

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Civil Action No.: 9:16-cv-80980

Honorable Robin L. Rosenberg

Honorable Dave Lee Brannon (Mag.)

Shipping and Transit, LLC,

Plaintiff,

LensDiscounters.com, A Division of LD
Vision Group, Inc.

Defendant.

**DEFENDANT’S MOTION TO COMPEL
PLAINTIFF TO RESPOND TO DISCOVERY REQUESTS
UNDER RULE 37, FEDERAL RULES OF CIVIL PROCEDURE**

Pursuant to Federal Rule of Civil Procedure 37 and Local Rules 7.1 and 26.1, Defendant, LensDiscounters.com (“LD”), moves this Court for an order compelling Plaintiff, Shipping & Transit, LLC (“S&T”), to respond to LD’s interrogatories and document requests. LD further requests the Court order S&T to pay all costs LD has incurred from bringing this motion, as well as costs stemming from its attempts to collect the awards this Court granted. *See* DE 60, 62. In support of its motion, LD states the following:

BACKGROUND

On June 13, 2016, S&T filed a complaint alleging eight counts of patent infringement against LD. *See* DE 1. S&T’s complaint was ultimately dismissed, but

not before LD filed a motion to recover its attorneys' fees. *See* DE 22–23, 27. On July 10, 2017 the magistrate issued its Report and Recommendation to Judge Rosenberg, which she adopted on August 9, 2017. *See* DE 60. Final judgment was entered by Judge Rosenberg on November 17, 2017, awarding LD its attorneys' fees in the amount of \$36,317.50 with post-judgment interest accruing in accordance with 28 U.S.C. § 1961. *See* DE 62. The final judgment further provided that the Court would “retain[] jurisdiction to entertain any post-judgment collection matters.” *Id.*

FACTS AND DISCOVERY ISSUE

Following the Court's August 9, 2017 order awarding LD its attorneys' fees, S&T expressed to LD a willingness to enter into a payment plan on such award. On September 25, 2017, LD offered a payment plan to S&T. While S&T promised a reply to LD's offer the following week, no reply was timely made. *See* Exhibit A to the Declaration of Aaron Gott (“Gott Decl.”), filed concurrently with this motion. In fact, S&T ignored LD's efforts to follow up on the plan until late October, when S&T stated that they would not pay LD *any* amount awarded by this Court. *Id.*

The Court entered its final judgment in this case on November 17, 2017. On November 27, LD served its post-judgment discovery requests to aid in the execution of this Court's judgment. *See* Gott Decl., Exs. B–C. At a meet and confer over LD's requests, S&T represented that it could not make a timely production, citing that its accountant was on vacation—and requesting an extension at least until February. In light of LD's past experience with S&T—LD believed the extension was unreasonable, and that despite the accountant being on vacation, S&T would be

capable of making a substantive response on December 27, or when the responses were due. S&T agreed and promised LD that it would provide a substantive response by December 28, 2017. No response, however, was provided on that date. Again, S&T broke its promise and LD was met with more excuses and reasons for delay. *See Gott Decl., Ex. A* at 3. When S&T finally responded to LD's discovery requests, on January 3, 2018, the responses were grossly deficient from what was promised.

It is clear that despite LD's patience and past good faith efforts to work with S&T—S&T will refuse to act unless forced by this Court. LD therefore brings this motion.

LAW AND ARGUMENT

1. The Court Should Order S&T to Fully Respond to All LD's Discovery Requests.

S&T must fully respond to LD's discovery requests. Motions to compel discovery under Rule 37(a) are committed to the sound discretion of the trial court. *Commercial Union Ins. Co. v. Westrope*, 730 F.2d 729, 731 (11th Cir. 1984). As a general rule, when a party fails to timely object to interrogatories, production requests, or other discovery efforts, the objections are deemed waived. *See Bailey Indus., Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 668 (N.D. Fla. 2010). S&T failed to object to LD's discovery requests by December 28, 2017, and therefore, such objections are waived. S&T must respond to all discovery requests—which are attached to the Gott Declaration as Exhibit B, and outlined below.

(a) S&T must provide full and substantive responses to LD's Interrogatories.

- i. **Interrogatory 1:** *State your present address(es), telephone number(s), and tax ID number.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- ii. **Interrogatory 2:** *State all names of all businesses in which you have a financial interest (e.g., as shareholder, partner or member) and provide each such businesses' address.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- iii. **Interrogatory 3:** *Identify all trusts of which you are a beneficiary, including without limitation, the name of the trust, the names, addresses, and telephone numbers of all trustees and beneficiaries and the nature of your interest in the trusts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- iv. **Interrogatory 4:** *Have you prepared a financial statement within the last five (5) years? If so, provide the date of the financial statement, the purpose of which it was prepared, and the name of the person receiving the financial statement.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- v. **Interrogatory 5:** *Have you applied for loans, credit or any credit cards in the past five (5) years? If so, where and when did you apply? What was the result of the application (approved or denied)?*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- vi. **Interrogatory 6:** *State your gross annual revenue and income from all sources for the past five (5) years and the identity of the source of such revenue.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- vii. Interrogatory 7:** *Describe by legal description and street address all real property which you currently own, or in which you have a direct or indirect interest, setting forth the percentage of your interest in each parcel and list the names and addresses of all persons or entities which own an interest with you in the parcels of real property. For each parcel, state the date of purchase, purchase price, present market value and the amount of equity you currently have in the property.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- viii. Interrogatory 8:** *Describe by legal description the street address of all real property you previously owned, or in which you claim an interest during the past five years through the present. For each property, state the date of purchase, the purchase price, the percentage of interest you had in the property, the date of sale/transfer, the sale price and to whom you sold or transferred the parcel. For this interrogatory, both transfers for valuable consideration and transfers lacking consideration should be listed.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- ix. Interrogatory 9:** *List all items of tangible personal property with an estimated value of \$1000.00 or more, including but not limited to, motor vehicles, furniture, boats, planes, electronics, collectibles, jewelry, stamps, coins or art objects, which you own or in which you had an interest in the past five years. State the estimated value for each item and list the names and address of any person who owns an interest with you in the items of tangible personal property. If you previously owned an interest in personal property in the past five years, yet do not presently own such an interest, state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- x. **Interrogatory 10:** *List all accounts in which you have deposited money or from which you have withdrawn or transferred money (or other assets) in you name, jointly with another person or in the name of an entity in which you are affiliated within the past five years, setting forth for each account: (i) Name and address of the financial institution where the account is maintained; (ii) Type of account; (iii) Account number; (iv) Present balance; and (v) Names and addresses of all persons authorized to withdraw funds from such account.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xi. **Interrogatory 11:** *Identify all intangible personal property, including but not limited to, stocks, bonds, securities, annuities, patents, trademarks, copyrights, club memberships, notes and mortgages owned by you or in which you have had an interest within the past five years. State the percentage of your interest and the present value of such interest. If you previously owned an interest state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xii. **Interrogatory 12:** *Identify the names and address of all persons or entities indebted to you for the past five years to the present, and the nature and amount of their obligations to you. Such indebtedness would include, but not be limited to, obligations to pay money, real property, tangible assets, intangible assets, or to provide services at some point in the future.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xiii. **Interrogatory 13:** *Identify each transaction by which you transferred any item of value (with an estimated market value in excess of \$1000) to any other third party in the past five years. With respect to each transfer, identify: (i) The item transferred; (ii) The date of the transfer; (iii) The person to whom the transfer was made; (iv) Any consideration given for such transfer; and (v) The market value of the item transferred.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xiv. Interrogatory 14:** *List all brokerage, investment and/or commodity accounts in which you have an interest within the past five years, setting forth for each account the: (a) name and address of the broker where the account is maintained; (b) type of account; (c) account number; (d) present balance; and (e) name and addresses of all persons authorized to withdraw funds from such account.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xv. Interrogatory 15:** *Identify any safe deposit box in which you have access, setting forth (a) the name and complete address of each institution in which such a safe deposit box is located; (b) each safe deposit box number, and (c) the contents thereof.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xvi. Interrogatory 16:** *Identify all lawsuits to which you presently are or have been a party (either Plaintiff or Defendant) in the past five years. Your answer should include the title of action, the case number, the jurisdiction in which the suit is/was pending, the date the action commenced, a brief description of the nature of the claims, counterclaims or defenses, and the disposition of the case, including, judgment award.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xvii. Interrogatory 17:** *State whether you own any insurance policies of any type and set forth (a) the name of the insurance company; (b) the face amount of the policy; (c) the type of insurance; (d) the beneficiary of the policy; and (e) amounts, if any, borrowed from the policies.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xviii. Interrogatory 18:** *State whether you are entitled to any Federal, State or City income tax refund or credit, and set forth the amount of each.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xix. Interrogatory 19:** *Identify any and all assets that you have pledged as collateral for the purpose of obtaining any loan in the past five years, either on your own behalf or on behalf of any other entity.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xx. Interrogatory 20:** *Identify any accountants, accounting firms or other advisors that have assisted you with respect to any financial matters or tax preparation within the past five years. Your answer should include the name, address, and contact information of such accountants or accounting firms, a brief description of the services rendered, and the dates upon which such services were rendered.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxi. Interrogatory 21:** *Identify any loan transactions to which you have been a party (either as creditor, debtor, co-signatory, and/or guarantor) in the past five years. Your answer should include, but not be limited to, the date of the transaction, the parties to the transactions, and the terms of the loan transaction (amount, interest rate(s), payment schedule).*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxii. Interrogatory 22:** *Identify each person or entity to whom you believe you are presently indebted. Your answer should include the name of the creditor, the address of the creditor, the amount of the debt, the due date of repayment (if applicable), and date on which the obligation arose.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxiii. Interrogatory 23:** *Identify each document you consulted, referred to, relied on, examined, looked at, or reviewed in connection with responding to any interrogatory contained herein.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxiv. Interrogatory 24:** *Identify any financial interest held by you, directly or indirectly, in a domestic or foreign company. The term "company" shall include, but not be limited to, corporations, sole proprietorships, partnerships, limited partnerships, LLCs, LLPs, business trusts, or trusts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxv. Interrogatory 25:** *Identify any person or entity to whom you have made any disclosures concerning your personal finances in the past twelve (12) months. Your answer should include, but not be limited to, any banks, credit unions, individual investors, companies, governmental bodies/authorities, or courts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxvi. Interrogatory 26:** *Identify any person or entity who owes you money pursuant to any agreement, settlement agreement, contract, or the like.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxvii. Interrogatory 27:** *Identify all active litigation you are engaged in, providing for each, the case number, and the names, addresses, and phone numbers of the opposing party and their counsel.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

