 90 min meeting.

RESPONSE:

INTERROGATORY NO. 18:

In a September 27, 2018 email to Plaintiff you stated: "Perfect! Will get the balance off to you today." Please identify what the balance was and describe why the balance was not sent to Plaintiff as stated in this email.

RESPONSE:

INTERROGATORY NO. 19:

On September 11, 2018, you wrote: "Just set you up for ACH transfer back on the 30k arriving tomorrow. It takes Wells Fargo a couple of days to verify the account and next day delivery once verified." Explain why these funds were not received by Plaintiff.

RESPONSE:

INTERROGATORY NO. 20:

On December 21, 2018, you sent an email to Plaintiff stating: "Just got off the phone with fraud department at chase. Calling about the online wire I submitted to you. Confirmed it was legit. It was flagged because I haven't sent a lot of online wires and certainly not for \$30K. It's been released." Please identify the person with whom you were speaking to on this call. Please also identify the phone number from which you made this call.

RESPONSE:

INTERROGATORY NO. 21:

Please identify all phone numbers and the carrier for each number for calls made to any bank related to funds sent to or received from Plaintiff.

RESPONSE:

INTERROGATORY NO. 22:

Defendants assert in their answer that Defendants are not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care. Please describe the conduct by Plaintiff that you contend constituted negligence and/or failure by Plaintiff to exercise reasonable care.

RESPONSE:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

In an email from you to Plaintiff, dated December 6, 2018, you state with regard to the wire transfer "it still shows as pending." Please produce bank records showing that your account had a pending

wire transfer to Plaintiff, including but not limited to the following dates: December 4, 2018, December 5, 2018, December 6, 2018.

ANSWER:

REQUEST FOR PRODUCTION NO. 2:

In an email from you to Plaintiff, dated December 3, 2018, you state that you walked into the bank and submitted the wire transfer. Please produce documentation from the bank that the wire transfer was submitted on this date.

ANSWER:

REQUEST FOR PRODUCTION NO. 3:

Produce all documentation, including email or hand-written correspondence between you and Wells Fargo, bank policies in your possession, contracts between you and Wells Fargo regarding the bank's requirement that there be internal approval for the wire transfer in this case.

ANSWER:

REQUEST FOR PRODUCTION NO. 4:

Produce all correspondence between you and any bank regarding the wire transfer in this case.

ANSWER:

REQUEST FOR PRODUCTION NO. 5:

In a December 3, 2018 email to Plaintiff, sent at 4:15pm, you state "I am saving all their emails too," in reference to your frustrations with Wells Fargo. Please produce all email correspondence with Wells Fargo from October 1, 2018 – present.

ANSWER:

REQUEST FOR PRODUCTION NO. 6:

In your November 29, 2018 email to Plaintiff you state with regard to the wire transfer, "I know it was pulled back because it was credited to the account around 5pm." Produce documentation showing that the wire transfer amount was credited to your account as stated in your email.

ANSWER:

REQUEST FOR PRODUCTION NO. 7:

On October 9, 2018, thirty-two days after the initial ACH transfer was made, Plaintiff still had not received the return ACH transfer. Plaintiff was informed by Defendant Murray that he had an out of town emergency and assured Plaintiff that "[his] transfer was now outbound." Produce all documentation showing that the transfer was "outbound" as stated in your email, including any correspondence regarding the fact that the transfer was outbound.

ANSWER:

REQUEST FOR PRODUCTION NO. 8:

Produce all correspondence to/from you regarding the wire transfer attempts for the return of the \$30,000 ACH transfer to Plaintiff.

ANSWER:

REQUEST FOR PRODUCTION NO. 9:

Produce all correspondence to/from you regarding the wire transfer being delayed by administrative delays from the bank.

ANSWER:

REQUEST FOR PRODUCTION NO. 10:

Produce all correspondence with any board members regarding Robert Lance Gibbs, including correspondence regarding the buy-back of Plaintiff's stock and the return of any of Plaintiff's money.

ANSWER:

REQUEST FOR PRODUCTION NO. 11:

On November 27, Defendant Murray informed Plaintiff via email that he had just left Wells Fargo, and according to Murray "If not this afternoon deadline than first thing in the morning. Hallelujah, it's done." Identify the person with whom you met at the bank during the meeting referenced in this email. Produce documentation given to you by the bank to warrant you to say "Hallelujah, it's done."

ANSWER:

REQUEST FOR PRODUCTION NO. 12:

On November 21, Defendant Murray informed Plaintiff that he received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. Produce the confirmation referred to in this email.

ANSWER:

REQUEST FOR PRODUCTION NO. 13:

On November 21, Defendant Murray informed Plaintiff that he received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. Produce documentation from the bank that the transfer request was made as well as the bank's explanation as to why the transfer was not completed.

ANSWER:

REQUEST FOR PRODUCTION NO. 14:

Produce documentation to/from Defendants to SunTrust relating to the transfer of funds Plaintiff claims is owed to him.

ANSWER:

REQUEST FOR PRODUCTION NO. 15:

On November 7, 2018 you wrote, "Been in meetings all day. Didn't hear from you so submitted the WF. It's wire and not an ach." Provide documentation from the bank to support that you submitted the WF as stated in this email.

ANSWER:

REQUEST FOR PRODUCTION NO. 16:

On November 7, 2018 you wrote: "If the Chase transfer isn't through by noon I will find a WF on the break and send from there as well." Produce documentation/correspondence from Chase regarding the wire transfer at issue in this email.

ANSWER:

REQUEST FOR PRODUCTION NO. 17:

Produce all correspondence to/from your controller regarding the wire transfer at issue.

ANSWER:

REQUEST FOR PRODUCTION NO. 18:

Produce all emails between any members of the board regarding Plaintiff's claim that Defendant is in receipt of funds owed to Plaintiff.

