

CAUSE NO. DC-18-08923

**TRACY FLEMING and
NORMA EGEA**

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IN THE DISTRICT COURT OF

Plaintiffs,

vs.

DALLAS COUNTY, TEXAS

**BRIAN CHILDRESS; NEYLU, INC.;
RICHARD D. SCHUBERT, M.D., and;
SMITH & NEPHEW, INC.**

Defendants.

192nd JUDICIAL DISTRICT

PLAINTIFFS' MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

This is a products liability case that the Court is all too familiar with, having spent well over four hours in Zoom Open Court listening to discovery disputes just since the COVID-19 Pandemic began three months ago. Plaintiffs file this Motion for Sanctions despite being well-aware that sanctions are rarely imposed and are generally reserved for only the most egregious misconduct. The undersigned is always reluctant to seek sanctions, and has only filed a Motion for Sanctions two or three times in the last 30-plus years. However, the conduct of Smith & Nephew and its attorneys as described below makes this Motion necessary.

Smith & Nephew and their attorneys have refused to comply with this Court's written Order dated May 29, 2020 and clearly stated expectations on the record during various hearings. They seem to have no limitation on what they think they can get away with when it comes to disobeying this Court's Orders and the Texas Rules of Civil Procedure. This has created havoc just as we are beginning important corporate rep depositions involving subjects that are directly involved in the subject matter of the Order. Plaintiffs request the Court to impose sanctions against Smith & Nephew and its attorneys for violating this Court's Order and for bad faith discovery tactics that are discussed in more detail below.

I. FACTUAL BACKGROUND

On May 4, 2020, this Court conducted a Zoom hearing that lasted almost three hours. After that, the Court entered an Order requiring Smith & Nephew to answer certain Discovery Requests and produce certain documents “*at least ten days before the deposition of any corporate representative testifying on healthcare provider contracts.*” See Order on Motions Heard on May 4, 2020, attached as **Exhibit A**. The Court ordered the production of the following materials ten days in advance of the first corporate rep deposition:

1. Contracts with the hospital where Mr. Fleming’s surgery occurred. Order, page 3.
2. Emails related to contract negotiations with the hospital. Order, page 3.
3. Nine months of emails spanning a well-defined and logical time. Order, page 4.
4. Responsive documents involving “BHR Cup Usage.” Order, page 4 and 5.

The deposition of a Smith & Nephew corporate representative testifying on healthcare provider contracts occurred on June 30, 2020, and attorney David O’Quinn presented the witness at the deposition.

Despite the Court’s Order and numerous requests from the undersigned, Mr. O’Quinn did not identify any responsive documents ten days before the deposition and he refused to identify any of them any time before or during the deposition. Plaintiffs believe the documents were never produced, which is a direct violation of the attached Order. Mr. O’Quinn seems to believe he can simply tell counsel to look at two million documents to find Court-ordered responsive documents. Mr. O’Quinn has refused and still refuses to identify any documents produced in response to this Court’s Order. The Production Indices produced with documents since May 4 give no indication that any responsive documents have been produced. Mr. O’Quinn has repeatedly said his client fully complied with the Order, but he thinks it is cute to refuse to say where, when, or how he complied.

Plaintiffs' Counsel has spent more than ten hours looking for the Court-ordered documents and cannot find them. Mr. O'Quinn agreed on the morning of the deposition to provide Bates numbers for the documents he says were produced, but he has still not identified any of them or provided any Bates numbers for them *even today*. He says he needs to obtain this information from a third party, and said he would identify the documents produced in response to this Court's Order later. He was asked again to provide identifying information for the Court-ordered contract documents near the end of the deposition, and he still refused.

Other outrageous conduct occurred during the corporate rep deposition on contracts, but the failure to ever identify or produce the Court-ordered contract documents on multiple topics over a nine-month period resulted in a squandered day of testimony. Worse, Mr. O'Quinn is getting increasingly bold when it comes to following Court Orders and complying with the Texas Rules of Civil Procedure. Numerous depositions are scheduled this summer in the two combined Texas cases against Smith & Nephew, and substantial resources are sure to be wasted if Mr. O'Quinn's unreasonable conduct is not reigned in and somehow prevented.

II. THE DEPOSITION OF RUSSELL PALMER

Smith & Nephew designated Mr. Russell Palmer to testify about "Contracts" with the hospital where the Plaintiff's surgery occurred. This deposition was scheduled by agreement almost two months in advance. On June 15, 2020, Mr. O'Quinn represented to the Court, on the record, that:

Well, Your Honor, we're on schedule to produce those documents and we've already produced most of them. We've already given him the Baylor contract. We've already given him the Beaumont Joint in the Kemp case information.

