

Division of Securities
Utah Department of Commerce
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Salt Lake City, Utah 84114-6760
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**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,
GARY FRANK LAWYER**

Respondent.

**RESPONSE TO AMENDED MOTION
TO QUASH and for PROTECTIVE
ORDER, and MOTION TO MODIFY
SUBPOENAS**

**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**

The State of Utah, Department of Commerce, Securities Division (Division), hereby responds to the Motion to Quash and for Protective Order regarding subpoenas served on Ross Jardine (Jardine) and Michael Gillespie (Gillespie), and respectfully requests this tribunal to modify the subpoenas issued on February 23, 2012.

I. RESPONSE TO MOTION

A. The Motion Is Timely

The Division agrees that Jardine's and Gillespie's motion is timely under the applicable rules. The subpoenas originally provided that the response was due on or before March 9, 2012, at 5:00 p.m. Department of Commerce Administrative Rule 151-4-513(5)(a) allows a motion to quash or modify "... no later than the time specified in the subpoena for compliance[.]"

Jardine's and Gillespie's motion was originally filed on March 9, 2012, thus it was timely.

Jardine and Gillespie's attorneys withdrew as counsel and withdrew the motion on or about March 12, 2012, due to a conflict. New counsel filed the Amended motion on or about March 13, 2012.¹

If the subpoenas were incomplete or flawed, then neither Jardine nor Gillespie are obligated to respond to the subpoenas until they are properly served, and the time to respond cannot begin to run. Counsel for the parties have been negotiating a time for Jardine and Gillespie to respond to the subpoenas. Until they are properly served and/or an agreement is reached establishing a new deadline to respond to the subpoenas, any motion to quash or to modify is timely.

B. Incomplete or Flawed Service of the Subpoenas

Jardine and Gillespie ask this tribunal to quash the subpoenas served on them because service of the subpoenas by Respondents VYSN and Shawn Smart was incomplete because it did not contain an exhibit detailing what needed to be produced, and because the subpoenas served by Respondents Ridgeland, Bryan Farris and Gary Lawyer were not signed. The Division has no independent knowledge as to whether the subpoenas were or were not properly served, but assumes the representations by Jardine and Gillespie are true. If service of the subpoenas was incomplete and/or flawed, then there can be no obligation placed upon Jardine and Gillespie to respond to the subpoenas until they are properly served on them.

The Division understands that complete subpoenas were emailed to Jardine and Gillespie on March 8, 2012, by Respondents VYSYN and Smart, but does not know if complete and

¹The Division takes no position, for purposes of the pending motion, whether a withdrawn motion can be amended.

properly signed subpoenas have properly served as required by the rules.

C. Oppressive and Unreasonable Subpoenas

Jardine and Gillespie maintain that the subpoenas at issue are “oppressive, unreasonable, and overbroad.” Memorandum in Support of Motion to Quash and for Protective Order, p. 3. The Division agrees with Jardine’s and Gillespie’s argument that the subpoenas at issue here may chill investors from filing complaints with the Division if they believe that all their personal and business financial information will be subject to inspection and disclosure in a public proceeding.

The Respondents are only entitled to seek information that is relevant to the claims and defenses in the pending action. See, Utah Rules of Civil Procedure 26(b)(1). The investors’/victims’ personal and business tax and financial information, or other business or investment records not related to this case, has no relevance to whether or not the Respondents violated Utah securities laws as alleged in the Amended OSC. Because the investors’ personal and business tax and financial information and other business and investment records are not relevant to the claims and defenses arising under the Amended OSC, it is unreasonable and improper to demand by subpoena that the investors provide the information.

MOTION TO MODIFY SUBPOENAS

The Division asserts specifically that items numbered 1 through 4 and 9 in the “Documents to be Produced” section on page 5 of the Exhibit attached to the subpoenas (assuming they are properly served and complete), and as set forth on page 3 of Jardine’s and Gillespie’s Amended motion, are irrelevant to the Amended Order to Show Cause. Respondents request in these numbered items Jardine’s and Gillespies tax and financial information,

documents related to other oil and gas investments not related to this case, and PPMs for investments unrelated to this case, and a copy of their current resumes.

None of this requested is relevant to the claims or defenses arising out of the Amended OSC in this case. The Division understands from statements made by counsel for the Respondents that they claim this information is relevant because it goes to their defenses that the investors/victims in this matter did not lose money, and that the investors/victims are sophisticated investors. Whether or not the investors were sophisticated or lost money has no bearing on the allegations in the Amended OSC that the Respondents violated Utah securities laws.

As to the remaining items requested in the Respondents' subpoenas, numbers 5 through 8 and 10 through 13, the burden should be on the Respondents to demonstrate that they have not already received the information from the Division. The Division has provided all its non-privileged, relevant information to counsel for the Respondents, including information it obtained from investors in this case.

The Division questions whether discovery is appropriate at this stage in the proceedings. Neither Respondent has filed an answer to the Amended OSC. Their responses are not due until March 22, 2012. The Division is not seeking to make this case more difficult for the Respondents, but asserts that answers should be filed before discovery takes place.

CONCLUSION

The Division asserts that the information requested in numbers 1 through 4 and 9 is irrelevant to the claims and defenses raised in the Amended OSC. Accordingly, the Division requests that the subpoenas be modified to delete that requested information.

The Division further requests that the Respondents be required to certify that they have not already been provided the information requested in items 5 through 8 and 10 through 13 in the exhibits accompanying the subpoenas at issue.

Respectfully submitted this ~~14~~^{20th} day of March, 2012.

By:



D. Scott Davis
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I personally served a true and correct copy of the foregoing on this 20th day of March, 2012 to the following:

Mark D. Stubbs Joseph M. Hepworth FILLMORE SPENCER LLC 3301 N. University Ave. Provo, Utah 84604	Sent via: <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile: <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input checked="" type="checkbox"/> Other: mstubbs@fslaw.com
Mark W. Pugsley RAY QUINNEY & NEBEKER 36 South State Street, 14 th Floor Salt Lake City, Utah 84145-0385	Sent via: <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Facsimile: <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input checked="" type="checkbox"/> Other: mpugsley@rqn.com
Blair R. Jackson Phillip L. Martin Invictus Law, PLLC 1250 East 200 South, Suite 2E Lehi, Utah 84043	Sent via: <input type="checkbox"/> Hand-Delivery <input checked="" type="checkbox"/> Facsimile: 801-415-9340 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input checked="" type="checkbox"/> Other: <i>phillip@invictuspc.com</i>

D. [Signature]