

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

EMERY SMITH,

CASE NO. 15-CA-001620

Petitioner/Counter-Respondent,

-v-

EMCYTE CORP.,

Respondent/Counter-Petitioner

And

PATRICK PENNIE,

Respondent.

_____ /

REQUEST FOR PRODUCTION OF DOCUMENTS TO PETITIONER

Respondent/Counter-Petitioner, EmCyte Corporation, by and through the undersigned counsel and pursuant to Rule 1.350, *Florida Rules of Civil Procedure*, hereby propounds the following Request for Production of Documents to Petitioner, Emery Smith, an individual, and demands that Petitioner produce for inspection and copying the documents requested for production pursuant to Rule 1.350 of the Florida Rules of Civil Procedure **within thirty (30) days** of service. You are directed to produce the documents to EmCyte's undersigned counsel at the offices of Gunster, 401 East Jackson Street, Suite 2500, Tampa, Florida 33601, within **thirty (30) days** of service of this discovery request upon you

DEFINITIONS.

1. The word "Document" shall mean all materials within the full scope of Rule 1.350 of the Florida Rules of Civil Procedure, including, but not limited to, all writings and recordings of any kind whatsoever, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation, e-mails and attachments, correspondence, memoranda, notes, diaries, minutes, statistics, statements, tags, labels, invoices, brochures, periodicals, telegrams,

receipts, returns, summaries, pamphlets, books, inter-office and intra-office communications, offers, notations of any sort of conversations, working papers, applications, permits, file wrappers, indices, telephone calls, text messages, meetings, or modifications, changes and amendments of any of the foregoing), and graphic or oral representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, video tape, DVD, recordings, motion pictures, plans, drawings and surveys). This term includes any documents now or ever in your possession, custody or control, or available to your current or former attorneys, accountants, affiliates, agents, representatives, employees, or associates, and specifically includes documents kept by individuals in their desks, at home or elsewhere. This term includes Electronically Stored Information (as defined below). Any document shall include all exhibits, schedules or other writings affected by or referenced in any such document or other writings necessary to complete the information contained therein or make it not misleading.

2. Electronically Stored Information means all materials within the full scope of Rule 1.350 of the Florida Rules of Civil Procedure, including, but not limited to all electronic, mechanical magnetic, or optical records or representations of any kind (including, without limitation, computer files and programs, tapes, cassettes, discs, recordings, metadata and information stored on a computer, laptop, hand-held computer device, disk, CD, DVD, external hard drives, thumb drives, and any mechanical recording or production of any oral material.

3. "You" and "your" refers to Petitioner, and each and every name by which that party is known or had been known, and each and every employee, attorney, and agent of such party.

4. "Relate to" and "relating to" mean to make a statement about, refer to, discuss, describe, reflect, contain, comprise, identify, or in any way to pertain to, in whole or in part, or otherwise to be used, considered, or reviewed in any way in connection with, the specified subject. Thus, documents that "relate to" a subject also include those which were specifically rejected and those which were not relied or acted upon.

GENERAL INSTRUCTIONS

1. These discovery requests are intended to be a continuing obligation upon you to furnish all information requested herein until final disposition of this case. Corrections and supplemental answers are required as provided for in the Florida Rules of Civil Procedure.

2. These discovery requests seek documents, electronic data files, and other items in your possession, custody, or control and are intended to include documents, electronic data files and other items known to or reasonably ascertainable by the current or former employees, agents, attorneys, accountants, consultants, representatives, or any other persons who have acted in any capacity on behalf of Petitioner.

3. If you object to responding to any of the requests for production, in whole or in part, state your objection and state with particularity all of the factual and legal reasons supporting your objection. If you object on the ground of privilege, also specify the nature and

extent of all allegedly privileged matters. Objections should not be made in a general, blanket fashion. If you object in part to any request, respond in full to the remainder.

4. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun, and vice versa.

5. Regardless of the tense employed, all verbs shall be read as applying to the past, present, and future as is necessary to make any paragraph more, rather than less, inclusive.

6. Any request for production of documents shall be deemed to require production of each and every such thing executed, created, prepared, received, or in effect at any time to the present, or during any other indicated period of time.

7. The Documents and Electronically Stored Information produced in response to this Request shall be organized and designated to correspond to the categories in this Request and produced in a form that accurately reflects how they are maintained by you in the normal course of business. All Documents and Electronically Stored Information which cannot be produced as legible copies shall be produced in their original form.