ANSWER:

REQUEST FOR PRODUCTION NO. 19:

Produce documentation of all money received by LSG from Plaintiff

ANSWER:

REQUEST FOR PRODUCTION NO. 20:

Produce documentation of all money sent to Plaintiff by LSG.

ANSWER:

REQUEST FOR PRODUCTION NO. 21:

Produce documents and correspondence regarding Plaintiff's investment in LSG.

ANSWER:

REQUEST FOR PRODUCTION NO. 22:

Produce notes from any board meetings in which Plaintiff was referenced, including any reference to money transferred between Plaintiff and Defendants.

ANSWER:

REQUEST FOR PRODUCTION NO. 23:

Produce your bank statements for all accounts in which money was deposited or withdrawn relating to Plaintiff's investment with LSG.

ANSWER:

REQUEST FOR PRODUCTION NO. 24:

Produce your bank statements for all accounts from which any wire transfer was made to/from Plaintiff to LSG from October 1-present.

ANSWER:

REQUEST FOR PRODUCTION NO. 25:

On October 4, 2018, you emailed Plaintiff stating: "Your transfer is now outbound." Please produce documentation from the bank that this transfer was outbound.

ANSWER:

REQUEST FOR PRODUCTION NO. 26:

On September 11, 2018, you wrote: "Just set you up for ACH transfer back on the 30K arriving tomorrow. It takes Wells Fargo a couple of days to verify the account and next day delivery once verified." Please provide documentation with the bank to show that you set up the ACH transfer as stated in your email.

ANSWER:

REQUEST FOR PRODUCTION NO. 27:

On December 20, 2018, in an email to Plaintiff you stated: Just got a notice that fedex attempted delivery of the envelope to my house again. I am not home and won't be until tomorrow. I just submitted a wire from my trust at Chase to cover the 29750 to not delay it again." Produce the notice from fedex referenced in this email. Please also produce confirmation that you "submitted a wire from my trust at Chase to cover the 29750."

REQUEST FOR PRODUCTION NO. 28:

Produce all documentation, including emails or hand-written correspondence between you and Wells Fargo, as well as bank policies in your possession, and contracts between you and Wells Fargo regarding the bank's requirement that there be internal approval for the wire transfer in this case.

ANSWER:

REQUEST FOR PRODUCTION NO. 29:

Produce all emails between any members of the board regarding the vote to allow Plaintiff's withdrawal as an investor and the decision to grant Plaintiff a block of stock worth \$5000 "for the inconvenience" as referenced in your November 15, 2018 email to Plaintiff.

ANSWER:

Unofficial copy Travis Co. District Clerk Velda L. Price

EXHIBIT B

Unofficial copy Travis Co. District Clerk Velda L. Price

LANCE GIBBS
Plaintiff

v.

LSG SPIRITS LLC and
WILLIAM SCOTT MURRAY
Defendants

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**DEFENDANT WILLIAM SCOTT MURRAY'S ANSWERS AND OBJECTIONS
TO INTERROGATORIES AND REQUESTS FOR PRODUCTION**

TO: Ann Cardenas and Jennifer Trillsch, JONES SPROGGS, 1605 Lakecliff Hills Ln.,
Suite 100, Austin, Texas 78732.

COMES NOW Defendant William Scott Murray pursuant to Rule 197 of the
Texas Rules of Civil Procedure, and serves its Objections and Answers to
Plaintiff's First Set of Interrogatories and Requests for Production

Respectfully submitted,

HAWKINS PARNELL & YOUNG, LLP
1717 West 6th Street, Suite 250
Austin, Texas 78703
(512) 687-6918
(512) 687-6990 (Fax)

By: /s/ Amy Welborn
Amy Welborn
State Bar No. 24012853
awelborn@hpylaw.com

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify by my signature above that a true and correct copy of the foregoing document has been sent by electronic service to counsel of record, in accordance with the Texas Rules of Civil Procedure, on this 22nd day of November, 2019.

Jennifer Trillsch

Jennifer.Trillsch@jonesspross.com

Ann Cardenas

ann.cardenas@jonesspross.com

Unofficial copy Travis Co. District Clerk Velda L. Price

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

MURRAY objects to the definitions and instructions provided by Plaintiff for use in responding to these Interrogatories and Request for Production in that said definitions attempt to modify the meaning of terms according to the Texas Rules of Civil Procedure and commonly accepted English language interpretations. The terms defined are not legal terms and require no definition. Furthermore, the instructions provided by Plaintiff exceed the requirements of the Texas Rules of Civil Procedure.

MURRAY objects to Plaintiff's definitions of "You" and/or "Your" to the extent said definition, when read with the discovery requests, exceeds the permissible scope of discovery, is overbroad, when read with the discovery requests, exceeds the permissible scope of discovery as prescribed by Rule 192.3 of the Texas Rules of Civil Procedure, would require disclosure of information protected by the attorney-client, work product, and/or investigative privileges as defined in Rule 192.5 of the Texas Rules of Civil Procedure.

MURRAY objects to Plaintiff's definition of "Document" to the extent said definition, when read with the discovery requests, exceeds the permissible scope of discovery as prescribed by Rule 192.3 of the Texas Rules of Civil Procedure would require disclosure of information protected by the work product, attorney-client and/or investigative privileges as defined in Rule 192.5 of the Texas Rules of Civil Procedure. Further, this definition is over broad, unduly burdensome and harassing.

RESPONSES TO INTERROGATORIES

INTERROGATORY 1: Identify the names of the persons with whom you communicated at Wells Fargo regarding the wire transfer at issue in this case.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving objection, Defendant does not recall the name of the former branch manager at the 620 and 2222 location.

INTERROGATORY 2: Identify the members of the board that voted to allow Plaintiff's withdrawal as an investor and granted Plaintiff a block of stock worth \$5000 "for the inconvenience" as referenced in your November 15, 2018 email to Plaintiff.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's and the board members' privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

INTERROGATORY NO. 3: Identify all board members, owners, stockholders, and/or employees of LGS with whom you have discussed the wire transfer and the excess \$30,000 sent to LGS.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to the undefined term "LGS." Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Subject to and without waiving same, none.

