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Utah Department of Commerce
Division of Securities

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Attorneys for Respondents VYSN Capital, LLC and Shawn Blaine Smart

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

RIDGELAND WYOMING, INC.,
VYSN CAPITAL, LLC, BRYAN R.
FARRIS, SHAWN BLAINE SMART,
AND GARY FRANK LAWYER,

Respondents.

**OPPOSITION TO MOTION
TO STRIKE DEPOSITIONS**

**OPPOSITION TO MOTION
FOR A PROTECTIVE ORDER**

MOTION TO COMPEL

Docket No. SD-11-0052

Docket No. SD-11-0053

Docket No. SD-11-0054

Docket No. SD-11-0055

Docket No. SD-11-0056

Respondents Vysn Capital, LLC (“Vysn”) and Shawn Blaine Smart (“Smart”) (collectively referred to herein as “Respondents”), by and through their undersigned counsel of record, submit their opposition to the “Motion to Strike Depositions” filed by the Utah Division of Securities (the “Division”) and the “Motion for a Protective Order” filed by Michael Gillespie

and Ross Jardine (the “Victims”). Respondents further move to compel the victims in this case to sit for their depositions as noticed on June 12 and 13, 2012.

Since the inception of this case Respondents have diligently attempted to obtain discovery from the Victims, but they have been repeatedly delayed in obtaining this discovery by motions filed by the Utah Division of Securities (the “Division”) and by the Victims. These motions were out of Respondents’ control, and caused significant delays in the production of key documents. As discussed below, these motions should not be the basis to deny further discovery.

PROCEDURAL BACKGROUND

1. At the initial pretrial hearing in this case Respondents made it very clear that they intended to depose the Victims, and this was the subject of a lengthy discussion between the parties and the Court.

2. The Scheduling Order in this case was issued on February 21, 2012.

3. The very next day, on February 22, 2012, Respondents requested two subpoenas to the Victims, requiring them to produce documents and sit for depositions for April 11 and 12, 2012. These subpoenas were issued by the Court as requested.

4. On February 23, 2012 the Division filed a motion to strike the subpoenas, arguing that Respondents could not take depositions because Rule 151-4-602 had not been satisfied. They said the Respondents had to interview the victims informally.

5. In an attempt to resolve this issue amicably, Respondents agreed to modify the subpoenas to seek documents only, with the clear understanding that the Victims could be interviewed and/or deposed at a later date after the documents had been produced.

6. Respondents obtained new subpoenas without deposition dates, but there has never been any question that the Respondents intended to interview or depose the Victims prior to the hearing.

7. Then on March 13, 2012, the Victims filed a Motion to Quash and a Motion for a Protective Order.

8. A week later, on March 20, 2012, the Division filed yet another motion to prevent Respondents from obtaining relevant documents in this case. This motion was characterized as a Motion to Modify the Subpoenas, but it was filed on behalf of parties it did not represent, parties who had retained competent counsel who had already filed a motion to quash.

9. The Court eventually ruled on these motions on **May 1, 2012** – the same day that discovery closed. The Court modified the Subpoenas and required that certain information be produced.

10. Unfortunately the Court's ruling did not provide any deadline by which the Victims had to provide the documents.

11. On May 17, 2012 the Victim's counsel, Philip Martin, informed the Respondents *for the first time* that they were not willing to sit for an informal interview as is required by the rules. In his email, Mr. Martin stated "I've talked to my clients. They are unwilling to allow you to do a fishing expedition to prepare you for a deposition or trial. That said, if you are intending to proceed with a formal deposition, please advise me of dates and amount of time that you are proposing. Please advise." Therefore Respondents had no choice but to set depositions for the Victims – pursuant to Mr. Martin's agreement. A copy of this email exchange is attached hereto as Exhibit "A."

12. After repeated requests, the Victims finally produced documents (by mail) on **May 25, 2012**. The subpoenaed documents arrived in Respondents' counsel's office on May 28, 2012 and Notices of Depositions for Messrs. Jardine and Gillespie were sent out the very next day on May 29, 2012, pursuant to Mr. Martin's request.

13. In addition to the fact that Mr. Martin had already agreed to have his clients sit for depositions, these Notices were essentially rescheduling the depositions that had been originally scheduled for April 11 and 12. These could not have been noticed earlier because the Victims had not yet produced any documents.

14. However, Mr. Martin apparently had a subsequent discussion with the Division's counsel, Scott Davis, who urged him not to permit his clients to be deposed – so he backed out of his agreement to permit the depositions.

