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January 13, 2017

Via overnight courier
Honorable Lisa M. Vignuolo, J.S.C.
Chambers No. 305
Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903

RE: Selective Transport. Corp. vs. Gussco Mfg., et als.
Docket No.: MID-L-8013-12

Direct Coast to Coast vs. Gussco Manufacturing, et als
Docket No. MID-L-8018-12
J-198852-13

Dear Judge Vignuolo:

This firm represents non-party S.P. Richards in the above-referenced matter. On December 22, 2016, we filed a motion to quash Plaintiff's subpoena duces tecum dated December 16, 2016, returnable Friday, January 20, 2017. Please accept this letter in lieu of a more formal brief in Reply to Plaintiff's letter memorandum in opposition to our motion to quash.

As an initial matter, it must be said that Mr. Horowitz has attempted to present factual evidence to the record without a supporting certification or affidavit. This is in clear violation of R. 1:6-6; see e.g. Pressler, Current N.J. Court Rules, comment on R. 1:6-6 (2017) ("Even more egregious is the attempted presentation of facts which are neither of record, judicially noticeable, nor stipulated, by way of statements of counsel made in supporting briefs, memoranda and oral argument. Such statements do not constitute cognizable facts."). Mr. Horowitz's makes uncertified statements in his opposition letter to paint a grossly inaccurate picture of events in an attempt to

save his unsupportable subpoena duces tecum. These statements[1] further have no relevance at all to the legal argument he presents in his opposition. Accordingly, it is respectfully submitted that this Court disregard these irrelevant and uncertified statements which he sets forth in his "Statement of the Case" portion of his opposition letter.

Mr. Horowitz's recitation of the history of his Information Subpoena is inaccurate. First, he imperfectly served SPR, an out-of-state corporation, to a P.O. Box. It therefore took several weeks to get to the Legal department, and then assigned to our firm. Second, as soon as we received notice of the information subpoena and Plaintiff's motion in aid of execution, we reached out to our client to gather the demanded information. When we had the bottom-line number, knowing that there would be a delay getting the information subpoena executed given the holiday season, in an effort to amicably and expeditiously dispose of the pending motion and accelerate the resolution of the issue, we contacted Mr. Horowitz and came to an understanding: that he would accept our representation as to the amount and accuracy of the debt, with our guarantee that the executed information subpoena would follow shortly thereafter, and a consent order would be entered to resolve this entire matter. (See Certification of Counsel in support of Motion to Quash, ¶¶ 2-5). Had Mr. Horowitz not reneged on this agreement, he would have had a $10,507.43 check in his hands several weeks

[1] To date, we have tried our best to keep our submissions to this Court constrained to procedural, factual, and legal arguments as to the merits of Plaintiff's demands. However, Mr. Horowitz's statements in his opposition are so clearly false that they rise to the level of sanctionability. One indisputably clear example is on Page 3 of his opposition, where Mr. Horowitz claimed SPR "refused to comply" with a 2013 information subpoena, and that such noncompliance would have resulted in SPR being held in contempt. In fact, Mr. Horowitz did file that motion which he attaches as "Exhibit D", and by omitting the executed Order, he would have this Court incorrectly infer that the motion was never heard and incorrectly states that we were on the brink of being held in "contempt but for Selco's bankruptcy filing". **Not so**. It *was* heard, and the Honorable Phillip Lewis Paley, by way of Order dated January 31, 2014, explicitly refused to order SPR be held in contempt. (See ¶¶ 26-28 of Continued Certification of Counsel in support of motion to quash and **Exhibit G**, Judge Paley's executed Order). This one example having been made clear, we will not belabor the point by presenting other examples because it is still our belief that this Court has enough to quash the subpoena duces tecum on the true merits of our argument alone. We may choose to address Mr. Horowitz's filing of false and frivolous papers later, in a separate R. 1:4-8 motion for sanctions.

ago, and our firm and this Court would not now be burdened with an unsupportable and frivolous subpoena duces tecum.

Mr. Horowitz argues that once SPR executed the information subpoena, that "it was not answered on the form proscribed by the Supreme Court." This is a baseless argument, and no rule, statute, caselaw, or even explanation is provided to support his position. Mr. Horowitz has, suspiciously, not provided this Court with a copy of our client's executed information subpoena; but we have, twice (the first time attached to our Letter to Your Honor dated December 15, 2016, and once again as Exhibit C attached to our present Motion to Quash). It is facially sufficient. It contains all of the information demanded by the form, as well as the certification language required. It is properly executed, and Mr. Horowitz is in possession of the original signed copy.

Mr. Horowitz further grossly misinterprets the Selco bankruptcy case docket documents by cherry-picking two aged trial balance sheets, which were attached as Exhibit I to Selco's Fifth Amended Disclosure Statement (attached as "Exhibit B" to Plaintiff's opposition to this present motion). Mr. Horowitz then incorrectly concludes that Selco "certified and represented, less than one (1) year ago, to a federal bankruptcy court that SPR owed Selco over $200,000." No such certification or representation was made. In fact, on the 13th page of that Disclosure Statement, it is clear that those balance sheets were presented to the bankruptcy court only to "demonstrate[e] that there are funds available to meet the requirements of the plan," - not to certify to the extent of debts accrued one year prior. If it were Selco's intention to certify to the presence of extensive debt, it would have attached a more recent trial balance sheet to its Statement and other supporting documents, but it did not. Neither has Mr. Horowitz substantively addressed why he believes such an old document, now 21-months old, could 1) outweigh the presumption of accuracy of an information subpoena recently executed; or 2) possibly support his position as to the present subpoena duces tecum.