INTERROGATORY NO. 4: In an email from you to Plaintiff, dated December 3, 2018, you state that you walked into the bank and submitted the wire transfer. Please identify the name and title of the bank employee who assisted you with the wire transfer submittal.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving objection, Defendant does not recall the name of the former branch manager at the 620 and 2222 location.

INTERROGATORY NO. 5: Identify all individuals at Wells Fargo who at any time assisted you with the wire transfer in this case.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving objection, Defendant does not recall the name of the former branch manager at the 620 and 2222 location. There was also a female business banker at the branch that assisted as well as several tellers that directed Defendant to the branch manager. Defendant does not remember the names of these individuals

INTERROGATORY NO. 6: Identify all board members involved in discussions with you regarding the return of the \$30,000 ACH transfer to Plaintiff.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

INTERROGATORY NO. 7: On November 27, Defendant Murray informed Plaintiff via email that he had just left Wells Fargo, and according to Murray "If not this afternoon deadline than first thing in the morning. Hallelujah, it's done." Describe what you meant by your statement "Hallelujah, it's done." What specifically was "done?"

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waving same, Defendant meant that on November 27, 2018, Plaintiff was repaid his overpayment of \$30,000. Defendant was happy the overpayment had been returned in full. Plaintiff had given Defendant the wrong ABA number. The branch manager at the bank had formerly worked at the bank where Plaintiff had his account, as such he was able to correct it with the right number so that Plaintiff was

repaid. Plaintiff had caused delays in getting this money returned, including but not limited to going out of town on vacation for 30 days and not having access to email.

INTERROGATORY NO. 8: On December 11, Defendant Murray informed Plaintiff that he was going to send Plaintiff a cashier's check for the ACH transfer amount that was owed, stating, "[he] should have done that the first time!" Defendant said he would personally deliver the check to Plaintiff the following day. Explain why was the check was not delivered the following day as stated.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving same, Murray was not able to deliver the check because the trustee and attorney for estate of the lead investor refused to authorize the release of funds.

INTERROGATORY NO. 9: Please identify each and every reason the money at issue was not returned to Plaintiff until after this lawsuit was filed, including the dates for every delay, the reason for every delay, and the persons involved in every delay.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this interrogatory in that it assumes facts not in evidence and is based on untrue information. Further, Defendant objects to this discovery request for the reason it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

Subject to and without waiving same, after the parties entered into a binding settlement agreement all overpayment monies were returned and the stock was repurchased by LSG and the money refunded for the stock purchase. In violation of the settlement agreement, Plaintiff brought this suit seeking repayment after all monies were repaid.

INTERROGATORY NO. 10: Explain why the money owed to Plaintiff was not returned to him until after this lawsuit was filed

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this interrogatory in that it assumes facts not in evidence and is based on untrue information. Further, Defendant objects to this discovery request for the reason it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

Subject to and without waiving same, after the parties entered into a binding settlement agreement all overpayment monies were returned and the stock was repurchased by LSG and the money refunded for the stock purchase. In violation of the settlement agreement, Plaintiff brought this suit seeking repayment after all monies were repaid.

INTERROGATORY NO. 11: Identify those persons in charge of day-to-day operations of LSG Spirits, including each person's name and title.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving objection, W. Scott Murray is the managing member.

INTERROGATORY NO. 12: Describe what title is at LSG Spirits and what responsibilities your role entails.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this interrogatory in that it is nonsensical. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving objection, managing member. Defendant serves as the manager of LSG Spirits LLC

INTERROGATORY NO. 13: Identify all signor's on the LSG Wells Fargo account and anyone with access to the account.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Subject to and without waiving same, none.

INTERROGATORY NO. 14: Identify all persons from LSG involved in returning Plaintiff's \$30,000 ACH transfer.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Subject to and without waiving same, W. Scott Murray.

INTERROGATORY NO. 15: On November 21, you informed Plaintiff that you received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. What is your understanding as to why the transfer was not made?

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this interrogatory in that it assumes facts not in evidence and is based on untrue information. Further, Defendant objects to this discovery request for the reason it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

INTERROGATORY NO. 16: On November 8, 2018, you wrote, "The Wells Fargo transfer that I submitted yesterday afternoon was co-signed electronically mid-morning.

Every transfer requires two authorizations. She did not get my vm until this morning. I have a call tonight with the attorney for the estate of the lead investor and our chase banker on the treasury side to understand why it has not been completed yet as we both approved it same day." Describe what was said in the conversation referenced in this email.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Further, Defendant objects to this discovery request for the reason it seeks information, obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

INTERROGATORY NO. 17: In an Oct 9, 2018 email to Plaintiff you wrote, "Just spent 90 min at WF today with our banker. The direct pay had a glitch last week and reset all payees back to verify. They let me know that today!" Identify the name and phone number of the banker with whom you had this 90 min meeting.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters.

Subject to and without waiving objection, Defendant does not recall the name of the former branch manager at the 620 and 2222 location.

INTERROGATORY NO. 18: In a September 27, 2018 email to Plaintiff you stated: "Perfect! Will get the balance off to you today." Please identify what the balance was and describe why the balance was not sent to Plaintiff as stated in this email.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Further, Defendant objects to this discovery request for the reason it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

Subject to and without waiving objection, the balance of the overpayment was \$29,750.

INTERROGATORY NO. 19: On September 11, 2018, you wrote: "Just set you up for ACH transfer back on the 30K arriving tomorrow. It takes Wells Fargo a couple of days to verify the account and next day delivery once verified." Explain why these funds were not received by Plaintiff.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Further, Defendant objects to this discovery request for the reason it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials

responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

Subject to and without waiving same, Lead investor was unable to authorize the release of funds.

