

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ROY E. ERWIN, et al.,

Plaintiffs,

v.

BRYAN F. RUSS, JR., et al.,

Defendants.

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Case No. 6:09-CV-127-WSS

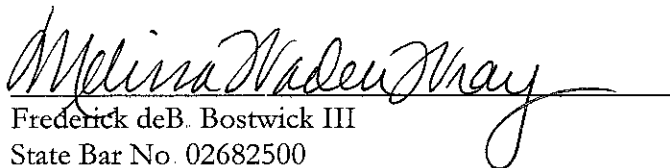
**DEFENDANT JAMES H. McCULLOUGH'S
OBJECTIONS, REQUEST FOR PROTECTION, AND ANSWERS
TO ROY E. ERWIN'S FIRST SET OF INTERROGATORIES**

TO: Plaintiff Roy E. Erwin, by and through his attorney of record, Ty Clevenger, Post Office Box 4806, Bryan, Texas 77805

Defendant James H. McCullough ("McCullough" or "Defendant") hereby serves his objections, request for protection, and answers to Roy E. Erwin's first set of interrogatories pursuant to the Federal Rules of Civil Procedure. McCullough reserves the right to and will supplement these objections and answers in accordance with the Federal Rules of Civil Procedure.

Respectfully submitted,

**BEARD KULIGEN BROPHY
BOSTWICK DICKSON & SQUIRES, LLP**



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MANAGEMENT, LLC; FLARE ROYALTIES
GENERAL PARTNER, LLC; FLARE
ROYALTIES, LP; HEARNE BUSINESS PARK,
LLC; JERRY BAXTER; BRYAN F. RUSS III; AND
MOLLY HEDRICK

CERTIFICATE OF SERVICE

I certify that on September 24, 2010, a true and correct copy of this instrument was served on all counsel of record by first class mail and/or certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure.

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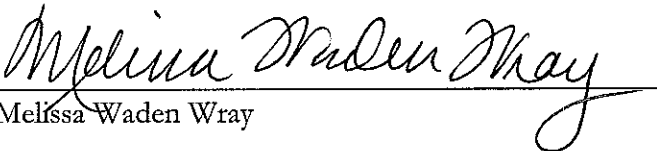
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Melissa Waden Wray

**OBJECTIONS, REQUEST FOR PROTECTION, AND ANSWERS
TO INTERROGATORIES**

INTERROGATORY NO. 1:

Please describe the net worth of Defendant for each year from 2003 until 2009.

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

INTERROGATORY NO. 2:

Please describe any payment, gift, or other financial benefit that Defendant or any company or firm owned (partially or fully) by Defendant provided to Judge Robert M. Stem or any member of his immediate family since January 1, 1999. The term "describe" includes, but is not limited to, the type of payment or gift, its value, and the date it was given. For example, if Defendant helped pay for the wedding of Judge Stem's daughter in Mexico or otherwise made a gift, please describe that payment or gift.

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers none.

INTERROGATORY NO. 3:

Please describe any business relationships that Defendant has had with Judge Robert M. Stem, any member of Judge Stem's immediate family, or any entity owned by Judge Stem or any member of his immediate family, at any time between January 1, 2000, and the present. This request includes, but is not limited to, joint ventures or mutual ownership of property.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define “business relationship”.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that Palmos Russ McCullough & Russ, LLP, in which Defendant is a partner, purchased property insurance on its office building through Judge Stem’s wife’s insurance agency from 2000 until July 2010.

INTERROGATORY NO. 4:

Please describe all companies (other than those publicly traded), firms, partnerships, or other entities in which Defendant owned an interest from January 1, 2003, until the present. The term “describe” includes, but is not limited to, the name of the entity, its other members or owners, its place of formation or incorporation, and its purpose. This request includes domestic and foreign entities.

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers as follows:

Deminimus Management, LLC – Bryan F. Russ, Jr.; Texas; any lawful business purpose.

Flare Royalties, LP – Flare Royalties General Partner, LLC, Bryan F. Russ, Jr.; Texas; any lawful business purpose.

Flare Royalties General Partner, LLC – Bryan F. Russ, Jr.; Texas; any lawful business purpose.

Hearne Business Park, LLC – Jerry Baxter, Bryan F. Russ, Jr.; Texas; any lawful business purpose.

Hearne Hospitality, LLC – Jerry Baxter, Bryan F. Russ, Jr.; Texas; any lawful business purpose.

LK&P, Limited – Evette Correa; Texas; any lawful business purpose.

MACRU, LLC – Bryan F. Russ, Jr ; Texas; any lawful business purpose

Oaks & Diamonds, LLC – Bryan F. Russ, Jr ; Texas; any lawful business purpose.

Palmos Russ McCullough & Russ, LLP – Bryan F. Russ, Jr.; Texas; any lawful business purpose.

Velnon, LLC – Bryan F. Russ, Jr.; Texas; any lawful business purpose.

