IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CORI RIGSBY and KERRI RIGSBY RELATORS/COUNTER-DEFENDANTS

v. CASE NO. 1:06cv433-LTS-RHW

STATE FARM MUTUAL INSURANCE COMPANY DEFENDANT/COUNTER-PLAINTIFF

and

FORENSIC ANALYSIS ENGINEERING CORPORATION;
EXPONENT, INC.; HAAG ENGINEERING CO.;
JADE ENGINEERING; RIMKUS CONSULTING GROUP INC.;
STRUCTURES GROUP; E. A. RENFROE, INC.;
JANA RENFROE; GENE RENFROE; and
ALEXIS KING DEFENDANTS

STATE FARM FIRE AND CASUALTY COMPANY'S
RESPONSE IN OPPOSITION TO
[212] "RELATORS' MOTION FOR LEAVE TO PROPOUND
EXPEDITED DOCUMENT REQUESTS IN ORDER TO RESPOND
TO DEFENDANTS' PENDING DISPOSITIVE MOTIONS"

Defendant/Counter-Plaintiff State Farm Fire and Casualty Company, improperly denominated in the First Amended Complaint as "State Farm Mutual Insurance Company" ("State Farm"), respectfully submits this Response in Opposition to [212] "Relators' Motion for Leave to Propound Expedited Document Requests in Order to Respond to Defendants' Pending Dispositive Motions" ("Motion for Discovery"). State Farm would show:

1. On August 6, 2008, this Court issued a Scheduling Order for Dispositive Motions Pending before the Court. ([205].) This Scheduling Order expressed this Court's intent "to reach the merits of all the pending motions as soon as it is practical to do so." ([*Id.*].) The Court further ordered:

> If counsel represents to the Court that it will be necessary to take discovery in order to prepare responses, rebuttals, or supporting memoranda, I will require that the discovery requests be ***specific*** and that they be ***directly relevant*** to the issues framed by these motions.

([*Id.*] at 2) (emphasis added).

2. Despite the Court's clear directive that any proposed discovery be "specific" and "directly relevant," the Rigsbys request that State Farm be required to expeditiously produce:

> [A]ll Documents allegedly downloaded, copied, taken or transferred from the premises, files, records, or systems of E.A. Renfroe or State Farm by the Rigsbys that refer to or relate to any insurance claims involving damages caused or alleged to have been caused by Hurricane Katrina.

([212-2] at 2.)

3. The Rigsbys euphemistically define the objects of their theft as the "False Claims Documents," in what appears to be an attempt to obscure the at best inauspicious origins of the requested documents and make these materials seem relevant to this *qui tam* Action. The Rigsbys' attempt at a rhetorical sleight of hand does not obscure the fact that the bulk of these "false claims documents" are none other than the "data dump" documents, *i.e.*, the documents that the Rigsbys admittedly stole from State Farm in June 2006 and which this Court has already ruled "are not going to come into evidence in this case" unless otherwise discoverable and properly obtained. ([210] at 3) (emphasis added).

4. In summary, the Rigsbys' request for expedited discovery should be denied for a host of reasons, including:

(1) **Not Directly Relevant and Necessary.** The "data dump" documents are not even tangentially related, let alone "directly relevant" ([210] at 3), to the issue of whether the Rigsbys are "original sources" as the term is used in the *qui tam* provision of the False Claims Act ("FCA"). This is so because the FCA expressly requires a relator to disclose all original source material to the government "*before* filing an action under this section." 31 U.S.C. § 3730(e)(4)(B) (emphasis added). Here, the Rigsbys did not even obtain the "data dump" documents until *after* this lawsuit was filed. Thus, they are not relevant to determining whether the Rigsbys are original sources.

(2) **Improper Attempt to Launder Stolen Property.** The Rigsbys are seeking to improperly use discovery to circumvent this Court's ruling that "[the stolen]

documents are not going to come into evidence in this case (or in any other case under my control as judge) unless the party sponsoring the document can show that the document was acquired through the *ordinary* channels of discovery." ([210] at 3.)

(3) **An Attempt to Misuse This Action to Evade the *Renfroe* Injunction.** The Rigsbys are seeking to use discovery in this Action as a vehicle to circumvent Judge Acker's injunction in *Renfroe*.