(b) S&T must provide full and substantive responses to LD's Request for Production (RFPs).

- i. **RFP 1:** *All federal, state and local tax returns (or equivalent of such forms filed in any jurisdiction outside the U.S.) filed by or for S&T or any business owned by S&T, including all accompanying schedules, worksheets, or other attachments thereto, for the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- ii. **RFP 2:** *All documents or records that evidence any payment received by S&T, or any person on S&T's behalf, during the last five years to present, from any and all sources.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- iii. **RFP 3:** *All bank books, passbooks, account statements, and all other documents that evidence any accounts that S&T owned, maintained, or controlled or for which S&T's representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any banks, savings and loans, credit unions, credit cards, investment houses, mutual fund, money market fund, brokerage firms, escrow agent, or any other institution or the like.*

S&T's production of this RFP is grossly incomplete and deficient—S&T only produced bank statements showing the beginning and ending balances for a checking account ending in 3301 during the following time periods:

- a. June 1, 2017–June 30, 2017;
- b. July 1, 2017–July 31, 2017;
- c. August 1, 2017–August 31, 2017;
- d. September 1, 2017–September 30, 2017;
- e. September 25, 2017–October 25, 2017; and

f. October 1, 2017–October 31, 2017.

Additionally, S&T failed to make any objection to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- iv. **RFP 4:** *All cancelled checks issued on any accounts that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any bank, credit union, savings and loan association, mutual fund, money market fund, brokerage firm, or any other institution, or the like, and all check stubs, check ledgers, check registers and all other records memorializing the issue of any such checks.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- v. **RFP 5:** *All wire transfer requests or receipts for wire transfers made or received by S&T in the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- vi. **RFP 6:** *All documents that relate to any safe deposit box or other deposit box or other depository for securities, cash, or valuables that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest or to which S&T had access, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years, and all documents relating to the contents of such depository and the disposition thereof.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- vii. **RFP 7:** *All invoices, ledgers, books, records or other documents that evidence any accounts receivable to S&T or any business you owned any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- viii. RFP 8:** *All deeds, leases, mortgages, and any other written instruments that evidence any legal or equitable interest or ownership that S&T held in any real property at any time during the last five years, whether directly and/or indirectly, whether individually or jointly with one or more other parties, whether or not currently held by S&T; and for each interest in real property, produce all contracts for sale, closing statements, sales statements, and all other documents pertaining to the purchase price, down payment, source of monies for the purchase price, appraised value of the property.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- ix. RFP 9:** *All documents that relate to the acquisition or sale of personal property by S&T or any business owned by S&T at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- x. RFP 10:** *All applications, certificates of title and registrations for all intellectual property or other intangible property that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xi. RFP 11:** *All certificates of title and registrations for all cars, trucks, airplanes, boats, water sports vehicles, mopeds, motorcycles, and motorized devices that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xii. RFP 12:** *All financial statements prepared during the last five years that show: (i) the assets that S&T owned or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; (ii) the money owed by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; and (iii) S&T's income and expenses, whether owned, owed, earned or spent by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xiii. RFP 13:** *All loan or credit applications prepared by S&T or on S&T's behalf, whether individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xiv. RFP 14:** *Schedules of all business furniture, fixtures, furnishings and equipment owned by S&T, whether individually or jointly with one or more other parties, in the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xv. RFP 15:** *All credit and debit cards currently held by S&T, and all credit card and debit card statements for all credit card, debit card, or other charges for all credit card, debit card, or other charge accounts established in S&T's names for the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xvi. RFP 16:** *All insurance policies held or owned by S&T, insuring real property, automobile, business, boat, or other property, and all umbrella policies, endowment, annuity, and all endorsements thereto, held or acquired during the last five years, and all documents pertaining to the cash values of all life*

insurance policies and the loan status upon each such policy, if any, during the said time period.

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xvii. RFP 17:** *All lease agreements, whether for real or personal property, to which S&T or a business owned by S&T was a party during the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xviii. RFP 18:** *All contracts on which S&T is now performing services or rendering materials, or upon which someone is indebted to S&T for services or materials already furnished.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xix. RFP 19:** *All documents reflecting all sources of income received by S&T in the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xx. RFP 20:** *Any and all documents pertaining to the acquisition or sale of any stocks, bond, notes, options, certificates of deposit, annuities, market certificates, securities, held, acquired or sold by S&T during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxi. RFP 21:** *All shareholder agreements to which S&T has been a party that were either executed or in effect at any time during the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxii. RFP 22:** *All trust agreements which refer or relate to any trusts established by or for S&T, either individually or jointly with others, regardless of whether the beneficiary is S&T or another person, that were executed or in existence at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxiii. RFP 23:** *All documents pertaining to any law suit to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxiv. RFP 24:** *All documents pertaining to any judgment to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxv. RFP 25:** *Any and all documents referring or relating to any payments, promises for payments, or transfers of funds by S&T to or from any other party in the past five years for any amounts in excess of \$1,000.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxvi. RFP 26:** *All appraisals of any property held by S&T during the past five-year period, whether real or personal, whether tangible or intangible, whether S&T's interest was legal or equitable.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxvii. RFP 27:** *All promissory notes held by or executed by S&T during the past five years.*

S&T produced A promissory note from March 5, 2015 between S&T (borrower) and West African Investment Trust (lender)—with a handwritten note representing that \$195,000 is owed