INTERROGATORY NO. 5:

Please describe any properties or bank accounts outside the United States in which Defendant has owned an interest at anytime. The term “describe” includes, but is not limited to, the location of the property, its value, and any other co-owners or investors

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers none

INTERROGATORY NO. 6:

Please describe how Defendant knows and what Defendant knows about Larry Aiken and Delaware Development Company, LLC (“DDC”) (see Paragraph 172 of the First Amended Complaint). This request includes, but is not limited to, how Defendant became acquainted with Mr. Aiken and DDC, what the nature of their business is, all contact information for Mr. Aiken, and any actual or planned relationships between Mr. Aiken/DDC and Defendant or any entity owned by Defendant

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers that he does not know Larry Aiken and does not know anything about Mr. Aiken or DDC other than what is contained in the allegations he has read in the First Amended Complaint, the truth of which, is general, is in serious dispute.

INTERROGATORY NO. 7:

Please describe any hunting, fishing, travel, or vacations Defendant has taken with Judge Robert M. Stem since January 1, 2003. The term “describe” includes, but is not limited to, the nature, dates, and locations of any such activities and who paid for any such activities.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define “travel”.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers none

INTERROGATORY NO. 8:

Please describe all organizations or clubs in which both Defendant and Judge Stem are or have been members. The term “describe” includes, but is not limited to, the name and location of the club or organization, the local chapter, and the dates of membership

OBJECTIONS:

Defendant objects to the interrogatory because it is vague, overbroad, and unduly burdensome, and constitutes a mere fishing expedition.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that he does not have personal knowledge of Judge Stem’s club memberships, but assumes that Judge Stem is a member of the State Bar of Texas (as is Defendant). Also, Defendant and Judge Stem may have been members of the American Bar Association at the same time. Defendant is not aware of any other organizations or clubs of which both he and Judge Stem are or have been members.

INTERROGATORY NO. 9:

For each and every hotel, motel, or inn owned by Defendant (or any company or entity in which Defendant owns an interest), please describe the annual revenues and business volume of such hotel, motel, or inn since January 1, 2003. This request includes, but is not limited to, the following:

- (a) The total annual revenues and total annual number of guests for each facility broken down by cash and credit card payments; and
- (b) The name, address, telephone number, and any other identifying information (e.g., driver's license or license plate number) of each individual who paid cash, as well as the date(s) and the facility where he/she stayed

OBJECTIONS:

Defendant objects to the interrogatory because it is vague, overbroad, and unduly burdensome, and constitutes a mere fishing expedition

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

Defendant objects to the interrogatory because it requests information that can be obtained from another source that is more convenient, less burdensome, or less expensive.

INTERROGATORY NO. 10:

Please describe all instances in which Defendant, his law firm, or any of his partners have represented Judge Robert M. Stem or any of his immediate family members in any legal matter. The term "describe" includes the persons represented, the purpose of the representation, the dates of representation, any amounts paid, the number of hours worked, and the name, case number, and jurisdiction of any litigation.

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

Defendant objects to the interrogatory because it seeks information protected by the attorney-client privilege and/or work product doctrine

INTERROGATORY NO. 11:

Please describe all *ex parte* communications that Defendant or any member of his firm has had with Judge Robert M. Stem since January 1, 2003.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define the intended scope of "*ex parte* communications".

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that the only *ex parte* communications Defendant has had with Judge Stem have been in the course of requests for injunctive or other relief that are allowed by law. Defendant does not consider casual greetings or social interaction *ex parte* communications. The only *ex parte* communications by other members of his law firm of which Defendant has personal knowledge have been of a similar nature to those identified by Defendant in this answer.

INTERROGATORY NO. 12:

Please describe all companies, firms, investments, partnerships, bank accounts or other property (other than publicly traded companies) in which Defendant and one or more other named defendants (including terminated or dismissed defendants) in the First Amended Complaint share a joint ownership interest. The term "describe" includes, but is not limited to the name of the property or entity, its value, its location, and its owners.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define "joint ownership interest".

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers as follows:

Deminimus Management, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Flare Royalties, LP – Flare Royalties General Partner, LLC, James H. McCullough, Bryan F. Russ; Texas.

Flare Royalties General Partner, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Hearne Business Park, LLC – Jerry Baxter, James H. McCullough, Bryan F. Russ, Jr.; Texas.

Hearne Hospitality, LLC – Jerry Baxter, James H. McCullough, Bryan F. Russ, Jr.; Texas.

MACRU, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Oaks & Diamonds, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas

Palmos Russ McCullough & Russ, LLP -- James McCullough, Bryan F. Russ, Jr.; Texas.

Velnon, LLC -- James H. McCullough, Bryan F. Russ, Jr.; Texas.

VERIFICATION

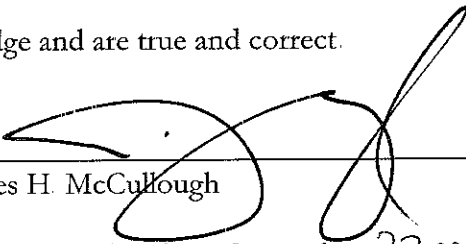
STATE OF TEXAS

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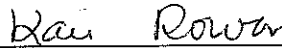
COUNTY OF ROBERTSON

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Before me, the undersigned notary, on this day personally appeared James H. McCullough, a person whose identity is known to me. After I administered an oath to him, upon his oath he said that he has read the foregoing objections and answers to Roy E. Erwin's first set of interrogatories, and that the facts stated therein are within his personal knowledge and are true and correct.


James H. McCullough

Sworn to and subscribed before me by James H. McCullough on September 22, 2010.


Kari Rowan

Notary Public in and for the State of Texas
My commission expires:

