

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2011-404-0123**

Between                    **WIDGETS RETAILER LIMITED**  
                                  Plaintiff

And                         **WIDGETS SUPPLIER LIMITED**  
                                  Defendant

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**PLAINTIFF'S AFFIDAVIT OF DOCUMENTS**

**Sworn: 10 June 2011**

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***BLOGGS & DOE***  
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Auckland

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## PLAINTIFF'S AFFIDAVIT OF DOCUMENTS

I, **SALLY ANNE SMITH**, of Auckland, Director, swear:

1. I am the managing director of Widgets Retailer Limited, the plaintiff in this proceeding. I am authorised to swear this affidavit on behalf of the plaintiff.
2. I make this affidavit under an order for discovery made under rule 8.20 of the High Court Rules on 20 May 2011 ("the discovery order").
3. The discovery order contains particular terms that are not set out in rule 8.22 of the High Court Rules, and those particular terms are set out in a Joint Memorandum of Counsel dated 11 May 2011.
4. The plaintiff is aware of its obligations under the discovery order and understands those obligations.
5. In order to fulfil the plaintiff's obligations under the discovery order, I have diligently searched for all documents that the plaintiff is required to discover under the order, and I have taken the following particular steps:
  - (a) searching for, and reviewing all relevant physical files held by relevant personnel;
  - (b) carrying out a review of personnel and system computer directories using the following search criteria:
    - (i) documents held by the following individuals:
      - (1) Sally Smith;
      - (2) John Brown;
      - (3) Neel Singh;
    - (ii) date range of 1 January 2008 - 1 January 2011.
    - (iii) applying the following search terms:
      - (1) "distrib\*";
      - (2) "widget supplier";

- (3) "wsl";
- (4) "promot\*"; or
- (5) "sales target"

- (c) locating all physical and electronic documents as set out in the Joint Memorandum of Counsel dated 11 May 2011.
6. In the Schedule of this affidavit, I list the documents that the plaintiff is required to discover.
  7. In Part 1 of the Schedule, I list the documents that are in the plaintiff's control and for which the plaintiff claims neither privilege nor confidentiality.
  8. In Part 2 of the Schedule, I list the documents that are in the plaintiff's control and for which the plaintiff claims privilege and state in relation to each document the privilege that applies.
  9. In Part 3 of the Schedule, I list the documents that are in the plaintiff's control and for which the plaintiff claims confidentiality. I propose that inspection of these documents be restricted to external counsel, external instructing solicitors and independent experts for the parties and the following restrictions apply:
    - (a) each such person is to provide a confidentiality undertaking in an agreed form;
    - (b) the confidentiality undertaking shall require that person to preserve the confidentiality of each document except where such disclosure has been agreed with the party providing the document or as otherwise directed by the Court or required by any law, rule or regulation.
  10. In Part 4 of the Schedule, I list the documents that are no longer in the plaintiff's control and state when, to the best of my knowledge and belief, each document ceased to be in the plaintiff's control and the persons who, to the best of my knowledge and belief, now have control of each document.
  11. In Part 5 of the Schedule, I list other documents known to the plaintiff relating to a matter in question in the proceeding.
  12. To the best of my knowledge and belief, this affidavit is correct in all respects and faithfully carries out the plaintiff's obligations under the discovery order.

**SWORN** at Auckland this )

day of June 2011 )

before me: )

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**SALLY ANNE SMITH**

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**A Solicitor of the High Court of New Zealand**

## SCHEDULE

### PART 1: DOCUMENTS FOR WHICH PRIVILEGE OR CONFIDENTIALITY IS NOT CLAIMED

Document ID	Date	Document Type	Author	Recipient	Parent Document ID	Privilege Category
WRL.0001	20/Jun/2008	Letter	WRL	WSL		
WRL.0002	22/Jun/2008	Letter	WSL	WRL		
WRL.0003	28/Jun/2008	Email	WSL	WRL		
WRL.0004	28/Jun/2008	Email	WRL	WSL; Bloggs & Doe		
WRL.0005	27/Jun/2008	Letter	WSL	WRL	WRL.0004	
WRL.0006	10/Jul/2008	Board Papers	WRL			
WRL.0007	10/Jul/2008	Fax	WSL	WRL		
WRL.0008	12/Jul/2008	Minutes	WRL			Redacted
WRL.0009	12/Jul/2008	Email	WRL	Bloggs & Doe		
WRL.0010	20/Jul/2008	Minutes	WRL			
WRL.0011	29/Aug/2008	Email	Bloggs & Doe	WSL		
WRL.0012	30/Aug/2008	Email	WRL	Bloggs & Doe		
WRL.0013	12/Jul/2008	Letter	WSL	Bloggs & Doe	WRL.0012	
WRL.0014	21/Sep/2008	Fax (with handwritten comments)	WRL	WSL		
WRL.0015	02/Oct/2008	Fax	WSL	WRL		
WRL.0016	10/Oct/2008	Board Papers	WRL			
WRL.0017	20/Oct/2008	Minutes	WRL			
WRL.0018	10/Jan/2009	Board Papers	WRL			
WRL.0019	20/Jan/2009	Minutes	WRL			
WRL.0020	10/Apr/2009	Board Papers	WRL			
WRL.0021	20/Apr/2009	Minutes	WRL			
WRL.0022	20/Jun/2009	Letter	WRL	WSL		
WRL.0023	22/Jun/2009	Letter	WSL	WRL		
WRL.0024	28/Jun/2009	Email	WSL	WRL		