We're still looking for a contract with North Central Surgical Center. I'm not sure there is one. I think they might have just been listed as somebody who was under the Baylor contract. But those documents are going to be produced and there's no reason we can't notice that deposition in Fleming for June 30th.

June 15, 2020 Hearing at page 48–49. He later made it extremely clear what his position was: “We’ve given him all we can, Your Honor. And if we can’t find it, then we’ll tell him why.” *Id.* at page 51.

Additionally, at the June 15th hearing, David O’Quinn protested that the deposition had not been officially noticed in the Fleming case. Plaintiff’s counsel unequivocally stated: “*Your Honor, there's nothing I'd love more than to consolidate these two cases for that deposition on June 30th. But I want to see the contracts before I agree to do that. You ordered them to produce it ten days in advance.*” However, Smith & Nephew did not produce the documents as ordered. Nevertheless, Plaintiff’s provided a notice to Defendant for the Fleming case in the name of efficiency, and in spite of the lack of cooperation by David O’Quinn.

The deposition began with only one responsive document being identified in advance, and that was emailed for the first time on the morning of the deposition. The testimony quickly revealed that a written agreement existed between the hospital and Smith & Nephew, but Mr. O’Quinn decided not to produce it because it was not signed. The witness agreed the document involved an “offer” that was “accepted” and that it represented a “binding” “arrangement” between the hospital and Smith & Nephew. Millions of dollars of orthopedic devices were sold pursuant to this document and all parties considered it enforceable. The witness agreed he could easily produce the document. The witness agreed it was renewed after Mr. Fleming’s surgery and was given a new “Sales Deal” number after Mr. Fleming’s surgery. Mr. O’Quinn simply decided it was not signed, so it was not a “contract.” *After* the deposition of the corporate rep on pricing, David O’Quinn has stated: “*Ps, we can produce the sales deal applicable to Mr. Fleming’s surgery.*” David O’Quinn has also refused to reproduce Mr. Palmer after he produces the actual “sales deal applicable to Mr. Fleming’s surgery” whenever that may be.

The corporate rep deposition on Contracts was a ridiculous experience of “cat and mouse” on the deposition record. The witness was not prepared to discuss the Court-ordered documents because they had not been produced and he had not read them. At a minimum, more time will be needed to question the witness after the Court-ordered documents are produced. That will require preparing again for a deposition that was scheduled by agreement more than two months ago. All of this wasted and repetitive maneuvering is required because Smith & Nephew simply will not act reasonably when it comes to compliance with this Court’s Orders.

III. PRODUCTION OF DOCUMENTS

Most of the documents the Court ordered Smith & Nephew to produce pursuant to this Court’s attached Order have still not been produced or identified. There are numerous depositions scheduled in the next few weeks and this kind of obstructive conduct must stop. This Court’s Order needs to be complied with. The Court spent hours listening to arguments of counsel. The company and its lawyers continue to ignore this Court’s Order and seem intent on producing relevant documents, if at all, only *after* important depositions are taken. A schedule of the incomplete document production in response to this Court’s attached Order is as follows:

RFP Number	Description	Court Order	Status
373-374/First Set.	Hospital Pricing	S&N agreed in its Response;	David O’Quinn did not produce pricing “arrangements” because he said the accepted binding Sales Deals were not “contracts.” “Arrangements” were also requested.
141	Emails related to 9 months of business meetings	Ordered to produce 10 days prior to Corporate Rep Deposition on Contracts. See Page 4.	No production as of July 2, 2020 as it relates to North Central Surgical Center.
253, 254, 255	BHR Cup Usage Tracking	Ordered to produce 10 days prior to Corporate	No production as of July 2, 2020.