INTERROGATORY NO. 20: On December 21, 2018, you sent an email to Plaintiff stating: "Just got off the phone with fraud department at chase. Calling about the online wire I submitted to you. Confirmed it was legit. It was flagged because I haven't sent a lot of online wires and certainly not for \$30K. It's been released." Please identify the person with whom you were speaking to on this call. Please also identify the phone number from which you made this call.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waving same Defendant spoke with the fraud phone representative at Chase. Defendant made the call from 512-423-1215.

INTERROGATORY NO. 21: Please identify all phone numbers and the carrier for each number for calls made to any bank related to funds sent to or received from Plaintiff.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving same. 512-423-1215.

INTERROGATORY NO. 22: Defendants assert in their answer that Defendants are not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care. Please describe the conduct by Plaintiff that you contend constituted negligence and/or failure by Plaintiff to exercise reasonable care.

RESPONSE:

Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this Interrogatory in that it is a fishing expedition as it requests more than a basic statement of facts and seeks to require Defendant to marshal his evidence. Defendant objects that this Interrogatory seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative.

Subject to and without waiving objection, Plaintiff was paid in full prior to filing this lawsuit. Plaintiff entered into a settlement agreement waiving all claims brought in this lawsuit. Plaintiff specifically agreed in the settlement agreement that he would not file a lawsuit. Defendant brought this frivolous lawsuit solely to harass and cause harm to Defendants. Plaintiff caused delays in the returning the over payment.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: In an email from you to Plaintiff, dated December 6, 2018, you state with regard to the wire transfer "It still shows as pending." Please produce bank records showing that your account had a pending wire transfer to Plaintiff, including but not limited to the following dates: December 4, 2018, December 5, 2018, December 6, 2018.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendants' legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 2: In an email from you to Plaintiff, dated December 3, 2018, you state that you walked into the bank and submitted the wire

transfer. Please produce documentation from the bank that the wire transfer was submitted on this date.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendants' legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 3: Produce all documentation, including email or hand-written correspondence between you and Wells Fargo, bank policies in your possession, contracts between you and Wells Fargo regarding the bank's requirement that there be internal approval for the wire transfer in this case.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 4: Produce all correspondence between you and any bank regarding the wire transfer in this case.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of

admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 5: In a December 3, 2018 email to Plaintiff, sent at 4:15pm, you state "I am saving all their emails too," in reference to your frustrations with Wells Fargo. Please produce all email correspondence with Wells Fargo from October 1, 2018 – present.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant further objects as the information invades the privacy rights of vendors and other persons and entities with whom Defendant has done business or sent money to or communicated with to Wells Fargo. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Interrogatory as it is harassing and argumentative. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 6: In your November 29, 2018 email to Plaintiff you state with regard to the wire transfer, "I know it was pulled back because it was credited to the account around 5pm." Produce documentation showing that the wire transfer amount was credited to your account as stated in your email.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of

admissible evidence. Defendant further objects because the request invades Defendants' legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 7: On October 9, 2018, thirty-two days after the initial ACH transfer was made, Plaintiff still had not received the return ACH transfer. Plaintiff was informed by Defendant Murray that he had an out of town emergency and assured Plaintiff that "[his] transfer was now outbound." Produce all documentation showing that the transfer was "outbound" as stated in your email, including any correspondence regarding the fact that the transfer was outbound.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 8: Produce all correspondence to/from you regarding the wire transfer attempts for the return of the \$30,000 ACH transfer to Plaintiff.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant further objects as the information invades the privacy rights of vendors and other persons and entities with whom Defendant has done business or sent money to or communicated with to Wells Fargo. Defendant objects that this Interrogatory seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials

responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is harassing and argumentative. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

REQUEST FOR PRODUCTION NO. 9: Produce all correspondence to/from you regarding the wire transfer being delayed by administrative delays from the bank.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's and board members legitimate expectations as to privacy. Defendant objects that this Interrogatory seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is harassing and argumentative.

REQUEST FOR PRODUCTION NO. 10: Produce all correspondence with any board members regarding Robert Lance Gibbs, including correspondence regarding the buy-back of Plaintiff's stock, and the return of any of Plaintiff's money.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's and board members legitimate expectations as to privacy. Defendant objects that this Interrogatory seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is

privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is harassing and argumentative.

REQUEST FOR PRODUCTION NO. 11: On November 27, Defendant Murray informed Plaintiff via email that he had just left Wells Fargo, and according to Murray "if not this afternoon deadline than first thing in the morning. Hallelujah, it's done." Identify the person with whom you met at the bank during the meeting referenced in this email. Produce documentation given to you by the bank to warrant you to say, "Hallelujah, it's done."

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request on the grounds that it seeks information rather than production, and is, therefore, not a proper request for production. Defendant objects to this request in that it is nonsensical and is not based in fact. Defendant further objects to this Request as it is harassing and argumentative.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 12: On November 21, Defendant Murray informed Plaintiff that he received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. Produce the confirmation referred to in this email.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because it is nonsensical and not based on fact. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is harassing and argumentative.

REQUEST FOR PRODUCTION NO. 13: On November 21, Defendant Murray informed Plaintiff that he received confirmation from the bank that the \$60,000 would be transferred to Plaintiff that same day. Produce documentation from the bank that the transfer request was made as well as the bank's explanation as to why the transfer was not completed.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because it is nonsensical and not based on fact. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is harassing and argumentative.

REQUEST FOR PRODUCTION NO. 14: Produce documentation to/from Defendants to SunTrust relating to the transfer of funds Plaintiff claims is owed to him.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because it is nonsensical and not based on fact.

Subject to and without waiving same, none.

REQUEST FOR PRODUCTION NO. 15: On November 7, 2018 you wrote, "Been in meetings all day. Didn't hear from you so submitted the WF. It's wire and not an ach." Provide documentation from the bank to support that you submitted the WF as stated in this email.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 16: On November 7, 2018 you wrote: "If the Chase transfer isn't through by noon I will find a WF on the break and send from there as well." Produce documentation/correspondence from Chase regarding the wire transfer at issue in this email.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 17: Produce all correspondence to/from your controller regarding the wire transfer at issue.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to the undefined term "controller." Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Request as it is harassing and argumentative.

REQUEST FOR PRODUCTION NO. 18: Produce all emails between any members of the board regarding Plaintiff's claim that Defendant is in receipt of funds owed to Plaintiff.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request in that it is nonsensical and not based in truth, as the money has been paid

back. Defendant further objects because the request invades Defendant's and board members' legitimate expectations as to privacy. Defendant objects that this Request as it seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant further objects to this Request as it is harassing and argumentative.

Subject to and without waiving same, none in Defendant's possession.

REQUEST FOR PRODUCTION NO. 19: Produce documentation of all money received by LSG from Plaintiff.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant further objects because the request invades Defendant's and board members' legitimate expectations as to privacy. Defendant further objects to this Interrogatory as it is harassing and argumentative. Defendant objects to this discovery request because it is over broad, unduly burdensome and harassing and because Plaintiffs have equal if not superior access to the documents sought in this request. If a moving party can obtain the desired information without resort to discovery, good cause does not exist for producing same. *Texhoma Stores, Inc. v American Central Ins. Co.*, 424 S.W.2d 466, 472 (Tex. Civ. App. – Dallas 1968, writ ref'd n.r.e.).

REQUEST FOR PRODUCTION NO. 20: Produce documentation of all money sent to Plaintiff by LSG.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant further objects because the request invades Defendant's and board members' legitimate expectations as to privacy. Defendant further objects to this Interrogatory as it is harassing and argumentative. Defendant objects to this discovery request because it is over broad, unduly burdensome and harassing and because Plaintiffs have equal if not superior access to the documents sought in this request. If a moving party can obtain the desired information without resort to discovery, good cause does not exist for producing same. *Texhoma Stores, Inc. v American Central Ins. Co.*, 424 S.W.2d 466, 472 (Tex. Civ. App. – Dallas 1968, writ ref'd n.r.e.).

Subject to and without waiving same, none.

REQUEST FOR PRODUCTION NO. 21: Produce documents and correspondence regarding Plaintiff's investment in LSG.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant objects to this discovery request because it is over broad, unduly burdensome and harassing and because Plaintiffs have equal if not superior access to the documents sought in this request. If a moving party can obtain the desired information without resort to discovery, good cause does not exist for producing same. *Texhoma Stores, Inc. v American Central Ins. Co.*, 424 S.W.2d 466, 472 (Tex. Civ. App. – Dallas 1968, writ ref'd n.r.e.).

REQUEST FOR PRODUCTION NO. 22: Produce notes from any board meetings in which Plaintiff was referenced, including any reference to money transferred between Plaintiff and Defendants.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant objects to this discovery request because it is over broad, unduly burdensome and harassing and because Plaintiffs have equal if not superior access to the documents sought in this request.

REQUEST FOR PRODUCTION NO. 23: Produce your bank statements for all accounts in which money was deposited or withdrawn relating to Plaintiff's investment with LSG.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request as it is overly broad, unduly burdensome and not limited in time or scope. Defendant objects to this discovery request because the information sought is not

relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiff should be required to prove his allegations of gross negligence before he is entitled to discover any such financial records.

REQUEST FOR PRODUCTION NO. 24: Produce your bank statements for all accounts from which any wire transfer was made to/from Plaintiff to LSG from October 1-present.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request as it is overly broad, unduly burdensome and not limited in time or scope. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the reason that the Plaintiff should be required to prove his allegations of gross negligence before he is entitled to discover any such financial records.

REQUEST FOR PRODUCTION NO. 25: On October 4, 2018, you emailed Plaintiff stating: "Your transfer is now outbound." Please produce documentation from the bank that this transfer was outbound.

ANSWER:

Defendant objects this response is duplicative of Request 7. See response to Request for Production 7.

REQUEST FOR PRODUCTION NO. 26: On September 11, 2018, you wrote: "Just set you up for ACH transfer back on the 30K arriving tomorrow. It takes Wells Fargo a couple of days to verify the account and next day delivery once verified." Please provide documentation with the bank to show that you set up the ACH transfer as stated in your email.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects because the request invades Defendant's legitimate expectations as to privacy. Defendant finally objects for the

reason that the Plaintiffs should be required to prove their allegations of gross negligence before they are entitled to discover any such financial records.

REQUEST FOR PRODUCTION NO. 27: On December 20, 2018, in an email to Plaintiff you stated: Just got a notice that fedex attempted delivery of the envelope to my house again. I am not home and won't be until tomorrow. I just submitted a wire from my trust at Chase to cover the 29750 to not delay it again." Produce the notice from fedex referenced in this email. Please also produce confirmation that you "submitted a wire from my trust at Chase to cover the 29750."

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this discovery request because the information sought is not relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of admissible evidence. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Defendant objects to this discovery request because it is harassing.

REQUEST FOR PRODUCTION NO. 28: Produce all documentation, including emails or hand-written correspondence between you and Wells Fargo, as well as bank policies in your possession, and contracts between you and Wells Fargo regarding the bank's requirement that there be internal approval for the wire transfer in this case.

ANSWER:

Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects that this Request seeks information obtained, material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information or materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client communications privilege. Further, information responsive to this request is privileged as per a confidential settlement agreement. Defendant further objects to this Request as it is overly broad, unduly burdensome and not limited in time or scope.

VERIFICATION

STATE OF TEXAS

COUNTY OF Travis

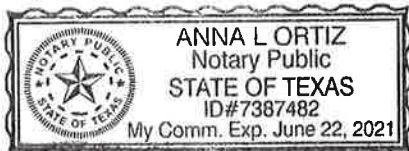
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BEFORE ME, the undersigned notary, on this day personally did appeared William Scott Murray, the affiant, a person whose identity is known to me. After I administered an oath to the affiant, affiant testified:

"My name is William Scott Murray I am capable of making this verification. I have read the Answers to Interrogatories and Requests for Production. The facts stated in it are with my personal knowledge and are true and correct."