Additionally, S&T failed to make any objection to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxviii. RFP 28: *The corporate books, including bylaws, minutes of meetings of the shareholders, officers and directors, resolutions pertaining to any corporate loans involving S&T in the past five years, and the stock ledger transfer sheet of all corporations in which S&T hold a 10% or more of the outstanding capital stock.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxix. RFP 29: *A list of all items having value in excess of \$500.00 purchased by S&T in the last 24 months.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxx. RFP 30: *A list of all items which S&T consider to be exempt from execution.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxi. RFP 31: *All documents reflecting the transfer of any item of value to or from S&T.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxii. RFP 32: *All banking, accounting and financial records of S&T.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxiii. RFP 33: *All agreements, including but not limited to executory settlement agreements, under which S&T is owed money.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

2. The Court Should Award LD All Costs Associated with Its Collection Efforts and from Bringing this Motion.

LD should be reimbursed for all costs from its collection efforts and from bringing this motion. Rule 37(a)(4) authorizes a trial court to award expenses, including reasonable attorneys' fees, to the prevailing party when a motion is made for an order compelling discovery. *Devaney v. Cont'l Am. Ins. Co.*, 989 F.2d 1154, 1159 (11th Cir. 1993). There is no requirement that expenses assessed in connection with a motion to compel discovery be premised on a finding of bad faith. *Merritt v. Int'l Brotherhood of Boilermakers*, 649 F.2d 1013, 1018 (5th Cir. 1981). However, S&T's actions, its history of making and breaking promises, its willful and deliberate failure to make an appropriate production, demonstrates S&T's bad faith and intention to further prejudice LD. *See id.*; *see also Eagle Hosp. Physicians, LLC. v. SRG Consulting, Inc.*, 561 F.3d 1298, 1306 (11th Cir. 2009) ("A party demonstrates bad faith by, *inter alia*, delaying or disrupting the litigation or hampering enforcement of a court order."). Since this Court entered its order against S&T, awarding LD \$36,317.50 and post-judgment interest, S&T has willfully acted to cause delay and hamper the enforcement of LD's rights. The Court should therefore grant LD the

reimbursement of all costs associated with its attempts to collect its award and from bringing this motion.

CONCLUSION

S&T has affirmatively refused to honor the order and final judgment of this Court, which granted LD an award of \$36,317.50 and post-judgment interest. LD's discovery requests to obtain the financial history and condition of S&T for the past five years has been met with broken promises and excuses by S&T, causing undue delay. S&T's initial response to LD's requests were grossly deficient, and clearly represents its bad faith and intention to frustrate LD's rights. Without the Court intervening, S&T will simply disregard its obligations under the law and cause further injury to LD. LD therefore asks that this Court compel S&T to provide full and comprehensive responses to its discovery requests and award LD all costs and attorneys' fees incurred from its collection efforts and from bringing this motion.

CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to resolve the issues.

Respectfully submitted,

DATED: January 22, 2018

s/ Geoffrey M. Cahen
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*Attorney for LensDiscounters.com, a
Division of LD Vision Group, Inc.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2018, I served a true and correct copy of the foregoing via electronic mail to the party on the below service list.

s/ Geoffrey M. Cahen

Geoffrey M. Cahen

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Civil Action No.: 9:16-cv-80980

Honorable Robin L. Rosenberg

Honorable Dave Lee Brannon (Mag.)

Shipping and Transit, LLC,

Plaintiff,

LensDiscounters.com, A Division of LD
Vision Group, Inc.

Defendant.

**DEFENDANT’S MOTION TO COMPEL
PLAINTIFF TO RESPOND TO DISCOVERY REQUESTS
UNDER RULE 37, FEDERAL RULES OF CIVIL PROCEDURE**

Pursuant to Federal Rule of Civil Procedure 37 and Local Rules 7.1 and 26.1, Defendant, LensDiscounters.com (“LD”), moves this Court for an order compelling Plaintiff, Shipping & Transit, LLC (“S&T”), to respond to LD’s interrogatories and document requests. LD further requests the Court order S&T to pay all costs LD has incurred from bringing this motion, as well as costs stemming from its attempts to collect the awards this Court granted. *See* DE 60, 62. In support of its motion, LD states the following:

BACKGROUND

On June 13, 2016, S&T filed a complaint alleging eight counts of patent infringement against LD. *See* DE 1. S&T’s complaint was ultimately dismissed, but

not before LD filed a motion to recover its attorneys' fees. *See* DE 22–23, 27. On July 10, 2017 the magistrate issued its Report and Recommendation to Judge Rosenberg, which she adopted on August 9, 2017. *See* DE 60. Final judgment was entered by Judge Rosenberg on November 17, 2017, awarding LD its attorneys' fees in the amount of \$36,317.50 with post-judgment interest accruing in accordance with 28 U.S.C. § 1961. *See* DE 62. The final judgment further provided that the Court would “retain[] jurisdiction to entertain any post-judgment collection matters.” *Id.*

FACTS AND DISCOVERY ISSUE

Following the Court's August 9, 2017 order awarding LD its attorneys' fees, S&T expressed to LD a willingness to enter into a payment plan on such award. On September 25, 2017, LD offered a payment plan to S&T. While S&T promised a reply to LD's offer the following week, no reply was timely made. *See* Exhibit A to the Declaration of Aaron Gott (“Gott Decl.”), filed concurrently with this motion. In fact, S&T ignored LD's efforts to follow up on the plan until late October, when S&T stated that they would not pay LD *any* amount awarded by this Court. *Id.*

The Court entered its final judgment in this case on November 17, 2017. On November 27, LD served its post-judgment discovery requests to aid in the execution of this Court's judgment. *See* Gott Decl., Exs. B–C. At a meet and confer over LD's requests, S&T represented that it could not make a timely production, citing that its accountant was on vacation—and requesting an extension at least until February. In light of LD's past experience with S&T—LD believed the extension was unreasonable, and that despite the accountant being on vacation, S&T would be

capable of making a substantive response on December 27, or when the responses were due. S&T agreed and promised LD that it would provide a substantive response by December 28, 2017. No response, however, was provided on that date. Again, S&T broke its promise and LD was met with more excuses and reasons for delay. *See Gott Decl., Ex. A* at 3. When S&T finally responded to LD's discovery requests, on January 3, 2018, the responses were grossly deficient from what was promised.

It is clear that despite LD's patience and past good faith efforts to work with S&T—S&T will refuse to act unless forced by this Court. LD therefore brings this motion.

LAW AND ARGUMENT

1. The Court Should Order S&T to Fully Respond to All LD's Discovery Requests.

S&T must fully respond to LD's discovery requests. Motions to compel discovery under Rule 37(a) are committed to the sound discretion of the trial court. *Commercial Union Ins. Co. v. Westrope*, 730 F.2d 729, 731 (11th Cir. 1984). As a general rule, when a party fails to timely object to interrogatories, production requests, or other discovery efforts, the objections are deemed waived. *See Bailey Indus., Inc. v. CLJP, Inc.*, 270 F.R.D. 662, 668 (N.D. Fla. 2010). S&T failed to object to LD's discovery requests by December 28, 2017, and therefore, such objections are waived. S&T must respond to all discovery requests—which are attached to the Gott Declaration as Exhibit B, and outlined below.

(a) S&T must provide full and substantive responses to LD's Interrogatories.