Mr. Horowitz further argues that SPR has not "explained why the great disparity", arguing further that SPR could have simply stated that the debt "was paid down". This argument has no teeth. As already briefed in our Motion to Quash, Mr. Horowitz is attempting to collect money from a non-party owed to the judgment-debtor Selco. The rules and procedures make it quite clear, that all Plaintiff is entitled to know is the bottom-line figure as to how much is owed to that judgment-debtor. With that number in hand, Plaintiff's counsel has no right to demand how that bottom-line figure is reached. Had Mr. Horowitz presented a recent document which contradicts the actual amount of debt that our client certified to ($10,507.43), we would have certainly attempted to expeditiously resolve the conflict. Instead, Mr. Horowitz relies upon nothing more than an unfounded suspicion, based solely to a perceived "delay" in executing an information subpoena (during the holiday season) and a 21-month old document. SPR, as a non-party, has no obligation to explain away such an imagined disparity, and it certainly has no obligation to reveal intimate corporate details to indulge Mr. Horowitz's imagination.

Neither did Mr. Horowitz make any effort to simply ask us to explain that imagined disparity, or even give us the opportunity to reach out to proffer an explanation before serving the subpoena duces tecum. (See ¶¶ 22-25 of Continued Certification of Counsel in Support of Motion to Quash). The very first indication that we had that Mr. Horowitz would claim a $200k disparity is by his letter to the Court dated December 14, 2016, which our office received on December 15, 2016. (See ¶¶ 8-9 of the Certification of Counsel in Support of Motion to Quash). Mr. Horowitz then served his subpoena duces tecum **the very next day**, on December 16, 2016. (See ¶ 11 of the Certification of Counsel in Support of Motion to Quash).

Even though it is our position that SPR has no obligation to explain Mr. Horowitz's imagined disparity, we will provide some insight into the complicated business relationship and history to help assure the Court there is no malfeasance happening behind the scenes which might possibly warrant equitable issuance of the subpoena duces tecum. In actuality, no deep research is needed; all Mr.

Horowitz needed to do was review the remainder of the bankruptcy docket, and he would have seen Document #82, e-filed on 5/30/2014 with the Northern District of Ohio's Western Division of the US Bankruptcy Court (see **Exhibit F**, attached to Continued Certification of Counsel in Support of Motion to Quash). Document #82 is a motion filed by Selco which seeks to assume an executory contract with SPR. In that motion, Selco provides a thorough description of the situation, which will be briefly recited here. The relationship between the parties is not one of a simple buyer-supplier; SPR is a wholesaler of office supply products. Different vendors have different contract terms with SPR. One such possibility is for a vendor to purchase the rights to have their products listed in various catalogs, including a General Line Catalog, for which each vendor would pay an annual cost which is pro-rated to the actual space used on the page. Vendors are willing pay this fee because their presence in the catalog will significantly increase their sales volumes. Selco opted for this program, but failed to pay their fees for the 2014 catalog. These fees totaled $225,000 alone; when all the other debts were totaled, Selco owed SPR $298,300. Because Selco owed SPR for these unpaid fees, SPR issued a debit memo dated December 12, 2013 and gave notice to Selco that the amounts would be withheld from future payments until the fee is covered or otherwise repaid. To the extent that Selco decided to list these withheld invoice payments as "debts" on their aged trial balance sheets is wholly irrelevant, in large part because Selco itself admits by its Court filings that once all the claimed debts between the parties are summed out, Selco actually owed SPR $18,000. Ultimately, the parties negotiated a discount on the owed amounts and agreed to have the debts settled over time in the form of monthly rebates and deductions on monthly sales, as reflected in further detail in Document #82's brief. Over the course of the next two years, this program whittled down both debts, and the dust is nearly settled. What once was a six-figure dispute has been reduced to SPR owing Selco $10,507.43 for those products shipped out in mid-2016. As Sandy Beaver certified in the information subpoena, SPR has no intention to continue doing future business with Selco; SPR's relationship with Selco is nearly concluded, and all that remains is this final $10,507.43 payment. (See ¶¶ 13-21 of Certification of

Counsel in Support of Motion to Quash). Thus, Mr. Horowitz's obstinance in this matter continues to cause unreasonable and unjustifiable burdens on our client.