Document ID	Date	Document Type	Author	Recipient	Parent Document ID	Privilege Category
WRL.0025	28/Jun/2009	Email	WRL	WSL; Bloggs & Doe	WRL.0024	
WRL.0026	27/Jun/2009	Letter	WSL	WRL		
WRL.0027	10/Jul/2009	Board Papers	WRL			
WRL.0028	10/Jul/2009	Fax	WSL	WRL		
WRL.0029	12/Jul/2009	Letter	WRL			
WRL.0030	12/Jul/2009	Email	WRL	Bloggs & Doe		
WRL.0031	20/Jul/2009	Minutes	WRL			
WRL.0032	29/Aug/2009	Email	Bloggs & Doe	WSL		
WRL.0033	30/Aug/2009	Email	WRL	Bloggs & Doe		
WRL.0034		Letter	WSL	Bloggs & Doe	WRL.0033	
WRL.0035	21/Sep/2009	Fax (with handwritten comments)	WRL	WSL		
WRL.0036	02/Oct/2009	Fax	WSL	WRL		
WRL.0037	5/Oct/2009	Financial Report	WSL			
WRL.0038	10/Oct/2009	Board Papers	WRL			
WRL.0039	20/Oct/2009	Minutes	WRL			
WRL.0040	10/Jan/2010	Board Papers	WRL			
WRL.0041	20/Jan/2010	Minutes	WRL			
WRL.0042	10/Apr/2010	Board Papers	WRL			
WRL.0043	20/Apr/2010	Minutes	WRL			
WRL.0044	10/Jul/2010	Board Papers	WRL			
WRL.0045	20/Jul/2010	Minutes	WRL			
WRL.0046	30/Jun/2010	Email	WSL	WRL		
WRL.0047	30/Jun/2010	Email	WRL	WSL		
WRL.0048	09/Jun/2011	Summary data	WRL			
WRL.0049	09/Jun/2011	Summary data	WRL			
WRL.0050	09/Jun/2011	Summary data	WRL			

## PART 2: DOCUMENTS FOR WHICH PRIVILEGE IS CLAIMED

Document ID	Date	Document Type	Author	Recipient	Parent Document ID	Privilege Category
WRL.0008	12/Jul/2008	Minutes	WRL			Solicitor-Client
WRL.0051	Various	Letters, emails, faxes and memoranda	WRL	Bloggs & Doe		Litigation
WRL.0052	Various	Letters, emails, faxes and memoranda	Bloggs & Doe	WRL		Litigation
WRL.0053	Various	Memoranda, emails, file notes and drafts	WRL	WRL		Litigation
WRL.0054	Various	File notes, drafts, research and internal memoranda	Bloggs & Doe	Bloggs & Doe		Litigation

The plaintiff objects to producing the documents listed in Part 2 of the Schedule on the grounds that they are privileged in that:

- (a) Documents marked "Solicitor-Client" consist of:
- (i) confidential communications between the plaintiff and its solicitors in their professional capacity; or
  - (ii) memoranda, drafts or file notes of the plaintiff's solicitors; or
  - (iii) documents prepared by the plaintiff for the purpose of submission to its solicitors; or
  - (v) documents recording or repeating confidential communications between the plaintiff and the plaintiff's solicitors for the purpose of obtaining or giving legal advice.
- (b) Documents marked "Litigation" consist of:
- (i) communications between the plaintiff and its solicitors; or
  - (ii) communications between the solicitors of the plaintiff; or
  - (iii) communications between the plaintiff and third parties; or

- (iv) communications between the solicitors of the plaintiff and third parties;  
or
- (v) memoranda, drafts or file notes of the plaintiff or its solicitors; or
- (vi) counsel's brief, memoranda and file notes; or
- (vii) communications between parties with a common interest;

made after litigation was in contemplation for the dominant purpose of enabling the plaintiff and/or the plaintiff's solicitors to assist in the preparation or conduct of contemplated or existing litigation.

- (c) Documents marked "Without Prejudice" consist of without prejudice communications between the parties.

**PART 3: DOCUMENTS OVER WHICH CONFIDENTIALITY IS CLAIMED**

Documents listed in this part consist of commercially sensitive and confidential communications, or drafts or records of such communications, and will be made available for inspection only on terms restricting access to the documents and their contents by external counsel, external instructing solicitors and independent experts for the parties whether by confidentiality undertaking or by order of the Court.

Document ID	Date	Document Type	Author	Recipient	Parent Document ID	Privilege Category
WRL.0055	12/Jul/2008	Letter	WRL	WRL		Confidential
WRL.0056	12/Jul/2009	Email	WRL	WRL		Confidential

**PART 4: DOCUMENTS NO LONGER IN THE CONTROL OF THE PLAINTIFF**

The following documents are no longer in the control of the plaintiff:

- The originals of correspondence originating from the plaintiff where copies only have been discovered, were last in the control of the plaintiff on or about the respective dates of those documents. The originals of these documents should now be in the hands of the addressees.

- Documents which have been lost or destroyed in the ordinary course of business.

**PART 5 – OTHER DOCUMENTS NOT IN THE CONTROL OF THE PLAINTIFF  
RELEVANT TO A MATTER IN QUESTION IN THE PROCEEDING**

The following documents that have not been in the control of the plaintiff, but are known to the plaintiff and which relate to a matter in question in the proceeding:

The documents in the control of the defendant in this proceeding.