- i. **Interrogatory 1:** *State your present address(es), telephone number(s), and tax ID number.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- ii. **Interrogatory 2:** *State all names of all businesses in which you have a financial interest (e.g., as shareholder, partner or member) and provide each such businesses' address.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- iii. **Interrogatory 3:** *Identify all trusts of which you are a beneficiary, including without limitation, the name of the trust, the names, addresses, and telephone numbers of all trustees and beneficiaries and the nature of your interest in the trusts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- iv. **Interrogatory 4:** *Have you prepared a financial statement within the last five (5) years? If so, provide the date of the financial statement, the purpose of which it was prepared, and the name of the person receiving the financial statement.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- v. **Interrogatory 5:** *Have you applied for loans, credit or any credit cards in the past five (5) years? If so, where and when did you apply? What was the result of the application (approved or denied)?*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- vi. **Interrogatory 6:** *State your gross annual revenue and income from all sources for the past five (5) years and the identity of the source of such revenue.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- vii. Interrogatory 7:** *Describe by legal description and street address all real property which you currently own, or in which you have a direct or indirect interest, setting forth the percentage of your interest in each parcel and list the names and addresses of all persons or entities which own an interest with you in the parcels of real property. For each parcel, state the date of purchase, purchase price, present market value and the amount of equity you currently have in the property.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- viii. Interrogatory 8:** *Describe by legal description the street address of all real property you previously owned, or in which you claim an interest during the past five years through the present. For each property, state the date of purchase, the purchase price, the percentage of interest you had in the property, the date of sale/transfer, the sale price and to whom you sold or transferred the parcel. For this interrogatory, both transfers for valuable consideration and transfers lacking consideration should be listed.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- ix. Interrogatory 9:** *List all items of tangible personal property with an estimated value of \$1000.00 or more, including but not limited to, motor vehicles, furniture, boats, planes, electronics, collectibles, jewelry, stamps, coins or art objects, which you own or in which you had an interest in the past five years. State the estimated value for each item and list the names and address of any person who owns an interest with you in the items of tangible personal property. If you previously owned an interest in personal property in the past five years, yet do not presently own such an interest, state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- x. **Interrogatory 10:** *List all accounts in which you have deposited money or from which you have withdrawn or transferred money (or other assets) in you name, jointly with another person or in the name of an entity in which you are affiliated within the past five years, setting forth for each account: (i) Name and address of the financial institution where the account is maintained; (ii) Type of account; (iii) Account number; (iv) Present balance; and (v) Names and addresses of all persons authorized to withdraw funds from such account.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xi. **Interrogatory 11:** *Identify all intangible personal property, including but not limited to, stocks, bonds, securities, annuities, patents, trademarks, copyrights, club memberships, notes and mortgages owned by you or in which you have had an interest within the past five years. State the percentage of your interest and the present value of such interest. If you previously owned an interest state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xii. **Interrogatory 12:** *Identify the names and address of all persons or entities indebted to you for the past five years to the present, and the nature and amount of their obligations to you. Such indebtedness would include, but not be limited to, obligations to pay money, real property, tangible assets, intangible assets, or to provide services at some point in the future.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xiii. **Interrogatory 13:** *Identify each transaction by which you transferred any item of value (with an estimated market value in excess of \$1000) to any other third party in the past five years. With respect to each transfer, identify: (i) The item transferred; (ii) The date of the transfer; (iii) The person to whom the transfer was made; (iv) Any consideration given for such transfer; and (v) The market value of the item transferred.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xiv. Interrogatory 14:** *List all brokerage, investment and/or commodity accounts in which you have an interest within the past five years, setting forth for each account the: (a) name and address of the broker where the account is maintained; (b) type of account; (c) account number; (d) present balance; and (e) name and addresses of all persons authorized to withdraw funds from such account.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xv. Interrogatory 15:** *Identify any safe deposit box in which you have access, setting forth (a) the name and complete address of each institution in which such a safe deposit box is located; (b) each safe deposit box number, and (c) the contents thereof.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xvi. Interrogatory 16:** *Identify all lawsuits to which you presently are or have been a party (either Plaintiff or Defendant) in the past five years. Your answer should include the title of action, the case number, the jurisdiction in which the suit is/was pending, the date the action commenced, a brief description of the nature of the claims, counterclaims or defenses, and the disposition of the case, including, judgment award.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xvii. Interrogatory 17:** *State whether you own any insurance policies of any type and set forth (a) the name of the insurance company; (b) the face amount of the policy; (c) the type of insurance; (d) the beneficiary of the policy; and (e) amounts, if any, borrowed from the policies.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xviii. Interrogatory 18:** *State whether you are entitled to any Federal, State or City income tax refund or credit, and set forth the amount of each.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xix. Interrogatory 19:** *Identify any and all assets that you have pledged as collateral for the purpose of obtaining any loan in the past five years, either on your own behalf or on behalf of any other entity.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xx. Interrogatory 20:** *Identify any accountants, accounting firms or other advisors that have assisted you with respect to any financial matters or tax preparation within the past five years. Your answer should include the name, address, and contact information of such accountants or accounting firms, a brief description of the services rendered, and the dates upon which such services were rendered.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxi. Interrogatory 21:** *Identify any loan transactions to which you have been a party (either as creditor, debtor, co-signatory, and/or guarantor) in the past five years. Your answer should include, but not be limited to, the date of the transaction, the parties to the transactions, and the terms of the loan transaction (amount, interest rate(s), payment schedule).*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxii. Interrogatory 22:** *Identify each person or entity to whom you believe you are presently indebted. Your answer should include the name of the creditor, the address of the creditor, the amount of the debt, the due date of repayment (if applicable), and date on which the obligation arose.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxiii. Interrogatory 23:** *Identify each document you consulted, referred to, relied on, examined, looked at, or reviewed in connection with responding to any interrogatory contained herein.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxiv. Interrogatory 24:** *Identify any financial interest held by you, directly or indirectly, in a domestic or foreign company. The term “company” shall include, but not be limited to, corporations, sole proprietorships, partnerships, limited partnerships, LLCs, LLPs, business trusts, or trusts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxv. Interrogatory 25:** *Identify any person or entity to whom you have made any disclosures concerning your personal finances in the past twelve (12) months. Your answer should include, but not be limited to, any banks, credit unions, individual investors, companies, governmental bodies/authorities, or courts.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxvi. Interrogatory 26:** *Identify any person or entity who owes you money pursuant to any agreement, settlement agreement, contract, or the like.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

- xxvii. Interrogatory 27:** *Identify all active litigation you are engaged in, providing for each, the case number, and the names, addresses, and phone numbers of the opposing party and their counsel.*

S&T did not respond or otherwise object to this interrogatory. This interrogatory is relevant to discovering whether S&T has assets to pay the judgment.

(b) S&T must provide full and substantive responses to LD's Request for Production (RFPs).

- i. **RFP 1:** *All federal, state and local tax returns (or equivalent of such forms filed in any jurisdiction outside the U.S.) filed by or for S&T or any business owned by S&T, including all accompanying schedules, worksheets, or other attachments thereto, for the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- ii. **RFP 2:** *All documents or records that evidence any payment received by S&T, or any person on S&T's behalf, during the last five years to present, from any and all sources.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- iii. **RFP 3:** *All bank books, passbooks, account statements, and all other documents that evidence any accounts that S&T owned, maintained, or controlled or for which S&T's representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any banks, savings and loans, credit unions, credit cards, investment houses, mutual fund, money market fund, brokerage firms, escrow agent, or any other institution or the like.*

S&T's production of this RFP is grossly incomplete and deficient—S&T only produced bank statements showing the beginning and ending balances for a checking account ending in 3301 during the following time periods:

- a. June 1, 2017–June 30, 2017;
- b. July 1, 2017–July 31, 2017;
- c. August 1, 2017–August 31, 2017;
- d. September 1, 2017–September 30, 2017;
- e. September 25, 2017–October 25, 2017; and

f. October 1, 2017–October 31, 2017.

