

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

EMERY SMITH,

Petitioner/Counter-Respondent,

-v-

CASE NO. 15-CA-001620

EMCYTE CORP.,

Respondent/Counter-Petitioner

And

PATRICK PENNIE,

Respondent/Counter-Petitioner.

***NOTICE OF NON-COMPLIANCE BY EMERY SMITH AS TO THE FINDINGS OF
FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT AS TO
COUNTERCLAIM COUNTS I, III, VIII and IX***

EmCyte Corp., Respondent/Counter-Petitioner (“EmCyte”), by and through its undersigned counsel, hereby files its Notice of Non-Compliance by Emery Smith as to the Findings of Fact, Conclusions of Law and Final Judgment as to EmCyte’s Counterclaim Counts I, III, VIII and IX, which was executed by this Court on May 16, 2018 (the “Order”).

In the Court’s Order as to EmCyte’s Counterclaim Count I, Emery Smith was ordered, in part, to:

- 1) Mr. Smith is hereby directed to provide a full and complete accounting as to himself and the following business enterprises for the period commencing January 1, 2010 and continuing through May 8, 2018:
 - a. LifeForm Healing Research, LLC;
 - b. Bio Healix Research, LLC;
 - c. A2Mcyte, LLC;
 - d. A2M Bio;
 - e. Ultra Intelligence Corporation, LLC;
 - f. Canine Regenerative Therapies
 - g. Hydro Healix, Inc.;
 - h. Gian Medical Ltd.;
 - i. Bakhtar Technologies, LLC;
 - j. XMS Research Laboratories;

- k. Luminc Corp.;
 - l. Amnion Animal Science Corp.;
 - m. CSETI;
 - n. National Veterans Rights Association;
 - o. CardioGenesis Corp.
 - p. Exactech;
 - q. Animal Cure Foundation;
 - r. Electro Healix Research, LLC;
 - s. Aqua Healix Research, LLC; and
 - t. Any other business or enterprise from which he earned or received revenue during this time period.
- 2) Mr. Smith shall file verified Federal Income Tax Returns for the tax years 2014, 2015, 2016, and 2017 with the Internal Revenue Service and provide copies thereof to the Court and to counsel for EmCyte by June 15, 2018.
- 3) Mr. Smith shall file verified applicable Federal Tax Returns for all entities in which he owns or has owned an interest since 2010, including but not limited to Bio Healix, LifeForm, Ultra Intelligence and CRT and provide copies thereof to the Court and to counsel for EmCyte by June 15, 2018.
- 4) Mr. Smith's accounting shall include evidence of all revenues or distributions made to Mr. Smith since 2010 from enterprises in which he claims to not own an interest, whether actually made or accrued for later payment to him. Mr. Smith's accounting shall also include evidence of any other amounts paid directly or indirectly to him or his designees or to third parties for his benefit (including but not limited to reimbursement for travel, housing, automobile or other expenses) from such enterprises during the relevant time period. Mr. Smith shall provide a full and complete account for all such funds and shall provide proof of the relationship or agreement that resulted in such revenue, distribution or other amounts being attributable to him by June 15, 2018.
- 5) Mr. Smith's failure to file all applicable tax returns referenced in this judgment, or to provide copies thereof to the Court and to counsel for EmCyte shall constitute a failure to provide an equitable accounting or to comply with this judgment.
- 6) If Mr. Smith fails to provide the equitable accounting set forth in this judgment, then he shall forfeit any right to have his one-half of one percent (0.5%) interest in EmCyte bought out. Such determination will be made by this Court following the filing of a Notice by EmCyte of Mr. Smith's noncompliance.

Mr. Smith failed to comply with the Court's Order and he wholly failed to provide an equitable accounting by June 15, 2018.

Mr. Smith's non-compliance is further noted for purposes of the Court's Order on EmCyte's Counterclaim Count IX to the extent that the Court ordered that "Mr. Smith's right to

have his interest bought out under the Shareholder's Agreement will be forfeited for any failure to provide the full and complete equitable accounting mandated by this Judgment."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed through the Court's E-portal filing system and furnished by electronic and U.S. mail to Emery Smith, P.O. Box 21767, El Sobrante, CA 94820 and 936 30th Street, Richmond, CA 94804 and at Emerysmith28@gmail.com; and by electronic mail to Andrew W. Lennox, Esq., and Casey R. Lennox, Esq., of Lennox Law, P.A., 5100 W. Kennedy Boulevard, Suite 120., Tampa, Florida 33609 at alennox@lennoxlaw.com, clennox@lennoxlaw.com, and eservice@lennoxlaw.com; and Stephen J. Leahu, Esq. and Alejandro J. Fernandez, Esq., of Brinks, Gilson & Lione, 401 E. Jackson Street, Ste. 3500, Tampa, Florida 33602 at sleahu@brinksgilson.com and afernandez@brinksgilson.com on this 18th day of June, 2018.

Respectfully Submitted,

/s/ Kenneth G.M. Mather

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