William Scott Murray

Given under my hand and seal of office this 22nd day of November, 2019, to which witness my hand and seal of office.




Notary Public in and for the State of Texas

EXHIBIT C

Unofficial copy Travis Co. District Clerk Velda L. Price



Ann Cardenas <ann.cardenas@jonesspross.com>

Gibbs v Murray/LSG Spirits

1 message

Ann Cardenas <ann.cardenas@jonesspross.com>
To: "Welborn, Amy" <awelborn@hpylaw.com>
Cc: Jennifer Trillsch <jennifer.trillsch@jonesspross.com>

Thu, Jan 9, 2020 at 9:03 AM

Amy,

Attached please find Plaintiff's conferral letter in response to Defendants' discovery deficiencies. Also, please provide several available deposition dates in February for Mr. Murray. I am out of town the week of Feb 10. Assuming you plan to depose my client, ideally it would be great if we could find a date that works for both parties.

Thanks,
Ann



01 09 2020 Conferral Letter to Amy Welforn re Defendants' discovery deficiencies.pdf
202K

January 9, 2020

Re: Discovery Deficiency Notice:

Lance Gibbs v. LSG Spirits LLC and Scott Murray, Cause No. D-1-GN-19-000432, in the 200th Judicial District Court of Travis County, Texas

Amy:

I write to confer about the deficiencies in Defendants' discovery responses in anticipation of Plaintiff's forthcoming motion to compel. Defendants have asserted boiler-plate objections as to each request and have yet to produce a single document as of the date of this letter. Plaintiff asks Defendants, by 5:00 PM on January 15, 2020, to withdraw their improper objections, provide full and complete responses to Plaintiff's interrogatories based on all available information, and identify and produce all categories of relevant and responsive records that they continue to improperly withhold. Our review is ongoing and we reserve the right to raise additional issues.

I. Withdrawal of Improper Objections:

- General and boilerplate objections, including those asserted in response to a specific discovery request and not as part of a general list of generic objections preceding any responses to specific discovery requests, violate the Rules. Objections to discovery must be made with specificity, and the responding party has the obligation to independently explain and support each of its objections.¹
- Defendants' improper "subject to and without waiving" responses – asserted in response to virtually every request – waives any legitimate objections to those requests. Such responses "violate Texas Rule 192.3(c) because they are hypothetical, and hypothetical objections are

¹ See, e.g., Tex. R. Civ. P. 193.2(c) ("A party may object to written discovery only if a good faith factual and legal

basis for the objection exists at the time the objection is made."); Tex. R. Civ. P. 193.2(e) ("An objection that is ...

obscured by numerous unfounded objections, is waived."); see also *Mt. McKinley Ins. Co. v. Grupo Mexico*, No. 13–12–00347–CV, 2013 WL 1683641, at *9-10 (Tex. App.—Corpus-Christi Edinburg Apr. 18, 2013) (holding that

defendant's boilerplate objections and failure to produce any documents was part of "a strategy of obstruction that went beyond [] merely 'opposing discovery requests as needed to protect its rights.'"); *Heller v. City of Dallas*, 303 F.R.D. 466 (N.D. Tex. 2014) (noting patent impropriety of general and boilerplate objections under Federal discovery rules).

impermissible under the Rule, which limits objections to those for which ‘a good faith factual and legal basis exists . . . at the time the objection is made.’” Robert K. Wise, Ending Evasive Responses to Written Discovery: A Guide for Properly Responding (and Objecting) to Interrogatories and Document Requests Under the Texas Discovery Rules, 65 Baylor L. Rev. 510, 567–72 (2013) (concluding that subject-to objections violate Texas Rules of Procedure 193.2(a) and (e), among others, and that trial courts should strike them, ruling that each such objection has been waived) (quoting Tex. R. Civ. P. 193.2(c)). “Subject-to” objections also violate Texas Rule of Civil Procedure 193.2(a), which requires the responding party to “state . . . the extent to which the party is refusing to comply with the request” and to “state specifically the legal and factual basis for the objection,” because “such objections are nonspecific and ‘hide the ball’ with respect to what information or material is being provided and what information or material is being withheld and why.” *Id.*, 65 Baylor L. Rev. at 568-69 (citing Tex. R. Civ. P. 193.2(a)).²

- To properly assert and preserve objections, Defendants must affirmatively explain what portions of each interrogatory or document request are objectionable and non-objectionable and why, and then (i) fully answer each interrogatory or document request to the full extent that it is not objectionable, and (ii) affirmatively explain whether any responsive information or documents have been withheld pursuant to objections.
- When responding to document requests, Defendants must make a diligent search and inquiry and, if no responsive documents or tangible things exist, so state with sufficient specificity to allow the Court to determine whether the party made a reasonable inquiry and exercised due diligence. If responsive documents exist but the responsive party claims lack of possession, control, or custody, the responding party must so state with sufficient specificity to allow the Court (i) to conclude that the responses were made after a case specific evaluation, and (ii) to evaluate the merit of each response.
- If a discovery request is overbroad or unduly burdensome, the responding party must explain the extent to which it is overbroad and answer or respond to the extent that it is not— and specifically explain the scope of what the responding party is answering or responding to. In addition, a party objecting to discovery must present some evidence necessary to support its objections. See TEX. R. CIV. P. 193.4(a), 199.6. See, e.g., *In re Alford*

² Such objections also violate the requirement of Texas Rule of Civil Procedure 191.3(c) that the signature of an attorney or a party on a response to written discovery constitutes a certification that to the best of the signer’s knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection: (1) is consistent with the rules of civil procedure and these discovery rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) has a good faith factual basis; and (3) is not interposed for any improper purpose. See *id.* at 570–71 (quoting Tex. R. Civ. P. 191.3(c)) (discussing “subject-to” objections to interrogatories and production requests).