Additionally, S&T failed to make any objection to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- iv. **RFP 4:** *All cancelled checks issued on any accounts that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any bank, credit union, savings and loan association, mutual fund, money market fund, brokerage firm, or any other institution, or the like, and all check stubs, check ledgers, check registers and all other records memorializing the issue of any such checks.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- v. **RFP 5:** *All wire transfer requests or receipts for wire transfers made or received by S&T in the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- vi. **RFP 6:** *All documents that relate to any safe deposit box or other deposit box or other depository for securities, cash, or valuables that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest or to which S&T had access, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years, and all documents relating to the contents of such depository and the disposition thereof.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- vii. **RFP 7:** *All invoices, ledgers, books, records or other documents that evidence any accounts receivable to S&T or any business you owned any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- viii. RFP 8:** *All deeds, leases, mortgages, and any other written instruments that evidence any legal or equitable interest or ownership that S&T held in any real property at any time during the last five years, whether directly and/or indirectly, whether individually or jointly with one or more other parties, whether or not currently held by S&T; and for each interest in real property, produce all contracts for sale, closing statements, sales statements, and all other documents pertaining to the purchase price, down payment, source of monies for the purchase price, appraised value of the property.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- ix. RFP 9:** *All documents that relate to the acquisition or sale of personal property by S&T or any business owned by S&T at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- x. RFP 10:** *All applications, certificates of title and registrations for all intellectual property or other intangible property that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xi. RFP 11:** *All certificates of title and registrations for all cars, trucks, airplanes, boats, water sports vehicles, mopeds, motorcycles, and motorized devices that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xii. RFP 12:** *All financial statements prepared during the last five years that show: (i) the assets that S&T owned or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; (ii) the money owed by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; and (iii) S&T's income and expenses, whether owned, owed, earned or spent by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xiii. RFP 13:** *All loan or credit applications prepared by S&T or on S&T's behalf, whether individually or jointly with one or more other parties, at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xiv. RFP 14:** *Schedules of all business furniture, fixtures, furnishings and equipment owned by S&T, whether individually or jointly with one or more other parties, in the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xv. RFP 15:** *All credit and debit cards currently held by S&T, and all credit card and debit card statements for all credit card, debit card, or other charges for all credit card, debit card, or other charge accounts established in S&T's names for the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xvi. RFP 16:** *All insurance policies held or owned by S&T, insuring real property, automobile, business, boat, or other property, and all umbrella policies, endowment, annuity, and all endorsements thereto, held or acquired during the last five years, and all documents pertaining to the cash values of all life*

insurance policies and the loan status upon each such policy, if any, during the said time period.

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xvii. RFP 17:** *All lease agreements, whether for real or personal property, to which S&T or a business owned by S&T was a party during the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xviii. RFP 18:** *All contracts on which S&T is now performing services or rendering materials, or upon which someone is indebted to S&T for services or materials already furnished.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xix. RFP 19:** *All documents reflecting all sources of income received by S&T in the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xx. RFP 20:** *Any and all documents pertaining to the acquisition or sale of any stocks, bond, notes, options, certificates of deposit, annuities, market certificates, securities, held, acquired or sold by S&T during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxi. RFP 21:** *All shareholder agreements to which S&T has been a party that were either executed or in effect at any time during the past five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxii. RFP 22:** *All trust agreements which refer or relate to any trusts established by or for S&T, either individually or jointly with others, regardless of whether the beneficiary is S&T or another person, that were executed or in existence at any time during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxiii. RFP 23:** *All documents pertaining to any law suit to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxiv. RFP 24:** *All documents pertaining to any judgment to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxv. RFP 25:** *Any and all documents referring or relating to any payments, promises for payments, or transfers of funds by S&T to or from any other party in the past five years for any amounts in excess of \$1,000.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxvi. RFP 26:** *All appraisals of any property held by S&T during the past five-year period, whether real or personal, whether tangible or intangible, whether S&T's interest was legal or equitable.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

- xxvii. RFP 27:** *All promissory notes held by or executed by S&T during the past five years.*

S&T produced A promissory note from March 5, 2015 between S&T (borrower) and West African Investment Trust (lender)—with a handwritten note representing that \$195,000 is owed

Additionally, S&T failed to make any objection to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxviii. RFP 28: *The corporate books, including bylaws, minutes of meetings of the shareholders, officers and directors, resolutions pertaining to any corporate loans involving S&T in the past five years, and the stock ledger transfer sheet of all corporations in which S&T hold a 10% or more of the outstanding capital stock.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxix. RFP 29: *A list of all items having value in excess of \$500.00 purchased by S&T in the last 24 months.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxx. RFP 30: *A list of all items which S&T consider to be exempt from execution.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxi. RFP 31: *All documents reflecting the transfer of any item of value to or from S&T.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxii. RFP 32: *All banking, accounting and financial records of S&T.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

xxxiii. RFP 33: *All agreements, including but not limited to executory settlement agreements, under which S&T is owed money.*

S&T did not respond or otherwise object to this RFP. This RFP is relevant to discovering whether S&T has assets to pay the judgment.

2. The Court Should Award LD All Costs Associated with Its Collection Efforts and from Bringing this Motion.

LD should be reimbursed for all costs from its collection efforts and from bringing this motion. Rule 37(a)(4) authorizes a trial court to award expenses, including reasonable attorneys' fees, to the prevailing party when a motion is made for an order compelling discovery. *Devaney v. Cont'l Am. Ins. Co.*, 989 F.2d 1154, 1159 (11th Cir. 1993). There is no requirement that expenses assessed in connection with a motion to compel discovery be premised on a finding of bad faith. *Merritt v. Int'l Brotherhood of Boilermakers*, 649 F.2d 1013, 1018 (5th Cir. 1981). However, S&T's actions, its history of making and breaking promises, its willful and deliberate failure to make an appropriate production, demonstrates S&T's bad faith and intention to further prejudice LD. *See id.*; *see also Eagle Hosp. Physicians, LLC. v. SRG Consulting, Inc.*, 561 F.3d 1298, 1306 (11th Cir. 2009) ("A party demonstrates bad faith by, *inter alia*, delaying or disrupting the litigation or hampering enforcement of a court order."). Since this Court entered its order against S&T, awarding LD \$36,317.50 and post-judgment interest, S&T has willfully acted to cause delay and hamper the enforcement of LD's rights. The Court should therefore grant LD the

reimbursement of all costs associated with its attempts to collect its award and from bringing this motion.

CONCLUSION

S&T has affirmatively refused to honor the order and final judgment of this Court, which granted LD an award of \$36,317.50 and post-judgment interest. LD's discovery requests to obtain the financial history and condition of S&T for the past five years has been met with broken promises and excuses by S&T, causing undue delay. S&T's initial response to LD's requests were grossly deficient, and clearly represents its bad faith and intention to frustrate LD's rights. Without the Court intervening, S&T will simply disregard its obligations under the law and cause further injury to LD. LD therefore asks that this Court compel S&T to provide full and comprehensive responses to its discovery requests and award LD all costs and attorneys' fees incurred from its collection efforts and from bringing this motion.

CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to resolve the issues.

Respectfully submitted,

DATED: January 22, 2018

s/ Geoffrey M. Cahen
Geoffrey M. Cahen
Fla. Bar No. 001339
CAHEN LAW, P.A.
1900 Glades Road, Suite 355
Boca Raton, FL 33431

Telephone: (561) 922-0430
E-Mail: geoff@cahenlaw.com

*Attorney for LensDiscounters.com, a
Division of LD Vision Group, Inc.*

Aaron Gott (admitted *phv*)
BONA LAW PC
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Telephone: (858) 964-4589
E-mail: aaron.gott@bonalawpc.com

*Additional Attorney for
LensDiscounters.com, a Division of LD
Vision Group, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2018, I served a true and correct copy of the foregoing via electronic mail to the party on the below service list.

s/ Geoffrey M. Cahen

Geoffrey M. Cahen

Jason P. Dollard

Law Offices of Jason P. Dollard P.A.

127 NE 2nd Avenue

Delray Beach, FL 33444

561-819-5406

819-5407 (fax)

jdollard@jpdesq.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Civil Action No.: 9:16-cv-80980

Honorable Robin L. Rosenberg
Honorable Dave Lee Brannon (Mag.)

Shipping and Transit, LLC,

Plaintiff,

LensDiscounters.com, A Division of LD
Vision Group, Inc.

Defendant.

DECLARATION OF AARON R. GOTT
IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL
PLAINTIFF TO RESPOND TO DISCOVERY REQUESTS
UNDER RULE 37, FEDERAL RULES OF CIVIL PROCEDURE

I, AARON R. GOTT, declare as follows:

I am an attorney admitted to practice before all the courts of Minnesota, the United States District Courts in the Central and Northern Districts of California, and the U.S. Court of Appeals for the Fourth, Eighth, Ninth, and Tenth Circuits. I am Of Counsel with the law firm of Bona Law PC, counsel for defendant LensDiscounters.com, and admitted *pro hac vice* in this case. I submit this declaration in support of Defendant's Motion to Compel Plaintiff to Respond to Discovery Requests Under Rule 37, Federal Rules of Civil Procedure, filed concurrently with this declaration. I am over the age of 18 and am not a party in this

action. I have personal knowledge of the matters set forth herein, and if called upon, could and would competently testify.