(4) **Flawed in Construction.** Even if the Rigsbys' proposed discovery was "specific and . . . directly relevant to the issues framed by these motions[,]" ([205] at 2), and not an impermissible attempt to launder stolen property, it would still be subject to objection for at least two reasons: (1) it seeks the production of materials – *in part* – that State Farm cannot currently identify; and (2) it seeks the production of some materials that the Rigsbys may never have reviewed.

(5) **Further Exposes the Rigsbys' False Testimony.** The Rigsbys' use of Exhibit A to their proposed discovery further exposes the falsity of prior testimony regarding the "data dump."

5. Thus, for these and the other reasons explained in more detail in State Farm's Response Memorandum, State Farm respectfully submits that the Rigsbys' Motion for Discovery should be denied. As this Court has stated, it is time "to reach the merits of all the pending motions as soon as it is practical to do so." ([205].)

6. The Rigsbys claim that their expedited discovery request seeks information that is relevant to the pending motions because the data dump documents are needed to show that the Rigsbys are "original sources" of the information underlying their *qui tam* complaint. ([212] at ¶¶ 2-3.) This argument is without merit.

7. As State Farm demonstrated in its Memorandum in Support of Its Motion to Dismiss for Lack of Subject Matter Jurisdiction [92], the FCA divests a court of subject matter jurisdiction over a *qui tam* action where, as here, it is "based upon the public disclosure of allegations or transactions in a . . . civil . . . hearing, [or] in a congressional . . . hearing, audit, or investigation . . . unless . . . the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A). The FCA defines "original source" to mean "an

individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government *before filing an action under this section which is based on the information*." 31 U.S.C. § 3730(e)(4)(B) (emphasis added).

8. As the definition itself makes clear, there are two jurisdictional elements in the "original source" exception. First, the *qui tam* relator must have direct and independent knowledge of the information' which forms the basis of his claims. Second, the *qui tam* relator must have voluntarily provided the information to the government *before* filing suit. Taking these two elements in reverse order, it is clear that the data dump documents are irrelevant to whether the Rigsbys fall within the original source exception.

9. The Rigsbys' claim that they need the data dump documents to refute State Farm's argument that they are not an original source totally ignores the fact that the data dump documents did not even come into their possession until months after this suit was filed. The Rigsbys submitted their written evidentiary disclosure to the federal government on April 24, 2006. ([2] at ¶ 3 & [103-14].) By statute, the Rigsbys were required to provide "substantially all material evidence and information [they] possess[ed]" in that written evidentiary disclosure. 31 U.S.C. § 3730(b)(2). This suit was filed two days later on April 26, 2006. The data dump occurred over the June 3-5 weekend in 2006.[1] ([103-5 & 103-6].) Thus, the data dump documents cannot possibly have any bearing on whether the Rigsbys voluntarily provided the government with original source information "*before* filing" this lawsuit. 31 U.S.C. § 3730(e)(4)(B) (emphasis added).

[1] In fact, the Rigsbys' former lead counsel contends that he did not even provide the data dump documents to the federal government until December 6, 2006 – a full six months after the data dump weekend. ([141-2] at ¶ 39.)

10. The Rigsbys might attempt to obscure the fact that they did not obtain the data dump documents until long after they brought this action by noting that they filed an amended complaint about a year after they stole the data dump documents. But the Rigsbys' amended complaint – which reiterates the same allegations made in the original complaint – is not relevant to the original source inquiry. This is so because the FCA requires the Court to look at the disclosures that the Rigsbys "voluntarily provided to the Government before filing *an action under this section.*" 31 U.S.C. § 3730(e)(4)(B) (emphasis added). As courts have recognized in addressing identical language under the "first filed" provision of the FCA, a relator brings an action when the case is filed. The fact that the original complaint is subsequently amended is not relevant.

11. Indeed, the Rigsbys have already implicitly argued this very position to this Court in their Emergency Motion to Lift the Seal and Revocation of Consent to a Stay of Civil Proceedings [17]. In that motion, the Rigsbys informed the Court that they had recently become aware that a different relator had brought a second *qui tam* action – filed on August 2, 2006 – against State Farm and other insurers, captioned *Branch Consultants, L.L.C. v. Allstate Insurance Co.*, 2:06-cv-04091-PB-SS (E.D. La. filed Aug. 2, 2006). The Rigsbys argued that this case – filed on April 26, 2006 – was the "prior-filed qui tam action" for the purposes of the "first filed" rule. ([17] at ¶ 8; *see also* [*id.*] at ¶¶ 3-5.) In making this argument, the Rigsbys implicitly and correctly rejected any notion that their amended complaint – which was not filed until May 22, 2007, *i.e.*, nine months after the *Branch* case was filed – had any effect on whether theirs were the first-filed *qui tam* action.