8. The laws and rules prohibiting destruction of evidence apply to Electronically Stored Information in the same manner as they apply to other types of documentary evidence. Due to its format, Electronically Stored Information is easily deleted, modified or corrupted. You must take every reasonable step to preserve all Electronically Stored Information concerning or relating to this matter until a final resolution of this dispute. This includes, but is not limited to, your obligation to cease any and all data destruction and backup tape recycling policies which are in any way related to this matter.

9. If you claim that any document responsive to this Request has been lost, deleted, or destroyed, or it is otherwise unavailable, you shall describe and identify the document by stating in writing: (i) the name(s) of the author(s); (ii) the name(s) of the person(s) receiving the original and all copies; (iii) the date; (iv) the subject matter; (v) the circumstances under which it was lost, deleted, destroyed, or otherwise became unavailable; and (vi) your efforts to locate the document.

10. If you claim that any document responsive to this Request is protected by a claim of privilege, work product, or for any other reason, you shall describe and identify the document by stating in writing: (i) the name and address of each individual who participated in creating the document or thing; (ii) the name and address of each individual to whom the document or thing, or a copy thereof, has been provided at any time; (iii) the date the document or thing was created; (iv) its type (e.g., letter, memorandum, computer chip, etc.); (v) the subject matter; (vi) the basis upon which the document is being withheld; (vii) the name(s) of the person(s) to whom the contents of the document have already been revealed; (viii) the name(s) of the person(s) now in possession or control of the document; and (ix) such other information which would permit the court to adjudicate the validity of the claim of privilege.

11. When production of any Document or Electronically Stored Information in your possession is requested, such request includes Documents and Electronically Stored Information subject to your possession, custody, or control. In the event that you are able to provide only part of the Document or Electronically Stored Information called for in any particular request, provide all Documents or Electronically Stored Information that you are able to provide and state the reason, if any, for the inability to provide the remainder of the Documents or Electronically Stored Information.

12. Whenever appropriate, the conjunctive “and” should be interpreted in the disjunctive to include the term “or” and vice versa.

13. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa

14. If you claim any ambiguity in interpreting this Request, a definition, or an instruction applicable thereto, you shall not utilize such claim as a basis for refusing to respond, but you shall instead set forth in your response the language claimed to be ambiguous and the interpretation chosen or used by you in responding to such Request.

15. Unless otherwise provided, the relevant time period for purposes of production is January 1, 2010 to the present.

DOCUMENTS AND THINGS TO BE PRODUCED

The following documents shall be produced:

1. All documents referred to or relied upon by Petitioner to support its claim under Florida Statutes, Section 607.1602(2).

2. All documents referred to or relied upon by Petitioner as the support or basis for paragraph 59 of his Amended Petition.

3. All documents referred to or relied upon by Petitioner to support your claim that Patrick Pennie engaged in any ultra vires acts or willful misconduct.

4. All documents referred to or relied upon by Petitioner to support your claim that you were damaged by any actions of Patrick Pennie.

5. All documents referred to or relied upon by Petitioner to support your claim that Petitioner and Patrick Pennie are effectively deadlocked in the management of EmCyte.

6. All documents referred to or relied upon by Petitioner to support your claim that ultra vires acts of Patrick Pennie are causing, or have caused irreparable injury to EmCyte and to Petitioner that cannot be undone through the award of legal or monetary remedies.

7. All documents referred to or relied upon by Petitioner as to the statement in paragraph 29 of his Amended Petition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed through the Court's E-portal filing system and notice will be served electronically to all counsel of record on this 30th day of August, 2016.

Respectfully Submitted,

GUNSTER, YOAKLEY & STEWART, P.A.
401 East Jackson Street
Suite 2500
Tampa, Florida 33602
Phone: (813) 222-6630
Fax: (813) 228-6739

By: s/ Kenneth G.M. Mather
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JACKSONVILLE, FL (904) 354-1980
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FAX TRANSMITTAL FORM

DATE: AUGUST 30, 2016

TO: RICHARD C. ALVAREZ, Esq.
FIRM: OLDER LUNDY & ALVAREZ
CITY, STATE: Tampa, FL
FAX #: 813. 839.4411
PHONE #: 813. 254.8998

FROM: Kenneth G. M. Mather, Esq.
FIRM: Gunster, Yoakley & Stewart, P.A.
OFFICE: Tampa
TELEPHONE: 813-222-6630
FACSIMILE: 813-228-6739

ORIGINAL FOLLOWS: Client/Matter No. 00038095.00001

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MESSAGE: *Please see attached EmCyte Corp.'s Request for Production of Documents to Petitioner.*

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