		Rep Deposition on Contracts. See Page 4.	
160	President's Video Update to Sales Reps.	Ordered to produce at May 4, 2020 hearing. See page 5. Needed by plaintiffs prior to July 15 Sales Rep. Training Corporate Rep Deposition.	No production as of July 2, 2020.
55-67	Childress Training Materials	Ordered to produce at May 4, 2020 hearing. See Page 2. Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.	Defendant has produced some documents that appear related to this request, but has not stated whether the production of training materials is complete.
79-82	Field Marketing Director Training Materials	Ordered to produce at May 4, 2020 hearing. See page 2. Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.	Defendant does not appear to have produced the relevant training materials as of July 2, 2020.
154-162, 168	Schubert Media Training	Ordered to produce at May 4, 2020 hearing. See page 2. Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.	Defendant does not appear to have produced the relevant training materials as of July 2, 2020.
199.	Schubert Visit Agendas	Ordered to produce at May 4, 2020 hearing. See Page 2-3. Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.-	Defendant appears to have completed this request.
344-348, 352-356, 360-364, 368, 369, 374-380	Training Agenda Sign in Sheets for Schubert training.	Ordered to produce at May 4, 2020 hearing. See Page 3.	Defendant has produced blank sign in sheets, but it is clear not all relevant sign in sheets

		Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.	have been produced as of July 2, 2020.
477-482, 484-486,488	Mark Cuban and Martha Stewart Endorsement Documents	Ordered to produce at May 4, 2020 hearing. See page 3. Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.	No production as of July 2, 2020.
489-517, 519-525	Compliance Monitoring	Ordered to produce at May 4, 2020 hearing. See page 3. Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.	Defendant has produced some documents that appear related to this request, but has not stated whether the production of Compliance Monitoring is complete
537-544	MoM Hip Revision Videos	Ordered to investigate and produce any responsive videos at May 4, 2020 hearing. See page 3. Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.	Defendant has not produced any revision videos as of July 2, 2020.
2, 3, 5, 6, 8, 9, 11, 12, 14, 15, 17, 18	Dr. Schubert Communications	Ordered to produce at May 4, 2020 hearing. See Page 4. Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.	As of July 2, 2020, some additional Dr. Schubert communications from after the September 2009 surgery have been produced, but it is unclear if all communications made within the relevant time period have been produced that are not duplicative of prior productions since the May hearing.

381-451, 453-470	Dr. Schubert Payments	<p>Ordered to produce at May 4, 2020 hearing. See Page 4.</p> <p>Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.</p>	Defendant has produced some documents that appear related to this request, but has not stated whether the production of Schubert Payments is complete
28-44	Expert Communications	<p>Ordered to produce at May 4, 2020 hearing. See Page 4.</p> <p>Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition.</p>	No production as of July 2, 2020.
415	Schubert Compliance Website	<p>Ordered to produce at May 4, 2020 hearing. See Page 5.</p> <p>Needed by plaintiffs prior to July 14 Surgeon Training Corporate Rep Deposition</p>	As of July 2, 2020, Defendant has not stated if responsive documents exist nor produced any responsive documents.
128	Brian Childress Evaluations	<p>Ordered to produce at May 4, 2020 hearing. See page 5.</p> <p>Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.</p>	<p>No responsive documents have been produced as of July 2, 2020.</p> <p>Plaintiff is concerned that a similar issue exists here where “formal” evaluations is being used to withhold responsive documents as is the case regarding “contracts” that is the subject of this motion.</p>
175-188	FDA Communications	<p>Ordered to produce at May 4, 2020 hearing. See page 5.</p>	Defendant has produced some responsive documents as of July 2, 2020 but has not confirmed if all responsive documents have been produced.

337, 338, 342, 343	“Wrong Way Video”	<p>Ordered to produce at May 4, 2020 hearing. See page 3.</p> <p>Needed by plaintiffs prior to July 15 Sales Rep Training Corporate Rep Deposition.</p>	Not produced as of July 2, 2020.
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IV. DEPOSITION OF TOM TROUP

Another example of unacceptable deposition conduct is how another recent deposition was conducted just last week. Smith & Nephew’s attorneys agreed to present a high-level executive named Tom Troup for deposition. His Zoom deposition was taken on June 25, 2020. It was scheduled by agreement in both of the Smith & Nephew Texas hip implant cases this Court has heard so much about. Plaintiffs’ counsel requested a total of eight hours with the witness because the deposition involved two distinct cases involving two different products that were surgically implanted more than two years apart. Mr. O’Quinn never responded to that request. An attorney from Mr. O’Quinn’s firm appeared at the deposition despite having not bothered to first enter a formal appearance as an attorney in the case. The presenting attorney, like Mr. O’Quinn at the Corporate Rep deposition, decided the deposition would be limited to six hours. The deposition was terminated at six hours despite protests from Plaintiffs’ counsel. Mr. O’Quinn has not agreed to present Mr. Troup for a follow up deposition.