1. Attached hereto as Exhibit A is a true and correct copy of an email chain between Jason Dollard, counsel for plaintiff Shipping and Transit, LLC, and Bona Law PC.

2. Attached hereto as Exhibit B is a true and correct copy of LensDiscounters.com's Requests for Production in Aid of Execution Against Shipping and Transit, LLC, dated November 27, 2017.

3. Attached hereto as Exhibit C is a true and correct copy of LensDiscounters.com's Interrogatories in Aid of Execution Against Shipping and Transit, LLC, dated November 27, 2017.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of January, at Fallbrook, California.

s/ Aaron R. Gott

Aaron. R. Gott

EXHIBIT A

Sent: Wednesday, January 03, 2018 5:38 PM
To: Jason Dollard; Artoush Ohanian
Cc: Geoffrey Cahen; Aaron Gott; Jarod Bona; Gabriela Hamilton
Subject: Discovery Hearing Date: Shipping and Transit Discovery Responses

Jason and Artoush,

Despite your representations that S&T would produce responsive information and documents no later than last Friday, December 28—no production was made. Unfortunately, your client's failure to follow through on its promises, honor its agreements, and to make substantive productions to our requests is recurring. We have little confidence that your client will act unless compelled by the court. Therefore, as required under the court's order setting discovery procedure, we will begin to move for relief by setting a hearing date on the court's discovery calendar. *See* Dkt. 19.

Jason, I called and left a message this afternoon—I anticipate you will be the one handling this hearing.

We plan to schedule our discovery hearing on January 18, 2018, sometime between 1:00PM–4:00PM.

What is your availability on that date?

Thank you,

Matt

From: Jason Dollard [mailto:JDollard@lrevanspa.com]
Sent: Thursday, January 04, 2018 11:46 AM
To: Matthew Riley <matthew.riley@bonalawpc.com>; Artoush Ohanian <artoush@ohanianip.com>
Cc: Geoffrey Cahen <geoff@cahenlaw.com>; Aaron Gott <aaron.gott@bonalawpc.com>; Jarod Bona <jarod.bona@bonalawpc.com>; Gabriela Hamilton <gabriela.hamilton@bonalawpc.com>
Subject: RE: Discovery Hearing Date: Shipping and Transit Discovery Responses

Matt,

Thank you for reaching out. We can appreciate your frustration, but I think we have been more that open about trying to get you documents in response to your requests, unfortunately, as we expressed previously, with the holidays and our clients accountant out of the office for several weeks, it has been difficult to get any documents. We did receive documents from our client Tuesday afternoon, but I was out of the office and it was Artoush's first day back in the office, and I had a family emergency yesterday afternoon, so we have not been able to discuss them until this morning. We have attached what we have to this point, which is bank statements and a promissory note. Our client is working to get more documents to provide you over the next few weeks, but this what we have to this point.

We understand if you want to proceed with setting a hearing, we can't stop you. If you are going to proceed, I am available on 1/18/18.

Jason P. Dollard, Esq.-- Of Counsel
Leslie Robert Evans & Associates, P.A.
214 Brazilian Avenue, Suite 200
Palm Beach, FL 33480
Main: 561.832.8288
Direct: 561.659-7891
Fax: 561.832.5722
Email: jdollard@LREvansPA.com
Website: www.LREvansPA.com

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Civil Action No.: 9:16-cv-80980

Honorable Robin L. Rosenberg

Honorable Dave Lee Brannon (Mag.)

Shipping and Transit, LLC,

Plaintiff,

LensDiscounters.com, A Division of LD
Vision Group, Inc.

Defendant.

**LENSDISCOUNTERS.COM'S REQUESTS FOR PRODUCTION
IN AID OF EXECUTION AGAINST SHIPPING AND TRANSIT, LLC**

Lensdiscounters.com, by and through its counsel and pursuant to Fed. R. Civ. P. 34, hereby requests Shipping and Transit, LLC ("S&T") produce the following items for inspection and copying at the offices of Cahen Law, P.A., 1900 Glades Road, Suite 355, Boca Raton, FL 33431, within thirty (30) days from services thereof.

INSTRUCTIONS

1. When producing a document, please produce the document as it is kept in the ordinary course of business or indicate the paragraph of these Requests to which that document is responsive.

2. Electronic records and computerized information must be produced in an intelligible format or together with a description of the system from which it was

derived sufficient to permit rendering the materials intelligible.

3. In producing documents, furnish all documents known or available to you regardless of whether such documents are possessed directly by you, or any of your officers, directors, employees, agents, representatives, or attorneys, as well as any other documents in your custody or control.

4. File folders with tabs or labels identifying documents called for by these Requests must be produced intact with such documents.

5. Selection of documents from the files and other sources and the numbering of such documents shall be performed in such a manner as to insure that the source of each document may be determined, if necessary.

6. Documents attached to each other must not be separated.

7. The term "all documents" means any and all documents that might reasonably be located through a search of all locations reasonably likely to contain documents called for by these Requests.

8. Should any document be withheld based on some limitation of discovery (including a claim of privilege), please supply the following information:

a. The identity of each document's author(s), writer(s), sender(s), or initiator(s);

b. The identity of each document's recipient(s), addressee(s), or party(ies) for whom it was intended;

c. The date of creation or transmittal indicated on each document, or an estimate of that date, indicated as such, if no date appears on the

document;

d. The general subject matter as described on each document, or, if no such description appears, then some other description sufficient to identify the document; and

e. The claimed ground(s) for limitation of discovery (*e.g.*, “attorney-client privilege” or “attorney work product doctrine”).

9. The written answer to each individual request for production must repeat verbatim, immediately before each answer, the text of the individual request for production being answered.

DEFINITIONS

1. “You,” “your,” “plaintiff,” and “S&T” means Shipping & Transit, LLC, including any directors, officers, employees, agents or representatives thereof; its predecessors, successors, parents, or subsidiaries.

2. The term “person” is used in its broadest sense and includes without limitation, any natural person, partnership, joint ventures, corporations, associations and all other forms of organization, whether public or private.

3. The terms “document” or “documents” shall be synonymous in meaning and equal in scope to the broadest meaning provided by Rule 34 of the Federal Rules of Civil Procedure; meaning all writings, including all originals and duplicates, including, but not limited to, drafts and non-identical copies (such as copies that are different from the original because of notes or marks made on or attached to the copies). “Document” or “documents” further means all written, typewritten, printed

and graphic material of whatever kind or nature including, but not limited to, labels, packaging, containers, agreements, minutes, ledgers, personnel files, accounting records, tapes transcriptions, computer programs, data or data files, and information stored on diskettes, hard drives, microfiche, or other similar information storage/retrieval systems. Further, "document" also includes recordings through sound, video, or other electronic, magnetic or digital recording system such as pictures, photographs, tape recordings, videotapes, disks, diskettes, flash or portable drives, data tapes or readable computer-produced interpretations or transcriptions thereof, voice messages, and any other electronic, digital, or tangible things, including all electronically stored information. Further, this term shall apply to all documents, whether in hard copy or electronic form, on your computers or the computers of your employees, independent contractors or consultants, whether provided by you to such individuals or otherwise.

4. The terms "referring to" or "relating to" mean constituting, containing, consisting of, comprising, embodying, summarizing, mentioning, memorializing, discussing, showing, commencing upon, or describing.

5. The following rules of construction shall apply to all requests as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope: (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well as vice versa; (c) the connectives "and" and "or" shall be construed either disjunctively

or conjunctively; (d) the terms “all,” “any,” and “each” shall be construed as “all, any, every, and each;” and (e) the term “including” means “including but not limited to.”

6. The wording of any Request does not constitute an admission of what the facts or evidence will ultimately show.

DOCUMENTS REQUESTS

Request for Document Production No. 1:

All federal, state and local tax returns (or equivalent of such forms filed in any jurisdiction outside the U.S.) filed by or for S&T or any business owned by S&T, including all accompanying schedules, worksheets, or other attachments thereto, for the last five years.

Request for Document Production No. 2:

All documents or records that evidence any payment received by S&T, or any person on S&T's behalf, during the last five years to present, from any and all sources.