Chevrolet-Geo, 997 S.W.2d 173, 181 (Tex. 1999) (orig. proceeding) (“A party resisting discovery. . . cannot simply make conclusory allegations that the requested discovery is unduly burdensome or unnecessarily harassing. The party must produce some evidence supporting its request for a protective order.”); *see also Indep. Insulating Glass/Southwest, Inc. v. Street*, 722 S.W.2d 798, 802 (Tex. App.—Fort Worth 1987, orig. proceeding) (“Any party who seeks to exclude matters from discovery on grounds that the requested information is unduly burdensome, costly or harassing to produce, has the affirmative duty to plead and prove the work necessary to comply with discovery.”).

- Similarly, if all or part of a discovery request seeks documents or information not reasonably calculated to lead to the discovery of admissible evidence, the responding party should make a specific objection explaining how and to what extent the requested documents or information are not relevant and discoverable under the broad “reasonably calculated” standard and stand on that objection as to the portion of the request that is so objectionable while specifically describing the portion, if any, of the request to which the responding party is answering or producing documents. If part or all of a discovery request is allegedly vague and ambiguous, the responding party must first seek clarification of the allegedly vague or ambiguous term, and then explain its understanding of the allegedly vague and ambiguous terms or phrases and explicitly state that its answer is based on that understanding.

Defendants’ complete failure to adhere to these standards waives any legitimate objections they may have had to Plaintiff’s requests and gives rise to an award to Plaintiff of attorneys’ fees and costs in compelling compliance. Each of the subject requests is “reasonably calculated to lead to the discovery of admissible evidence,” as such information is “relevant to the subject matter of the pending action.” See TEX. R. CIV. P. 192.3(a), *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009) (phrase “relevant to the subject matter” liberally construed to allow parties to obtain fullest knowledge of facts and issues prior to trial).

II. Objections and Responses to Interrogatories

Specific Responses at Issue:

A. Requests involving identities of board members.

Interrogatories Nos. 2, 3 6, 14: These interrogatories request information relating to the identity of the members of the board that were involved in making decisions as to the timing of the refund of Plaintiff’s capital, the decision to allow Plaintiff’s withdrawal as an investor, the decision to grant Plaintiff a block of stock, and the timing of Plaintiff’s unit purchase.

DEFENDANT’S RESPONSE (as to each of the above Interrogatories): Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such

information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant's and the board members' privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Plaintiff's position in support of a Motion to Compel:

The scope of interrogatories is governed by TRCP 192 and 197, which allows a party to seek discovery of unprivileged information that is relevant to the subject of the lawsuit, including inadmissible evidence, as long as the request is reasonably calculated to lead to the discovery of admissible evidence. TRCP 192.3(a). "Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *In re National Lloyds Ins. Co.*, 532 S.W.3d at 808 (quoting Tex. R. Evid. 401).

- Defendants' Objection that this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters is not a proper objection supported by the Rules.
- Defendants assert that the requested information is not relevant. The crux of Plaintiff's claim is based on Defendants' failure to timely return Plaintiff's overpaid capital after both the Series A investment round and again, per the terms of the unit purchase agreement. Only the voting board members would have information with regard to the decision to grant Plaintiff a block of stock, the unit purchase agreement, and the Board's understanding as to the timing of when the buy-back of stock was to occur as well as the return of Plaintiff's overfunded capital. Lastly, Defendants have filed a counter claim asserting that, as a result of Plaintiff's alleged breach of the unit purchase agreement, LSG suffered damages including lost investors. Only the board members would have the knowledge of the information necessary to support this claim. The board members would also have additional information regarding the ways in which LSG's reputation has been damaged as asserted in Defendants' Counterclaim.
- Defendants' objection that the request is harassing/overbroad is conclusory and without support as required by Rule 193.2(e). *In re National Lloyds Ins. Co.*, 532 S.W.3d at 808. Plaintiff's requests are narrowly tailored to include only information related to the claims arising out of this lawsuit.
- Lastly, Defendants claim the information requested seeks confidential information regarding investors. Defendants provide no law in support of their contention that the identities of board members are confidential. Moreover, Defendants have filed a counterclaim asserting that its investors have been affected by Plaintiff's actions, thus opening the door with regard to the discovery of these individuals.

B. General objection asserting this lawsuit was improperly brought.

In response to each and every Interrogatory, Defendant objects that that “this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Such an objection does not exist under the Texas Rules of Civil Procedure. Plaintiff requests Defendant to remove this objection.

C. Objection to identity of signors on Wells Fargo account

Interrogatory No. 13: Identify all signor’s on the LSG Wells Fargo Account and anyone with access to the account.

RESPONSE: Defendants object to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to furnishing the information sought by this interrogatory to the extent that such information is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects on the grounds that it is overly broad, harassing and invasive of Defendant’s and the board members’ privacy rights. Defendant specifically objects to this interrogatory to the extent it seeks confidential information regarding investors and board members.

Subject to and without waiving same , none.

Plaintiff’s Response in Support of Motion to Compel:

Plaintiff demands that Defendant remove the above conclusory objections. The information sought is relevant to determine which individuals had the authority to authorize the return of Plaintiff’s overfunded capital. Such individuals are likely to also have knowledge regarding the timing of the return of Plaintiff’s overfunded capital as well as the reason for the delay.

III. Objections and Responses to Requests for Production

- A. Requests for Products Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20, 23, 24, 25, 26:** Include requests for emails with financial institutions and/or board members regarding the return wire transfer of Plaintiff’s overfunded capital. These requests also include a request for bank records showing the status of all wire transfers initiated by Defendants to return Plaintiff’s overfunded capital.

DEFENDANT’S RESPONSE: Defendant objects to this request as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant further objects because the request invades Defendants’ legitimate expectation of privacy. Defendant finally objects for the reason that the Plaintiff should be required to prove allegations of gross negligence before they are entitled to discover any such financial records.