V. SANCTIONS ARE JUSTIFIED AND PERMITTED

A trial court has broad discretion when deciding if sanctions are warranted and, if so, what sanction is appropriate. Is this a minor, excusable infraction or does the conduct represent the kind of discovery abuse that should be dealt with harshly at the outset? In this case, the refusal of Smith & Nephew and its lawyers and its lawyers to cooperate in the discovery process is certainly intentional and longstanding, having persisted since *before* the beginning of this case and persisting

despite repeated rulings from the Court on these exact subjects. Why should these Defendants be allowed to dodge legitimate discovery requests for years and not face sanctions of any kind after all this time, then when discovery ends, interfere with depositions and withhold or deliberately not look for responsive documents until after the relevant depositions? Plaintiff submits that this kind of discovery practice and discovery abuse should not be tolerated.

Smith & Nephew has continually refused to comply with the most basic rules governing discovery in this state. Smith & Nephew's inexplicable refusal to comply with the plain language of the Texas Rules of Civil Procedure and to follow the guidance of this Court's previous Orders should result in some kind of sanction greater than merely ordering them to answer the requests and produce the documents. The evasive discovery practices above were solely for purposes of delay and are a clear abuse of the discovery process which amounts to a failure to answer. *See* TEX. R. CIV. P. 215.1(c), 215.3. Various rules contemplate the scope of sanctions for abusive discovery practices like these, including Texas Rules of Civil Procedure 193.2(e), 215.1(b)–(d), 215.2(b), and 215.3. These Rules suggest a broad range of sanctions, including charging expenses of discovery or taxable court costs, the establishing of facts in accordance with the claim of the party obtaining the order, an order “refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,” or the payment of attorneys’ fees. TEX. R. CIV. P. 215.2(b).

CONCLUSION AND PRAYER

It is unfortunate that a Motion like this needs to be filed, but we either continue to tolerate this unreasonable conduct or do something about it. This conduct cannot be tolerated any longer. Plaintiffs request the Court to set this Motion for a Zoom hearing and impose the following

sanctions for violating this Court's Order and for other flagrant discovery abuses, and grant such other and further relief to which Plaintiffs may show themselves justly entitled:

1. Comply fully with the Court's May 29, 2020 Order within seven days.
2. Identify all Bates numbers for all documents produced in response to the May 29, 2020 Order.
3. Notify Plaintiffs when Defendant finishes answering each discovery request ordered by the May 29, 2020 Order.
4. Produce all contract/pricing documents listed on the spreadsheet created by Russell Palmer stamped SN_KempDepo-000001 as well as any other relevant sales deals or pricing agreements for Baylor Health System, Baylor University Medical Center, and North Central Surgical Center that includes any BHR device or the Modular Femoral Head, and then present Russell Palmer for deposition again within ten days at Defendant's expense.
5. Produce Tom Troup for at least three more hours at Defendant's expense.

Respectfully submitted,

LAW OFFICE OF KIP PETROFF

/s/ Kip Petroff

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ATTORNEYS FOR PLAINTIFFS

Certificate of Conference

I hereby certify that a draft of this Motion was sent to David O'Quinn and Brian Johnson on July 2, 2020, and no agreement can be reached on these matters. Therefore, this Motion is submitted to the Court as an OPPOSED Motion.

SIGNED July 2, 2020

/s/

Kip A. Petroff

Certificate of Service

Exhibit A

TRACY FLEMING and
NORMA EGEA

Plaintiffs,

vs.

BRIAN CHILDRESS; NEYLU, INC.;
RICHARD D. SCHUBERT, M.D., and;
SMITH & NEPHEW, INC.

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192nd JUDICIAL DISTRICT

ORDER ON MOTIONS HEARD ON MAY 4, 2020

On May 4, 2020, came on to be heard the Motions listed below, and the Court makes the following rulings after having considered the Motions, Responses, and the arguments of counsel:

I. Defendant Smith & Nephew, Inc.’s Motion for Protection re: Plaintiff’s 5th RFPs

Request Nos.	GRANTED	DENIED	Comments
1, 4, 7, 10, 13, 16, 19, 22, 25	X		Withdrawn by Plaintiff
20, 21, 23–27	X		Withdrawn by Plaintiff
68–78	X		Withdrawn by Plaintiff
83–85, 87	X		Withdrawn by Plaintiff
147, 149, 151, 153	X		Withdrawn by Plaintiff
163–167, 170, 171	X		Withdrawn by Plaintiff
189–198	X		Withdrawn by Plaintiff
266–271	X		Withdrawn by Plaintiff
277	X		Withdrawn by Plaintiff
327	X		Withdrawn by Plaintiff
340, 341, 349–351	X		Withdrawn by Plaintiff
357–359	X		Withdrawn by Plaintiff
365–367, 370–373	X		Withdrawn by Plaintiff
452	X		Withdrawn by Plaintiff
471–476	X		Withdrawn by Plaintiff