Request for Document Production No. 3:

All bank books, passbooks, account statements, and all other documents that evidence any accounts that S&T owned, maintained, or controlled or for which S&T's representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any banks, savings and loans, credit unions, credit cards, investment houses, mutual fund, money market fund, brokerage firms, escrow agent, or any other institution or the like.

Request for Document Production No. 4:

All cancelled checks issued on any accounts that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest, whether individually or jointly with one or more other parties, at any time during the last five years at any bank, credit union, savings and loan association, mutual fund, money market fund, brokerage firm, or any other institution, or the like, and all check stubs, check ledgers, check registers and all other records memorializing the issue of any such checks.

Request for Document Production No. 5:

All wire transfer requests or receipts for wire transfers made or received by S&T in the past five years.

Request for Document Production No. 6:

All documents that relate to any safe deposit box or other deposit box or other depository for securities, cash, or valuables that S&T owned, maintained, or controlled or for which a S&T representative was a signatory or in which S&T had any interest or to which S&T had access, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years, and all documents relating to the contents of such depository and the disposition thereof.

Request for Document Production No. 7:

All invoices, ledgers, books, records or other documents that evidence any accounts receivable to S&T or any business you owned any time during the last five years.

Request for Document Production No. 8:

All deeds, leases, mortgages, and any other written instruments that evidence any legal or equitable interest or ownership that S&T held in any real property at any time during the last five years, whether directly and/or indirectly, whether individually or jointly with one or more other parties, whether or not currently held by S&T; and for each interest in real property, produce all contracts for sale, closing statements, sales statements, and all other documents pertaining to the purchase price, down payment, source of monies for the purchase price, appraised value of the property.

Request for Document Production No. 9:

All documents that relate to the acquisition or sale of personal property by S&T or any business owned by S&T at any time during the last five years.

Request for Document Production No. 10:

All applications, certificates of title and registrations for all intellectual property or other intangible property that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.

Request for Document Production No. 11:

All certificates of title and registrations for all cars, trucks, airplanes, boats, water sports vehicles, mopeds, motorcycles, and motorized devices that S&T owned, maintained, or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties, at any time during the last five years.

Request for Document Production No. 12:

All financial statements prepared during the last five years that show: (i) the assets that S&T owned or controlled or in which S&T had any interest, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; (ii) the money owed by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties; and (iii) S&T's income and expenses, whether owned, owed, earned or spent by S&T, in whole and/or in part, directly and/or indirectly, individually or jointly with one or more other parties.

Request for Document Production No. 13:

All loan or credit applications prepared by S&T or on S&T's behalf, whether individually or jointly with one or more other parties, at any time during the last five years.

Request for Document Production No. 14:

Schedules of all business furniture, fixtures, furnishings and equipment owned by S&T, whether individually or jointly with one or more other parties, in the last five years.

Request for Document Production No. 15:

All credit and debit cards currently held by S&T, and all credit card and debit card statements for all credit card, debit card, or other charges for all credit card, debit card, or other charge accounts established in S&T's names for the last five years.

Request for Document Production No. 16:

All insurance policies held or owned by S&T, insuring real property, automobile, business, boat, or other property, and all umbrella policies, endowment, annuity, and all endorsements thereto, held or acquired during the last five years, and all documents pertaining to the cash values of all life insurance policies and the loan status upon each such policy, if any, during the said time period.

Request for Document Production No. 17:

All lease agreements, whether for real or personal property, to which S&T or a business owned by S&T was a party during the past five years.

Request for Document Production No. 18:

All contracts on which S&T is now performing services or rendering materials, or upon which someone is indebted to S&T for services or materials already furnished.

Request for Document Production No. 19:

All documents reflecting all sources of income received by S&T in the last five years.

Request for Document Production No. 20:

Any and all documents pertaining to the acquisition or sale of any stocks, bond, notes, options, certificates of deposit, annuities, market certificates, securities, held, acquired or sold by S&T during the last five years.

Request for Document Production No. 21:

All shareholder agreements to which S&T has been a party that were either executed or in effect at any time during the past five years.

Request for Document Production No. 22:

All trust agreements which refer or relate to any trusts established by or for S&T, either individually or jointly with others, regardless of whether the beneficiary is S&T or another person, that were executed or in existence at any time during the last five years.

Request for Document Production No. 23:

All documents pertaining to any law suit to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.

Request for Document Production No. 24:

All documents pertaining to any judgment to which S&T has been a party, either as a party plaintiff or claimant, party defendant or respondent, or otherwise, during the last five years.

Request for Document Production No. 25:

Any and all documents referring or relating to any payments, promises for payments, or transfers of funds by S&T to or from any other party in the past five years for any amounts in excess of \$1,000.

Request for Document Production No. 26:

All appraisals of any property held by S&T during the past five-year period, whether real or personal, whether tangible or intangible, whether S&T's interest was legal or equitable.

Request for Document Production No. 27:

All promissory notes held by or executed by S&T during the past five years.

Request for Document Production No. 28:

The corporate books, including bylaws, minutes of meetings of the shareholders, officers and directors, resolutions pertaining to any corporate loans involving S&T in the past five years, and the stock ledger transfer sheet of all corporations in which S&T hold a 10% or more of the outstanding capital stock.

Request for Document Production No. 29:

A list of all items having value in excess of \$500.00 purchased by S&T in the last 24 months.

Request for Document Production No. 30:

A list of all items which S&T consider to be exempt from execution.

Request for Document Production No. 31:

All documents reflecting the transfer of any item of value to or from S&T.

Request for Document Production No. 32:

All banking, accounting and financial records of S&T.

Request for Document Production No. 33:

All agreements, including but not limited to executory settlement agreements, under which S&T is owed money.

Dated: November 27, 2017

By: s/ Aaron R. Gott
Aaron R. Gott

Aaron R. Gott (*admitted phv*)
aaron.gott@bonalawpc.com
BONA LAW PC
4275 Executive Square, Suite 200
La Jolla, CA 92037
(858) 964-4589
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*Additional Attorney for
LensDiscounters.com, a Division of LD
Vision Group, Inc.*

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Boca Raton, FL 33431
Telephone: (561) 922-0430
E-Mail: geoff@cahenlaw.com

*Attorney for LensDiscounters.com, a
Division of LD Vision Group, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2017, I caused to be served a true and correct copy of the foregoing via electronic mail to the party on the below service list.

s/ Aaron R. Gott

Aaron R. Gott

Jason P. Dollard

Law Offices of Jason P. Dollard P.A.

127 NE 2nd Avenue

Delray Beach, FL 33444

561-819-5406

819-5407 (fax)

jdollard@jpdesq.com

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Civil Action No.: 9:16-cv-80980

Honorable Robin L. Rosenberg

Honorable Dave Lee Brannon (Mag.)

Shipping and Transit, LLC,

Plaintiff,

LensDiscounters.com, A Division of LD
Vision Group, Inc.

Defendant.

**LENSDISCOUNTERS.COM'S INTERROGATORIES
IN AID OF EXECUTION AGAINST SHIPPING AND TRANSIT, LLC**

LensDiscounters.com by and through its counsel and pursuant to Fed. R. Civ. P. 33, hereby propounds the follow set of interrogatories in aid of execution to Shipping and Transit, LLC ("S&T"). The responses to these interrogatories are due, under oath, within thirty (30) days from the date of service thereof.

DEFINITIONS

1. "You," "your," and "S&T" mean Shipping & Transit, LLC, including any directors, officers, employees, agents or representatives thereof; its predecessors, successors, parents, or subsidiaries.

2. The term “person” is used in its broadest sense and includes without limitation, any natural person, partnership, joint ventures, corporations, associations and all other forms of organization, whether public or private.