15. On May 29, 2012 (after receiving the deposition notices he had previously agreed to accept) Mr. Martin informed Respondents that “Mr. Davis has informed me that discovery was closed as of May 1, 2012. That said, until an order has been issued by the court allowing additional discovery, my clients are unwilling to commit to deposition dates.” A copy of this email is attached hereto as Exhibit “B.”

16. Subsequently the Division and the Victims filed two more motions to prevent the depositions they had initially agreed to.

DISCUSSION

Respondents take exception to the Court's statement in the May 17, 2012 Order Denying Motion to Vacate Scheduling Order that “Respondents have not made use of the discovery time available.” The Court set a very short and aggressive discovery schedule that did not take into

account the potential for delays caused by discovery motions. As discussed below, the primary delay in this case was the filing and briefing of the Victims' Motion for a Protective Order, numerous motions filed by the Division.

It is impossible to take a deposition without the relevant documents, and the Court first ordered the documents to be produced on the very day that discovery closed, May 1, 2012. Later the Court denied Respondents motion to vacate the scheduling order in this case, putting Respondents into a serious bind. They hadn't received documents that had been subpoenaed months earlier but had been delayed by discovery motions they did not file. This is an untenable position that, Respondents believe, constitutes a serious denial of due process.

Compounding the unfairness, the Victims counsel agreed to permit his clients to sit for depositions, and in fact required Respondents to take depositions rather than engage in the interview process – interviews which clearly could have taken place outside of the discovery cutoff because they are not formal discovery.

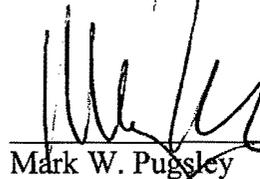
Respondents did not know that depositions would even be necessary until May 17, 2012 when Mr. Martin notified Respondents counsel – for the first time – that he would not permit his clients to sit for informal interviews. *See* Exhibit "A." This email was sent long after the discovery cutoff, and eight (8) days before the documents had even been produced.

In summary, Respondents should not be prevented from being able to depose the two most important witnesses in this case; the victims who claim they were somehow misled and initiated this case in the first place. Mr. Martin delayed producing documents until long after the discovery cutoff and initially agreed to these depositions, until the Division's counsel talked him out of it.

There is adequate time to take these depositions before the hearing on this case, and the stakes in this case are very high. For all of these reasons Respondents respectfully request that the Court deny the latest round of motions filed by the Victims and the Division, and compel the Victims to sit for their depositions as noticed.

DATED this 6th day of June, 2012.

RAY QUINNEY & NEBEKER P.C.



Mark W. Pugsley

*Attorneys for Respondents Vysn Capital, LLC
and Shawn Blaine Smart*

1180942

CERTIFICATE OF SERVICE

I hereby certify on this 6th day of June 2012, a true and correct copy of the
**OPPOSITION TO MOTION TO STRIKE DEPOSITIONS, OPPOSITION TO MOTION
FOR A PROTECTIVE ORDER AND MOTION TO COMPEL** was served by electronic
mail and U.S. First Class Mail, postage prepaid, to the following:

Thomas Brady
DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE
160 East 300 South, 2nd Floor
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Angela Hendricks
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Blair R. Jackson
Philip L. Martin
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1250 East 200 South, Suite 2E
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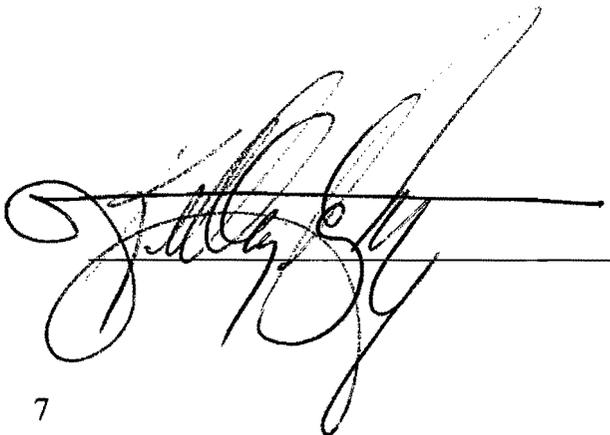
A handwritten signature in black ink, appearing to read "Philip L. Martin", is written over two horizontal lines. The signature is stylized and cursive.

EXHIBIT A

Mark Pugsley

From: Philip Martin <philip@invictuspc.com>
Sent: Thursday, May 17, 2012 5:00 PM
To: Mark Pugsley
Subject: RE: Ross Jardine and Michael Gillespie

Mark,

I've talked to my clients. They are unwilling to allow you to do a fishing expedition to prepare you for a deposition or trial. That said, if you are intending to proceed with a formal deposition, please advise me of dates and amount of time that you are proposing. Please advise.

Philip L. Martin, Esq.

INVICTUS LAW
1250 East 200 South, 2E
Lehi, UT 84043
Office: 801.854.9212
Facsimile: 801.415.9340

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From: Mark Pugsley [<mailto:mpugsley@RQN.COM>]
Sent: Tuesday, May 15, 2012 3:59 PM
To: Philip Martin
Subject: RE: Ross Jardine and Michael Gillespie

Thank you. This is my second request to please set up a time to interview these individuals separately after we obtain the documents. Please let me know so I can get it calendared. Thanks.

From: Philip Martin [<mailto:philip@invictuspc.com>]
Sent: Tuesday, May 15, 2012 3:40 PM
To: Mark Pugsley
Subject: RE: Ross Jardine and Michael Gillespie

Mark,

I've been in touch with my client and they are gathering the documents. We will get them to you shortly.

Philip L. Martin, Esq.

INVICTUS LAW
1250 East 200 South, 2E
Lehi, UT 84043
Office: 801.854.9212
Facsimile: 801.415.9340

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From: Mark Pugsley [<mailto:mpugsley@RQN.COM>]

Sent: Wednesday, May 02, 2012 6:15 PM

To: Philip Martin; Blair Jackson

Subject: Ross Jardine and Michael Gillespie

Blair and Philip, please see the attached order that was issued by the Judge in our case yesterday. I just noticed that you were not on the service list so I am sending it to you. Please let me know when I will receive the responsive documents. Thank you.

Also, once I receive the documents I would like to set up interviews with both of your clients at my office (separately). Please let me know when they are available to be interviewed. Thanks.

Mark Pugsley | Ray Quinney & Nebeker P.C. | 36 South State Street, Suite 1400 | Salt Lake City, Utah 84111
Direct: 801-323-3380 | Facsimile: 801-532-7543 | www.rqn.com

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Exhibit B

Mark Pugsley

From: Philip Martin <philip@invictuspc.com>
Sent: Tuesday, May 29, 2012 10:58 AM
To: Mark Pugsley
Subject: RE: Depositions of Gillespie and Jardine

Mark,

My clients' responses to your discovery requests were placed in the mail last Friday, so they should be arriving at your office shortly.

Also, Mr. Davis has informed me that discovery was closed as of May 1, 2012. That said, until an order has been issued by the court allowing additional discovery, my clients are unwilling to commit to deposition dates.

Philip L. Martin, Esq.

INVICTUS LAW
1250 East 200 South, 2E
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From: Mark Pugsley [<mailto:mpugsley@RQN.COM>]
Sent: Tuesday, May 29, 2012 10:50 AM
To: Philip Martin
Subject: RE: Depositions of Gillespie and Jardine

Philip. I just checked my mail and I did not receive any documents from you. Please send me an update. Also, please see the attached deposition notices for the dates we discussed. This case is moving forward to trial in July and your clients will be the primary witnesses during the three-day hearing so I don't have to postpone these depositions any longer. Thanks.

From: Philip Martin [<mailto:philip@invictuspc.com>]
Sent: Monday, May 21, 2012 4:01 PM
To: Mark Pugsley
Subject: RE: Depositions of Gillespie and Jardine

Mark,

Most of the documents were produced to the state. They are searching for others that may not have been provided. We hope to have them to you by this Friday.

I'll check with my clients with respect to the deposition dates you have suggested.

Philip L. Martin, Esq.

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From: Mark Pugsley [<mailto:mpugsley@RON.COM>]

Sent: Thursday, May 17, 2012 5:39 PM

To: Philip Martin

Cc: 'D Davis'

Subject: Depositions of Gillespie and Jardine

Philip, I need to know when you will be producing all of the documents that your clients were ordered to produce so that I can schedule their depositions. Currently I am looking at June 12th and June 13th for their depositions. I anticipate taking 5 hours with each of them, but there may be cross examination by the State and redirect so think they should reserve the whole day just in case.

Please let me know if you will be able to produce documents at least a week in advance of that date, and whether those dates will work for your schedule. Thanks.

Mark Pugsley | Ray Quinney & Nebeker P.C. | 36 South State Street, Suite 1400 | Salt Lake City, Utah 84111

Direct: 801-323-3380 | Facsimile: 801-532-7543 | www.rqn.com

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