Mr. Horowitz appears to be under the impression that, when asked to reveal how much money it owes to Selco, S.P. Richards picked a random number of $10,507.43. This theory would further imply that our client perjured itself by falsely certifying to that amount. What a ridiculous position. Sandy Beaver (A/P Analyst) at SPR spent hours running reports and gathering invoices and debit memos to confirm the amount presently owed, and confidently certified to the bottom-line number in her executed information subpoena. In fact, in the proposed consent orders exchanged between counsel and submitted to this Court for consideration, we listed every individual invoice number for which an amount owed is outstanding to Selco. Document discovery compelled by a subpoena against an innocent non-party will reveal nothing further. It is a ridiculous notion for Mr. Horowitz to say he is entitled to essentially audit the books of a ***non-party*** simply because he imagines a disparity and conjures images of a grand conspiracy to defend it. It is respectfully submitted that Plaintiff has no right to demand document discovery now that it is in possession of a validly executed information subpoena. For this and the other previously stated reasons, we respectfully ask that our motion to quash Plaintiff's subpoena duces tecum be granted.

Respectfully submitted,

RAYMOND G. CHOW

RGC/ml
w/enc
cc: Ronald Horowitz, Esq. (via regular mail and facsimile (386) 597-1229)

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SELECTIVE TRANSPORTATION CORPORATION, Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MIDDLESEX COUNTY DOCKET NO. MID-L-8013-12 MID-L-8018-12 J-198852-13 CIVIL ACTION
DIRECT COAST TO COAST, LLC Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	**CONTINUED CERTIFICATION OF COUNSEL IN SUPPORT OF MOTION TO QUASH A SUBPOENA DUCES TECUM**

I, RAYMOND G. CHOW, hereby certify as follows:

13. I am an Attorney at Law in the State of New Jersey and am an associate with the law firm of Breuninger & Fellman, the attorneys representing non-party S.P. Richards company with regard to the within matter. I issue this certification in continuation of my prior Certification dated December 22, 2016.

As to the issue of the history of S.P. Richards, Selco, and their respective trade debts

14. On May 30, 2014, Selco e-filed a Motion to assume an executory contract with non-party S.P. Richards with the US Bankruptcy Court, North District of Ohio's Western Division. This motion is docket Document #82, a true copy of which is attached as **Exhibit F** with its exhibits omitted.

15. SPR's customers (vendors) have the option of buying space in various catalogs it issues, including a General Line Catalog. These vendors pay an annual fee per page, which is pro-rated to the actual space used on the page. Vendors are willing to pay this fee because their presence in the catalog will significantly increase their sales volumes.

16. Selco is one such vendor who chose to participate in this catalog program. They signed up for pages in the 2014 catalog, but failed to pay their fees. Those fees alone totaled $225,000. Selco further failed to pay other fees and expenses, and the sum total of debt that Selco owed SPR reached $298,300.

17. On December 12, 2013, SPR issued a debit memo, which gave notice to Selco that the owed amounts would be withheld from future invoice payments until the fee is covered or otherwise repaid.

18. As of May 30, 2014, when totaling the withheld amounts and all claimed debts, the net sum figure was that Selco actually owed SPR $18,000. This debt by Selco to SPR is admitted to in Selco's own court filings, see Exhibit F (Document #82 - Selco's Motion).

19. SPR and Selco came to an agreement, wherein both parties would credit each other's accounts and withhold payments in the form of monthly rebates and deductions from invoices. In exchange, SPR would accept a drastic discount on the debts it was owed. This 5% rebate program was accepted by the bankruptcy court.

20. Once the rebate program was enacted, the mutual debts were reduced over the course of two years such that they were fully settled in 2016.

21. In 2016 SPR made the decision to stop working with Selco. Shipments began winding down throughout 2016, and the last shipment to SPR was in August, 2016. The invoices corresponding to those last few 2016 shipments represent the sole remaining debts owed from SPR to Selco, and they total $10,507.43.

22. Sandy Beaver, an A/P Analyst at SPR, expended numerous hours running reports and reviewing invoices and debit memos to confirm the bottom-line number before she certified the information subpoena.

As to the issue of Mr. Horowitz's conduct before and after the issuance of the subpoena duces tecum

23. Thursday, December 15, 2016 was the first-time Mr. Horowitz gave us or SPR notice that he intends to dispute the extent of the debt SPR owes to Selco, by way of letter to this Court dated December 14, 2016.

24. Mr. Horowitz then issued a subpoena duces tecum and served it on the very next day, Friday, December 16, 2016.

25. At no time between December 15, 2016 and December 16, 2016 did Mr. Horowitz make any attempt to contact our office to ask us to explain the disparity he imagines.

26. At no time after December 16, 2016 did Mr. Horowitz make any attempt to contact our office to ask us to explain the disparity he imagines.

As to the issue of Mr. Horowitz's improper presentation of earlier court filings in an incomplete and misleading manner

27. The motion which Mr. Horowitz attached as "Exhibit D" to his opposition was actually heard and decided by Judge Phillip Lewis Paley.

28. A true copy of the Order from that motion, executed by Judge Paley on January 31, 2014 is attached as **Exhibit G**.

29. At no point was S.P. Richards in danger of being held in contempt. In fact, Plaintiff sought to have SPR held in contempt, and Judge Paley explicitly denied it in the Order, see Exhibit G.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BREUNINGER & FELLMAN

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By: Raymond G. Chow
Attorneys for Non-Party S.P. Richards

Dated: January 13, 2017