Plaintiff’s Response in Support of Motion to Compel:

Plaintiff and Defendant Murray engaged in three months of email correspondence in which Murray promised the return of Plaintiff's funds by a certain date, and then blamed the delay on various issues with the bank. The timing of the transfer and the reasons for Defendants' delay, including administrative delays by the bank, are relevant to establish the fact that Plaintiff's capital was not refunded in a timely manner, due to the fault of Defendants. The requests are narrowly limited to only those records relating to the return of Plaintiff's overfunded capital. Plaintiff is not at this time seeking account information for purposes of establish punitive damages under a gross negligence claim.

- B. Requests for Production Nos. 10, 17, 18, 21, 22, 29:** Includes requests for emails to/from LSG board members regarding Plaintiff's initial investment, the return of Plaintiff's overpaid capital, the unit purchase agreement, and the determination to grant Plaintiff a block of stock.

DEFENDANTS' RESPONSE: Defendants object to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it reasonably calculated to lead to the discovery of a admissible evidence. Defendant objects that this requests seeks information obtained. Material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information of materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client privilege. Defendant objects to this discovery request because it is harassing.

Plaintiff's Response in Support of Motion to Compel:

The information requested is necessary to determine if in fact the delay was on the side of the bank or due to the fault of LSG in returning Plaintiff's overfunded capital. Additionally, the requested information is relevant to understand the board's decisions as to when the overfunded capital would be returned and why it took so long for the board to return the funds, as well as whether LSG converted the funds to its own use before the refund.

- C. Request for Production No. 27:** On December 20, 2018, in an email to Plaintiff you stated: Just got a notice that fedex attempted delivery of the envelope to my house again. I am not home and won't be until tomorrow. I just submitted a wire from my trust at Chase to cover the 29750 to not delay it again." Produce the notice from fedex referenced in this email. Please also produce confirmation that you "submitted a wire from my trust at Chase to cover the 29750."

RESPONSE: Defendant objects to this interrogatory as this lawsuit was improperly brought after the entrance of the settlement agreement which resolved all matters. Defendant objects to this request because the information sought is neither relevant to the subject matter of the pending litigation nor is it

reasonably calculated to lead to the discovery of a admissible evidence. Defendant objects that this requests seeks information obtained. Material prepared or mental impressions developed in anticipation of litigation or for trial by or for Defendant or Defendant's representatives, including Defendant's attorneys, consultants, sureties, indemnitors, insurers, employees or agents. Information of materials responsive to this discovery request will be withheld based on the work product privilege and the attorney-client privilege. Defendant objects to this discovery request because it is harassing.

D. Plaintiff's Response in Support of Motion to Compel:

Plaintiff is quite frankly at a loss as to how any of the above objections might apply to a fed ex notice or wire confirmation. Plaintiff demands that all of the above objections be removed and for the requested documents to be produced.

"Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action even though it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.'" *Irre National Lloyds Ins. Co.*, 507 S.W.3d 219, 223 (Tex. 2016) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003). Plaintiff's claims and alleged injuries in this case are central to the lawsuit. Regardless of the admissibility of the above requested information, the information requested is directly related to Plaintiff's injuries and therefore is relevant and should be provided.

Please withdraw the above referenced objections that you asserted in this matter and produce the requested documents by noon on January 15, 2019, or I will be forced to file a motion to compel. Please contact me if you wish to further discuss.

Sincerely,

Ann Cardenas

Ann Cardenas

EXHIBIT D

Unofficial copy Travis Co. District Clerk Velda L. Price

ROBERT LANCE GIBBS,

Plaintiff,

V.

LSG SPIRITS LLC and SCOTT MURRAY,

Defendants.

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IN THE DISTRICT COURT

200TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

UNSWORN DECLARATION OF ANN CARDENAS

1. "My name is Ann Bedford Cardenas. I am over 18 years of age, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. "I am an attorney licensed to practice in the State of Texas.
3. "I am of counsel with the law firm of Jones & Spross.

Attorney's Fees

4. "I have over twelve years of experience in civil litigation, which include business disputes and contract disputes similar to the issues involved in this lawsuit.
5. "It was necessary for Robert Lance Gibbs to retain an attorney in this case.
6. "My rate in this matter is \$300/hour. This fee is equivalent to what is customarily charged in the locality for similar legal services.
7. "I spent nine (9) hours in this matter for the following actions necessary to properly to prepare this Motion to Compel and argue before the Court:
 - i. Review Defendants' Objections to Plaintiff's Interrogatories and Requests for Production (.3 hours);
 - ii. Draft a conferral letter to opposing counsel outlining deficiencies in Defendants' discovery responses (2.2 hours);
 - iii. Prepare Motion to Compel, affidavit on attorney's fees, notice of hearing, and proposed order (3.5 hours);

iv. Prepare for hearing on Plaintiff's Motion to Compel (1.5 hours);

v. Attend hearing on Plaintiff's Motion to Compel (1.5 hours).

8. The total fees incurred in drafting/arguing this Motion is \$2,700.00

9. "The fees I charged in this case are customarily charged in this area for the same or similar services for an attorney with my experience, reputation and ability.

10. "The attorney fees charged in this case were necessary, reasonable, and incurred in seeking this Motion to Compel."

Ann Cardenas
Ann Cardenas

Unofficial copy Travis Co. District Clerk

ROBERT LANCE GIBBS,

Plaintiff,

V.

LSG SPIRITS LLC and SCOTT MURRAY,

Defendants.

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IN THE DISTRICT COURT

200TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

ORDER ON PLAINTIFF'S MOTION TO COMPEL

After considering Plaintiff Robert Lance Gibbs' Motion to Compel, the response, and arguments of counsel, the Court:

GRANTS Plaintiff's Motion to Compel and orders that the requested discovery be produced by Defendants by _____.

SIGNED on _____, 2020.

PRESIDING JUDGE