

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

2011 SEP -5 P 3:40  
HENRY S. KINCH JR., CLERK  
FILED  
SUPERIOR COURT

SUPERIOR COURT

RHODE ISLAND ECONOMIC DEVELOPMENT  
CORPORATION,

Plaintiff,

v.

WELLS FARGO SECURITIES, LLC et al.,

Defendants.

C.A. No. PB-12-5616

FILED UNDER SEAL

### AFFIDAVIT

Marcel A. Valois, being duly sworn, hereby deposes and says:

1. I am the Executive Director of the Rhode Island Commerce Corporation ("RICC") and submit this Affidavit in connection with my service as the RICC's designee at depositions in this case. I understand that the RICC's counsel has informed the Court that I am no longer able and willing to continue in that role. I also have been informed that defense counsel consider that statement to be a "pretense" and are requesting that the Court issue an order compelling me to "prepare sufficiently on all subject matters" involved in the deposition and to continue as the RICC's designee.

2. I accepted the responsibility to be the RICC's designee because the RICC had no one with any personal knowledge concerning these matters. I also completely lack personal knowledge, but I did not think it was fair to assign such an important task to an employee who lacks personal knowledge. I also understood that Defendants were seeking statements of the RICC's position concerning the specific topics listed in the

deposition notices, and I felt that with the assistance of counsel I should be able to understand and present the RICC's position.

3. Accordingly I took over one week from my usual duties to devote fully to preparing to testify as the RICC's designee. My preparation consisted of

- reviewing the topics;
- speaking by telephone with two individuals at the RICC (Stuart Freiman and John Riendeau) who were at the RICC in 2010 and remain with the RICC today, determining that they could shed no light on the topics;
- reviewing narrative statements of the RICC's position prepared by the RICC's trial counsel;
- reviewing documents selected by the RICC's trial counsel as the basis for those positions;
- reviewing the RICC's Complaint and 70 documents upon which was based;
- reviewing the RICC's answers to Wells Fargo's interrogatories, and the approximately 35 documents upon which they were based; and
- several extensive meetings with the RICC's trial counsel to discuss and go over these materials.

I devoted easily over 70 hours of time in study and meetings in connection with the two deposition notices. The depositions themselves took approximately another 14 hours of time.

4. I felt I was prepared when the deposition started to set forth the RICC's positions. However, defense counsel did not want to hear the responses I was prepared to give, but preferred instead to ask me questions that did not fall within the topics or were phrased differently than the topics; or, having heard the positions, insisted on cross-examining me concerning the positions. In any event, answering the questions required a specificity of information of which I was completely lacking. Initially

I refused to answer those questions. Then, at defense counsel's request, RICC's trial counsel and I agreed that I would attempt to answer those questions.


5. That was a mistake, in that it opened up a process that was both extremely frustrating for me and beyond the scope of my preparation and, therefore, was beyond my capabilities. When I attempted to provide answers to specific questions that were outside of the responses I was prepared to give, I sometimes got it right, but other times, not surprisingly, I misstated the RICC's position. On those occasions I had to correct my testimony when I realized the error. Defense counsel frequently objected to my correcting my testimony. They also objected to my frequently conferring with the RICC's trial counsel, which I felt was absolutely essential for me to continue. At the end of two days of testimony under those circumstances, I was both completely exhausted and completely certain that I was not the proper designee for the RICC. I could not put aside my responsibilities as the RICC's Executive Director and devote myself fulltime to that study for several months, and, even if that were somehow possible, I do not think that would be enough time or that I would be the right witness for this exercise.

6. Accordingly I have concluded and I informed the RICC's trial counsel that I cannot continue. The suggestion that my unwillingness to testify further is a "pretense" could not be farther from the truth.



---

SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of August, 2014.



---

Notary Public      MAX WISTOW  
My Commission Expires: 5/4/18