483	X		Withdrawn by Plaintiff
487	X		Withdrawn by Plaintiff
518	X		Withdrawn by Plaintiff
55-67		X	Childress Training Materials. By agreement, Smith & Nephew is producing all training materials for Brian Childress or Neylu, Inc. from January 1, 2007-September 28, 2009.
79-82	IN PART	IN PART	Field marketing director training. Smith & Nephew is ordered to produce all field marketing director training information requested in Requests 79-82 from January 1, 2007-September 28, 2009 for the field marketing directors responsible for Dr. Schubert or Brian Childress. GRANTED otherwise.
86, 88-102, 121, 123, 125, 127-136, 169,	X***		Ruling deferred as requested. See below.
103-120, 122, 124, 126, 137-146, 148, 150, 152, 172-174, 265		X***	Ruling deferred as requested. See below.
154-162, 168	IN PART	IN PART	Surgeon "Media Training". Smith & Nephew is ordered to produce any documents relating to Smith & Nephew's training of Dr. Schubert from January 2006-September 28, 2009, including any "media training". GRANTED otherwise.
175-188	IN PART	IN PART	FDA Communications. Smith & Nephew is ordered to produce any communications with the FDA from 2007-September 2009 sent pursuant to 21 CFR Part 99. GRANTED otherwise.
199	---	---	Schubert Visit Agendas. By agreement, Smith & Nephew is producing documents pursuant to this

			request. <i>See</i> Motion for Protective Order, page 10.
272	X***		Ruling deferred as requested. See below.
278–326	IN PART	IN PART	Contracts with HCPs. Smith & Nephew has agreed to produce contracts and communications exchanged with Baylor and North Central Surgical Center in negotiating the contracts if they exist. <i>See</i> Motion for Protective Order at page 13.
337, 338, 342, 343	IN PART	IN PART	Previous Production Documents. Request 337 is withdrawn by Plaintiffs. Smith & Nephew is ordered to produce all documents that are responsive to Requests 338, 342, and 343.
344–348, 352–356, 360–364, 368, 369, 374–380	IN PART	IN PART	Training Agenda Sign In Sheets. Smith & Nephew is ordered to produce any documents relating to Smith & Nephew’s training of Dr. Schubert from January 2006–September 28, 2009, including agendas and sign in sheets, for all orthopedic devices. GRANTED otherwise.
477–482, 484–486, 488	IN PART	IN PART	Celebrity Endorsements. Smith & Nephew is ordered to conduct a diligent search for and produce documents responsive to Request 488. GRANTED otherwise.
489–517, 519–525	IN PART	IN PART	Compliance Monitoring. Smith & Nephew is ordered to produce all documents that are responsive to Requests 489–494. GRANTED otherwise.
537–544			MOM Hip Revision Videos. Smith & Nephew will investigate whether a revision video exists and consult with plaintiffs.

2, 3, 5, 6, 8, 9, 11, 12, 14, 15, 17, 18	IN PART	IN PART	Dr. Schubert Communications. Smith & Nephew is ordered produce all communications with Dr. Schubert from 2007–September 28, 2009.
525–536	X		Linda Schubert Communications
381–451, 453–470	IN PART***	IN PART	Dr. Schubert Payments. Motion granted as to all but 446-447 and 453-456.
28–54		X	Communications with Experts. Smith & Nephew is ordered produce communications and other documents requested for the experts listed in RFP Numbers 28 to 54.