12. In this case, permitting the Rigsbys to "cure" a deficient initial disclosure by filing an amended complaint would create potential for abuse. Indeed, the whole purpose of section

3730(e)(4)(B) is to ensure that a *qui tam* relator makes a full disclosure at the onset of the litigation so that the government is apprised of key facts necessary in its efforts to confirm, substantiate or evaluate the fraud allegations. Where, as here, the allegations in the amended complaint mirror those in the original complaint, permitting a relator to establish that she is an original source by proffering information that was not submitted to the government until long after the suit was filed would irrevocably frustrate this statutory scheme.

13. The Rigsbys' attempt to predicate original source status on the data dump documents is further fatally undercut by the statutory requirement that they must have direct and independent knowledge of the information which forms the basis of their claims. In order to be "direct," the information must be firsthand knowledge. In order to be "independent," the information known by the relator cannot depend or rely on the public disclosures.

14. In this case, the Rigsbys admit that they were not involved in the adjustment of the claims that corresponded to the claim files that they and their cohorts accessed during the data dump weekend. (*McIntosh* [222] at 7 n.17.) Thus, any information that the Rigsbys could have culled from reviewing these claim files is, by definition, *not* "firsthand knowledge." Indeed, the fact that the Rigsbys are seeking discovery to establish subject matter jurisdiction is demonstrative of the fact that they do not have direct and independent knowledge of the information that forms the basis of their Amended Complaint.

15. The Rigsbys' attempt to transform the data dump documents into highly relevant "False Claims Documents" is also at odds with the testimony submitted by their former counsel in this case. Although the Rigsbys now claim that the data dump documents are at the heart of this case, their former lead counsel testified that the data dump documents played no part in his preparation of the case. In particular, former counsel testified that he "did not see the copied

[data dump] documents until December 6, 2006 [*i.e.*, *six months* after the data dump occurred]" ([141-2] at ¶ 39) and that neither he nor any attorney at his firm ***ever*** reviewed the documents. Rather, former counsel simply passed along the four CDs containing the data dump documents to an unidentified person at the United States Department of Justice several months after the case was filed. ([*Id.*].)

16. The Rigsbys cannot have it both ways. Clearly, if the Rigsbys' "lead counsel," who was charged with "evaluating [and] formulating the strategy or claims in this case" ([*id.*] at ¶ 50), never even reviewed the data dump documents, the Rigsbys' representation that these same documents are now somehow "***directly relevant*** to the issues framed by [State Farm's] motions" cannot be taken seriously. ([205].)

17. Apparently realizing that their Amended Complaint falls far short of either establishing subject matter jurisdiction or adequately pleading a single false claim, the Rigsbys now attempt to rescue their claims by seeking hundreds of State Farm underwriting documents that correspond to a list of claim files they accessed during the data dump. This request runs afoul of both the FCA and Rule 9(b).

18. As a threshold issue, the Rigsbys do not claim that any of the underwriting documents that they now seek were produced to the government before they filed this lawsuit (or ever). As such, any underwriting documents cannot be considered in determining whether the Rigsbys were original sources, and thus have no relevance to the issues framed by State Farm's motions.

19. Moreover, the Rigsbys' request for underwriting documents is completely at odds with their burden of establishing this Court's subject matter jurisdiction. As detailed in State Farm's Memorandum in Support of Its Motion to Dismiss for Lack of Subject Matter

Jurisdiction ([92] at 4), there is no presumption of subject matter jurisdiction, and the Rigsbys as the parties invoking federal jurisdiction have the burden of proving its existence.

20. In this case, the Rigsbys' motion establishes conclusively that: (i) their Amended Complaint is based on speculation, not direct and independent knowledge; and (ii) their discovery request is an improper attempt to conceal that fact. In particular, the Rigsbys assert:

> The underwriting files will support the Rigsbys' allegation because State Farm requires applicants for home owner's insurance to list their homes' square footage and other feature in their application. . . . ***Accordingly the Relators believe that the underwriting files will show precisely which claims were fraudulent with respect to these criteria.***

([212] at ¶ 6) (emphasis added).

21. Finally, but no less fundamentally, the Rigsbys' attempt to augment their pleadings through expedited discovery runs afoul of Rule 9(b) of the Federal Rules of Civil Procedure. Further, the policy behind Rule 9(b) of protecting defendants from the reputational harm caused by groundless accusations of fraud is heightened in a *qui tam* action. The FCA provides significant monetary recovery to persons who have not been injured and, therefore, the potential for strike suits is high.

22. The Rigsbys begin their Motion for Discovery with the following admissions:

> The Relators already have access to the False Claims Documents in connection with [*Renfroe*], but counsel reads the orders from [Judge Acker in *Renfroe*] and this Court to hold that the Rigsbys must obtain the documents through discovery in order to use them in this action.

([212] at 2.)

23. Stated another way, the Rigsbys admit that although they already have access to the stolen documents, existing Orders in both this Action and *Renfroe* prohibit them from using them in prosecution of this case. Recognizing that they are in a conundrum of their own making,

the Rigsbys propose to use discovery in an improper attempt to create an escape valve from this Court's and Judge Acker's prohibitions. As explained below, the Rigsbys' Motion for Discovery is an attempt to navigate around those Orders by laundering stolen materials through the discovery process, in a manner that is anything but "legitimate." ([210] at 3.)

24. In its recent Order addressing the Rigsbys' [204] Motion for Leave to contact their former counsel and take possession of their files, this Court made clear that:

> [The stolen] documents are not going to come into evidence in this case (or in any other case under my control as judge) unless the party sponsoring the document can show that the document was acquired through the *ordinary* channels of discovery.

([210] at 3) (emphasis added).[2]

25. Having been enjoined to return to Renfroe that which the Rigsbys stole from State Farm and instructed by this Court that those materials will not be admissible in this Action unless "acquired through the ordinary channels of discovery[,]" ([210] at 3), the Rigsbys now incredibly seek to require State Farm to produce back to them:

> [T]he documents allegedly downloaded, copied, taken or transferred from the premises, files, records or systems of E.A. Renfroe & Company, Inc. or State Farm….

([212] at 2.)

[2] *Accord* ([177] at 3) (emphasis added) (In *McIntosh* "I ruled that any documents the Rigsby sisters had taken from Renfroe would be excluded from evidence unless these documents were obtained through the *ordinary* channels of discovery"); *see also* ([210] at 3) (emphasis added) ("[T]he orders entered by this Court and by Judge Acker are efforts to minimize or ameliorate the unfair prejudice that would otherwise flow from these documents having been wrongfully taken and disclosed to third parties. [However,] …if the documents are relevant, and if they are obtained through *legitimate* discovery requests, I know nothing that would render these documents inadmissible").

26. This request is not a good faith request to use "*legitimate* discovery requests" in the "*ordinary* channels of discovery." ([210] at 3) (emphasis added). Rather, what the Rigsbys propose is extraordinary – that is, laundering through discovery the objects of their own theft.

27. Further, the Rigsbys' proposal does not comport with this Court's requirement that any supposedly necessary and relevant discovery be "specific." ([205] at 2.) Had the Rigsbys requested the production of a specific document – assuming such was necessary and relevant within the tightly circumscribed current scope of discovery[3] – the fact that such document may also be within the universe of materials the Rigsbys stole might not, in-and-of-itself, render that document inadmissible under this Court's recent Orders. *E.g.*, ([210] at 3.)

28. Yet the Rigsbys have not made a specific request for a necessary and relevant document. Rather, the Rigsbys seek no less than judicial blessing of their theft – effectively seeking to back-door this Court's prohibition on the use of stolen evidence by attempting to wash that evidence through a discovery request, thereby enabling them to employ it. State Farm respectfully submits that if such is permitted, there would be no consequence whatsoever to the Rigsbys from their theft.

29. As explained above, the Rigsbys are seeking to improperly use discovery to circumvent this Court's ruling that "[the stolen] documents are not going to come into evidence in this case (or in any other case under my control as judge) unless the party sponsoring the document can show that the document was acquired through the *ordinary* channels of

[3] *See* ([205] at 2) (emphasis added) ("If counsel represents to the Court that it will be necessary to take discovery in order to prepare responses, rebuttals, or supporting memoranda, *I will require that the discovery requests be specific and that they be directly relevant to the issues framed by these motions*"). For the reasons explained in Sections I and II, no discovery is necessary for the Rigsbys to have a fair opportunity to respond to the pending motions. That being said, State Farm uses a generic document merely by way of example to demonstrate what it believes to be the "ordinary course of discovery…[,]" ([210] at 3), as opposed to document laundering.

discovery." ([210] at 3) (emphasis added). That is not their only purpose, however. The Rigsbys are also seeking to use discovery in this Action as a vehicle to get around Judge Acker's injunction in *Renfroe*.[4]

30. In order to fairly examine the Rigsbys' theory that they can legitimately use discovery in this Action to obtain and thereafter use in prosecution of their claims stolen documents subject to Judge Acker's injunction, it is necessary to briefly review certain recent proceedings in *Renfroe*. In June of this year, the Rigsbys, the Scruggses and The Scruggs Law Firm, P.A., each requested Judge Acker to modify his injunction – to varying degrees. Their stated motivation for those requests was a concern that compliance with discovery orders in *McIntosh* and perhaps other litigation could place them in contempt of the *Renfroe* injunction.

31. For example, in their motion, the Scruggses and The Scruggs Law Firm, P.A. represented to Judge Acker that:

> Scruggs is currently in a precarious position. If Scruggs does not produce the requested documents, Scruggs may face contempt charges in Mississippi. If Scruggs does produce the documents, Scruggs may face additional contempt proceedings in Alabama.

(*Renfroe* [360] at ¶ 8.) Similarly, Cori Rigsby represented to Judge Acker that compliance with a production order in *McIntosh* for files from her "crashed" computer "may violate the preliminary injunction order in *Renfroe*." (*Renfroe* [344] at ¶ 4.)

32. Although Renfroe also requested modification of the injunction, Renfroe raised a different concern – that the lack of permission to share a set of the stolen documents with State Farm put State Farm employees made privy to those documents under the terms of Judge

[4] ([60]) in *E.A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby*; in the United States District Court for the Northern District of Alabama, Southern Division; Civil Action No. 2:06cv1752-WMA-JEO.

Acker's June 24, 2008 Order (*Renfroe* [356]) in an awkward position with State Farm, due to restrictions on revealing what they had been provided. For that reason, Renfroe requested modification of the injunction so as to permit tender of a set of the documents to State Farm. (*Renfroe* [364] at 10.)

33. In response to these motions, in a July 1, 2008 Memorandum Opinion and Order, Judge Acker slightly modified his prior injunction to:

> (1) Provide that "Cori Rigsby, Scruggs, any and all witnesses, deponents, and entities ***subject to discovery requests in litigation*** now pending or to be filed in any other court are RELIEVED from any obligation imposed by this court not to disclose information, even though the materials being disclosed may be within the description contained in the injunction of December 8, 2006[;]" and
>
> (2) To permit "State Farm … to make copies of the documents now held by counsel for Renfroe, but [with the restriction that State Farm] shall not make them available to the general public."

(*Renfroe* [369] at 2-3) (emphasis added).

34. The permission given to the Rigsbys "to disclose *information*" "when subject to discovery requests" regarding the stolen documents is not license for the Rigsbys to take possession of another set of the stolen documents from State Farm and to thereafter affirmatively use the documents themselves in prosecution of this Action.[5] (*Renfroe* [369] at 2.) Rather, the two purposes of Judge Acker's July 1, 2008 Order were to: (1) provide State Farm access to its stolen property, under restriction; and (2) relieve the persons covered by Judge Acker's injunction who are "*subject to* discovery requests" of concern that compliance would violate his injunction.

[5] Richard Scruggs explicitly made a request to take possession of the documents and Judge Acker rejected it, "DEN[YING] Scruggs's request for access" and noting that "Scruggs has gone further [than what Cori Rigsby requested permission to do] and has requested access to the sequestered documents for the purpose of assisting him in responding to discovery requests in other cases." (*Renfroe* [369] at 3.)

35. Judge Acker's July 1, 2008 Order does not permit the Rigsbys – as they request here – to seek out and then make affirmative use of the stolen documents in prosecution of their claims. Indeed, the very purpose of Judge Acker's injunction, (*Renfroe* [60]), was to stop the Rigsbys' affirmative use of the stolen documents except with law enforcement. The Rigsbys' proposed discovery would effectively erase the remaining portions of the injunction.[6]

36. Exploiting the fact that Judge Acker granted them permission *to respond to* discovery without fear of the contempt conundrum of their own making, they now seek to mischaracterize that protection by using discovery *by them* in this Action as a vehicle to leverage a way around Judge Acker's injunction. Thus, the Rigsbys' attempt to obtain a copy of what they stole under the guise of discovery for affirmative use in this Action, in prosecution of their claims, would not only be improper laundering – in contravention of this Court's prior Orders, *e.g.*, ([212] at 2 & [210] at 3) – it also is an attempt to employ the processes of this Court to enable them to evade Judge Acker's Orders. For this additional reason, the Rigsbys' Motion for Discovery should be denied.

37. Even if the Rigsbys' proposed discovery was "specific and … directly relevant to the issues framed by these motions[,]" ([205] at 2), and not an impermissible attempt to launder stolen property, it would still be subject to objection for at least two reasons: (1) it seeks the

[6] More specifically, nothing in Judge Acker's July 1, 2008 Order vitiated the general provision "ENJOIN[ING the Rigsbys] *not to* further …***use*** [the stolen materials,]," (*Renfroe* [60] at 14) (emphasis added), beyond clarifying that the Rigsbys may disclose "information" about those materials in response to "discovery requests…." (*Renfroe* [369] at 3.) Further, nothing in Judge Acker's July 1, 2008 Order vitiated the provision in his October 10, 2007 Order that "[n]one of the documents …may be ***used*** except in connection with this case [the *Renfroe* case]…." (*Renfroe* [172] at 3) (emphasis added).

production of materials – *in part* – that State Farm cannot currently identify; and (2) it seeks the production of at least some materials that the Rigsbys may never have reviewed.[7]

38. First, proposed Request for Production no. 1 requests "[a]ll False Claims Documents, including but not limited to the documents referenced in Exhibit A." "False Claims Documents" are defined in the Rigsbys' proposed discovery to mean:

> [A]ll Documents *allegedly downloaded, copied, taken or transferred* from the premises, files, records, or systems of E.A. Renfroe or State Farm by the Rigsbys that refer to or relate to any insurance claims involving damages caused or alleged to have been caused by Hurricane Katrina.

([212-2] at 2) (emphasis added).

39. To be certain, State Farm knows what is in the physical set of the data dump documents recently provided to it in connection with the *Renfroe* case. State Farm also knows of certain documents that were produced to it by the Scruggses and the Rigsbys in *McIntosh* that must have been stolen from State Farm by the Rigsbys and/or their then-counsel.

40. However, the documents in the referenced Exhibit A that forms part of the Rigsbys' definition of their term "False Claims Documents" are a different matter. ([212-3]). While State Farm knows that Kerri Rigsby *accessed* some parts of each of the files reflected on the referenced Exhibit A, State Farm cannot currently determine, absent expert computer forensic examination,[8] which parts of those files the Rigsbys in fact "downloaded, copied, [took]

[7] By identifying these two obvious defects, State Farm is not waiving its right to assert appropriate and timely objections to any discovery actually propounded.

[8] By this qualifier, State Farm is not intending to suggest that an expert computer forensic examiner could identify the entirety of what the Rigsbys request. State Farm does not currently know whether that is the case or not. State Farm does know, however, that absent expert intervention, it is not currently capable of determining which parts of those files the Rigsbys in fact "downloaded, copied, [took] or transferred," ([212-2] at 2), except to the extent that physical copies of those documents may happen to be within the data dump documents or *McIntosh* documents produced to State Farm.

or transferred," ([212-2] at 2), except to the extent that physical copies of those documents may happen to be within the data dump documents or *McIntosh* documents produced to State Farm.

41. Second, for the same reasons, by defining the scope of production to also include "all documents referenced in Exhibit A" – which means the entirety of the claim files on that list – the Rigsbys are requesting the production of certain files that they may have never before viewed *in their entirety*. While State Farm knows that one or both of the Rigsbys or their then-counsel accessed some parts of all those files, as explained above, it does not currently know which parts were actually viewed, downloaded, printed or copied. As a result, a production of the complete files listed in the referenced Exhibit A would likely provide the Rigsbys certain documents previously unknown to them – which *a fortiori* cannot be relevant to whether they are an original source. For these additional reasons, the Rigsbys' proposed discovery – as currently constructed – is improper.

42. The Rigsbys' use of Exhibit A to their proposed discovery is ironic indeed, and further exposes the falsity of prior testimony regarding the "data dump." Early in the course of the Scruggs Katrina Group ("SKG") cases, the Rigsbys repeatedly testified that the SKG had no involvement in planning the data dump weekend. Yet State Farm's comparison of the list of claim files that Kerri Rigsby accessed from State Farm's CSR database during the data dump weekend with a list of clients that Scruggs represented in *McFarland* revealed that, of the first 118 claim files that Kerri Rigsby accessed, 99 matched up name-for-name and in substantially the same sequence as the claim files listed on what has come to be known as "*McFarland* Exhibit A."[9]

[9] ([1-1] in *McFarland v. State Farm Fire and Casualty Co.*, in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:06cv466-LTS-RHW.)

43. State Farm illustrated that point with Exhibit 46 to its Second Motion to Disqualify in *Shows*[10] – now used by the Rigsbys in this Action as Exhibit A to their proposed discovery. That Exhibit 46 - (Exhibit A to the Rigsbys' proposed discovery) – provides a side-by-side comparison of Kerri Rigsby's CSR Access Report and Scruggs's then-client list. Although Kerri Rigsby apparently worked from a separate list for the next 117 claim files, she then resumed searching based on *McFarland* Exhibit A, as demonstrated by the fact that 36 of the next 39 searches are listed in the same order as on *McFarland* Exhibit A.

44. Kerri Rigsby swore that she had never seen *McFarland* Exhibit A until it was shown to her at her deposition, and denied that she was guided by it or any similar list of the SKG's clients in determining which files to access. *See* (04-30-07 *McIntosh* K. Rigsby Dp. at 318:9-319:12, Ex. A to Resp.) Yet when confronted in a subsequent deposition with the fact that 135 claim files matched the SKG's client list, Kerri Rigsby conceded that she did not "see how [the search sequence] could be from an engineering roster" and tried to explain away her previous false testimony by postulating that Cori Rigsby might have had a list of Scruggs's clients. *See* (11-20-07 *McIntosh* K. Rigsby Dp. at 568:19-572:9, Ex. B to Resp.) Until this year, Cori Rigsby has continued to maintain that the only list that they used during the data dump was an engineering roster, even though she admits that "[c]learly they'd have to have [had a list of the *McFarland* claim numbers]" in order to produce the sequence of claim files that the record shows were, in fact, accessed. (11-19-07 *McIntosh* C. Rigsby Dp. at 423:1-425:6, Ex. C to Resp.)

45. In a January 14, 2008 deposition in *Renfroe* – apparently realizing that she had been caught yet again with false testimony - Cori finally admitted that she in fact used a "roster

[10] ([91 & 97-6] in *Glenda Shows, et al. v. State Farm Mutual Automobile Ins. Co., et al.*; in the United States District Court for the Southern District of Mississippi, Southern Division; Civil Action No. 1:07cv709-WHB- *(cont'd)*

of Dick's clients." (01-14-08 *Renfroe* C. Rigsby Dp. at 91:4-9 & 94:25, Ex. D to Resp.) Now, because it is convenient for their current ends, the Rigsbys have gone a step further and present an even more candid admission.

46. In support of their effort to obtain, through discovery, a copy of a large portion of what they stole from State Farm for their affirmative use in prosecution of their claims, the Rigsbys confess that "the False Claims Documents are a significant portion of the information that [they] provided to the United States…." ([212] at 3.) They then define "False Claims Documents" to include *all the files* on their Exhibit A, ([212-2] at 2-3), meaning, of course, that the "roster of Dick's clients" they used to steal State Farm's documents and ESI was in fact the *McFarland* Exhibit A which Cori earlier falsely denied using.

47. This concession is further proof that the Rigsbys' early testimony was false and they did in fact wrongfully access at least some parts of all of the files on the *McFarland* Exhibit A list. The exposure of this false testimony by the Rigsbys is yet another reason justifying denial of their proposed discovery as constructed.

WHEREFORE, PREMISES CONSIDERED, for all the foregoing reasons, State Farm respectfully requests that the Rigsbys' Motion for Discovery be denied. State Farm also seeks such supplemental, additional or alternative relief as may be appropriate in the premises.

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LRA.)

This the 27th day of August, 2008.

Respectfully submitted,

STATE FARM FIRE AND CASUALTY COMPANY

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CERTIFICATE OF SERVICE

I, E. Barney Robinson III, one of the attorneys for State Farm Fire and Casualty Company, do hereby certify that I have this day caused a true and correct copy of the foregoing instrument to be delivered to the following, via the means directed by the Court's Electronic Filing System or as otherwise set forth below:

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