3. The terms “document” or “documents” shall be synonymous in meaning and equal in scope to the broadest meaning provided by Rule 34 of the Federal Rules of Civil Procedure; meaning all writings, including all originals and duplicates, including, but not limited to, drafts and non-identical copies (such as copies that are different from the original because of notes or marks made on or attached to the copies). “Document” or “documents” further means all written, typewritten, printed and graphic material of whatever kind or nature including, but not limited to, labels, packaging, containers, agreements, minutes, ledgers, personnel files, accounting records, tapes transcriptions, computer programs, data or data files, and information stored on diskettes, hard drives, microfiche, or other similar information storage/retrieval systems. Further, “document” also includes recordings through sound, video, or other electronic, magnetic or digital recording system such as pictures, photographs, tape recordings, videotapes, disks, diskettes, flash or portable drives, data tapes or readable computer-produced interpretations or transcriptions thereof, voice messages, and any other electronic, digital, or tangible things, including all electronically stored information. Further, this term shall apply to all documents, whether in hard copy or electronic form, on your computers or the computers of your employees, independent contractors or consultants, whether provided by you to such individuals or otherwise.

4. The terms “referring to” or “relating to” mean constituting, containing, consisting of, comprising, embodying, summarizing, mentioning, memorializing, discussing, showing, commencing upon, or describing.

5. The following rules of construction shall apply to all requests as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope: (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form as well as vice versa; (c) the connectives “and” and “or” shall be construed either disjunctively or conjunctively; (d) the terms “all,” “any,” and “each” shall be construed as “all, any, every, and each;” and (e) the term “including” means “including but not limited to.”

6. The wording of any Interrogatory does not constitute an admission of what the facts or evidence will ultimately show.

INTERROGATORIES IN AID OF EXECUTION

Interrogatory No. 1:

State your present address(es), telephone number(s), and tax ID number.

Interrogatory No. 2:

State all the names of all businesses in which you have a financial interest (*e.g.*, as a shareholder, partner or member) and provide each such businesses’ address.

Interrogatory No. 3:

Identify all trusts of which you are a beneficiary, including without limitation,

the name of the trust, the names, addresses, and telephone numbers of all trustees and beneficiaries and the nature of your interest in the trusts.

Interrogatory No. 4:

Have you prepared a financial statement within the last five (5) years? If so, provide the date of the financial statement, the purpose of which it was prepared, and the name of the person receiving the financial statement.

Interrogatory No. 5:

Have you applied for loans, credit or any credit cards in the past five (5) years? If so, where and when did you apply? What was the result of the application (approved or denied)?

Interrogatory No. 6:

State your gross annual revenue and income from all sources for the past five (5) years and the identity of the source of such revenue.

Interrogatory No. 7:

Describe by legal description and street address all real property which you *currently* own, or in which you have a direct or indirect interest, setting forth the percentage of your interest in each parcel and list the names and addresses of all persons or entities which own an interest with you in the parcels of real property. For each parcel, state the date of purchase, purchase price, present market value and the amount of equity you currently have in the property.

Interrogatory No. 8:

Describe by legal description the street address of all real property you

previously owned, or in which you claimed an interest during the past five years through the present. For each property, state the date of purchase, the purchase price, the percentage of interest you had in the property, the date of sale/transfer, the sale price and to whom you sold or transferred the parcel. For this interrogatory, both transfers for valuable consideration and transfers lacking consideration should be listed.

Interrogatory No. 9:

List all items of tangible personal property with an estimated value of \$1,000 or more, including, but not limited to, motor vehicles, furniture, boats, planes, electronics, collectibles, jewelry, stamps, coins or art objects, which you own or in which you had an interest in the past five years. State the estimated value for each item and list the names and address of any person who owns an interest with you in the items of tangible personal property. If you previously owned an interest in personal property in the past five years, yet do not presently own such an interest, state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.

Interrogatory No. 10:

List all accounts in which you have deposited money or from which you have withdrawn or transferred money (or other assets) in your name, jointly with another person or in the name of an entity in which you are affiliated within the past five years, setting forth for *each* account:

- (i) Name and address of the financial institution where the account is maintained;

- (ii) Type of account;
- (iii) Account number;
- (iv) Present balance; and
- (v) Names and addresses of all persons authorized to withdraw funds from such account.

Interrogatory No. 11:

Identify all intangible personal property, including but not limited to, stocks, bonds, securities, annuities, patents, trademarks, copyrights, club memberships, notes and mortgages owned by you or in which you have had an interest within the past five years. State the percentage of your interest and the present value of such interest. If you previously owned an interest in intangible property in the past five years, yet do not presently own such an interest, state the date you relinquished the interest, to whom you relinquished the interest, and the compensation received for relinquishing such an interest.

Interrogatory No. 12:

Identify the names and addresses of all persons or entities indebted to you for the past five years to the present, and the nature and amount of their obligations to you. Such indebtedness would include, but not be limited to, obligations to pay money, real property, tangible assets, intangible assets, or to provide services at some point in the future.

Interrogatory No. 13:

Identify each transaction by which you transferred any item of value (with an estimated market value in excess of \$1,000) to any other third party in the past five years. With respect to each such transfer, identify:

- (i) The item transferred;

- (ii) The date of the transfer;
- (iii) The person to whom the transfer was made;
- (iv) Any consideration given for such transfer; and
- (v) The market value of the item transferred.

Interrogatory No. 14:

List all brokerage, investment and/or commodity accounts in which you have an interest within the past five years, setting forth for each account the: (a) name and address of the broker where the account is maintained; (b) type of account; (c) account number; (d) present balance; and (e) name and addresses of all persons authorized to withdraw funds from such account.

Interrogatory No. 15:

Identify any safe deposit box in which you have access, setting forth (a) the name and complete address of each institution in which such a safe deposit box is located; (b) each safe deposit box number, and (c) the contents thereof.

Interrogatory No. 16:

Identify all lawsuits to which you presently are or have been a party (either Plaintiff or Defendant) in the past five years. Your answer should include the title of action, the case number, the jurisdiction in which the suit is/was pending, the date the action commenced, a brief description of the nature of the claims, counterclaims or defenses, and the disposition of the case, including, judgment award.

Interrogatory No. 17:

State whether you own any insurance policies of any type and set forth (a) the name of the insurance company; (b) the face amount of the policy; (c) the type of insurance; (d) the beneficiary of the policy; and (e) amounts, if any, borrowed from

the policies.

Interrogatory No. 18:

State whether you are entitled to any Federal, State or City income tax refund or credit, and set forth the amount of each.

Interrogatory No. 19:

Identify any and all assets that you have pledged as collateral for the purpose of obtaining any loan in the past five years, either on your own behalf or on behalf of any other entity.

Interrogatory No. 20:

Identify any accountants, accounting firms or other advisors that have assisted you with respect to any financial matters or tax preparation within the past five years. Your answer should include the name, address, and contact information of such accountants or accounting firms, a brief description of the services rendered, and the dates upon which such services were rendered.

Interrogatory No. 21:

Identify any loan transactions to which you have been a party (either as creditor, debtor, co-signatory, and/or guarantor) in the past five years. Your answer should include, but not be limited to, the date of the transaction, the parties to the transactions, and the terms of the loan transaction (amount, interest rate(s), payment schedule).

Interrogatory No. 22:

Identify each person or entity to whom you believe you are presently indebted.

Your answer should include the name of the creditor, the address of the creditor, the amount of the debt, the due date of repayment (if applicable), and date on which the obligation arose.

Interrogatory No. 23:

Identify each document you consulted, referred to, relied on, examined, looked at, or reviewed in connection with responding to any interrogatory contained herein.

Interrogatory No. 24:

Identify any financial interest held by you, directly or indirectly, in a domestic or foreign company. The term “company” shall include, but not be limited to, corporations, sole proprietorships, partnerships, limited partnerships, LLCs, LLPs, business trusts, or trusts.

Interrogatory No. 25:

Identify any person or entity to whom you have made any disclosures concerning your personal finances in the past twelve (12) months. Your answer should include, but not be limited to, any banks, credit unions, individual investors, companies, governmental bodies/authorities, or courts.

Interrogatory No. 26:

Identify any person or entity who owes you money pursuant to any agreement, settlement agreement, contract, or the like.

Interrogatory No. 27:

Identify all active litigation you are engaged in, providing for each, the case number, and the names, addresses, and phone numbers of the opposing party and

their counsel.

Dated: November 27, 2017

By: s/ Aaron R. Gott
Aaron R. Gott

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2017, I caused to be served a true and correct copy of the foregoing via electronic mail to the party on the below service list.

s/ Aaron Gott

Aaron Gott

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