II. Plaintiffs’ Amended Motion to Compel re: First Requests for Production

Request No.	GRANTED	DENIED	Comments
T. Fleming’s First RFP No. 118	X		Memphis File. Smith & Nephew is ordered produce all information that it has on file in Memphis for Dr. Schubert from 2007–December 31, 2009, including but not limited to surgeon profiles, surgeon payments, surgery schedules, and past surgical history.
T. Fleming’s First RFP No. 141	X		Baylor Business Meeting. Smith & Nephew is ordered to produce responsive documents for the nine-month window starting in May 2009 to February 2010. Such documents shall be produced at least ten days before the deposition of any corporate representative testifying on healthcare provider contracts.
T. Fleming’s First RFP No. 253	X		BHR Cup Usage. Smith & Nephew is ordered to produce all responsive documents at least ten days before the deposition of any corporate representative testifying on healthcare provider contracts.
T. Fleming’s First RFP No. 254	X		BHR Cup Usage. Smith & Nephew is ordered to produce all responsive documents at least ten days before the deposition of any corporate representative testifying on healthcare provider contracts.
T. Fleming’s First RFP No. 255	X		BHR Cup Usage. Smith & Nephew is ordered to produce all responsive documents at least ten days before the deposition

			of any corporate representative testifying on healthcare provider contracts.
T. Fleming's First RFP No. 230	X		CFR Part 99. Smith & Nephew is ordered to produce any communications with the FDA from 2007 to September 2009 sent pursuant to 21 CFR Part 99.
T. Fleming's First RFP No. 236	X		CFR Part 99. Smith & Nephew is ordered to produce any communications with the FDA from 2007 to September 2009 sent pursuant to 21 CFR Part 99.
T. Fleming's First RFP No. 237	X		CFR Part 99. Smith & Nephew is ordered to produce any communications with the FDA from 2007 to September 2009 sent pursuant to 21 CFR Part 99.
T. Fleming's First RFP No. 238	X		CFR Part 99. Smith & Nephew is ordered to produce any communications with the FDA from 2007 to September 2009 sent pursuant to 21 CFR Part 99.
T. Fleming's First RFP No. 382	X		"Four Strategic Pillars." Smith & Nephew is ordered to produce the final version of any Four Strategic Pillars a/k/a/ 4 Strategic Pillars presentations that were created during 2007–September 28, 2009.
T. Fleming's First RFP No. 160	X		President's Video Update. Smith & Nephew is ordered to produce the Joe DeVivo video update referred to in Request 160.
T. Fleming's First RFP No. 415	X		Compliance website. Smith & Nephew is ordered to produce any information regarding Dr. Schubert that appears on any version of the compliance website.
N. Egea's First RFP No. 128	X		Brian Childress Evaluations. Smith & Nephew is ordered to produce any formal evaluations that it has for Brian Childress, including performance evaluations and sales awards, from the start of his affiliation with Smith & Nephew until September 28, 2009.

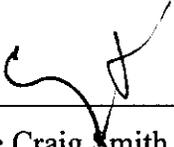
Plaintiffs and Defendant Smith & Nephew, Inc. are FURTHER ordered to meet and confer, pursuant to the standing Order issued by this Court, on the search terms that Defendant Smith & Nephew, Inc. is using to conduct its searches in response to the written discovery exchanged in this case. Any agreements will be reduced into a signed writing pursuant to Texas Rule of Civil Procedure 11. Any disagreements will be submitted to the Court in the form of an appropriate Motion.

III. Defendant Smith & Nephew, Inc.'s Motion to Quash Notice of Deposition

The deposition is quashed without prejudice to the Plaintiffs. The Court ORDERS the parties as follows: The Court grants Plaintiffs leave to serve Defendant Smith & Nephew, Inc. with a combined, indexed list of documents. Defendant Smith & Nephew, Inc. is ORDERED to identify the source, custodian, and authenticity of these documents, as well as state any and all specific objections to the admissibility of these documents in the trial of this lawsuit. Any agreements will be reduced into a signed writing pursuant to Texas Rule of Civil Procedure 11. Any disagreements will be submitted to the Court in the form of a Motion to Compel.

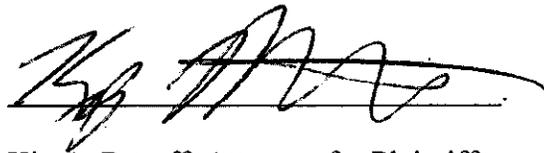
*** The parties have requested the Court to defer ruling on the discovery requests with an asterisk in the "Granted" or "Denied" column. They want to see the hearing transcript before requesting a ruling, and that is acceptable under the circumstances.

SIGNED this 29 day of May, 2020.



Honorable Craig Smith, Judge Presiding

APPROVED AS TO FORM ONLY.



Kip A. Petroff, Attorney for Plaintiffs



David W. O'Quinn, Attorney for Smith &
Nephew, Inc., Brian Childress, and Neylu, Inc.