

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

vs.

McGINN, SMITH & CO., INC.,  
McGINN, SMITH ADVISORS, LLC,  
McGINN, SMITH CAPITAL HOLDINGS CORP.,  
FIRST ADVISORY INCOME NOTES, LLC,  
FIRST EXCELSIOR INCOME NOTES, LLC,  
FIRST INDEPENDENT INCOME NOTES, LLC,  
THIRD ALBANY INCOME NOTES, LLC,  
TIMOTHY M. McGINN, DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
T. SMITH, and NANCY McGINN,

Case No.: 1:10-CV-457  
(GLS/DRH)

*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

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**NOTICE OF MOTION**

**PLEASE TAKE NOTICE**, that upon the annexed Declaration of James D. Linnan, Affidavits of Geoffrey R. Smith, Lauren T. Smith and Lynn A. Smith, proposed Affidavit of David L. Smith and Memorandum of Law, and upon all prior pleadings and proceedings heretofore had herein, a Motion will be made as follows:

**DATE, PLACE AND TIME OF MOTION:** February 20, 2014 at 9:30 a.m.  
at the United States Courthouse in Albany, New York or as soon thereafter as counsel can be heard.

**TYPE OF MOTION:** Movant seeks an Order of the Court granting permission to the Trust, by its Trustee, Geoffrey R. Smith, and its creators, David L. Smith and Lynn A. Smith, to amend the Trust to delete Paragraph "SIXTH:(10)" of the Declaration of Trust dated August 4, 2004 which authorized the Trust to enter into a private annuity agreement with the Donors of the said Trust and to cancel, terminate and void the Private Annuity Contract dated August 31, 2004 created pursuant to the authority of that Paragraph and to permit David L. Smith and Lynn A. Smith to renounce all rights and benefits they may have in the said Trust or pursuant to the Private Annuity Contract, together with such other and further relief as to the Court may deem just and proper.

Dated: Albany, New York  
January 3, 2014

Respectfully submitted,

Linnan & Fallon, LLP  
By           /s/ James D. Linnan            
James D. Linnan (Bar Roll# 102058)  
*Attorneys for Geoffrey R. Smith,  
Trustee of the David L. & Lynn A. Smith  
Irrevocable Trust U/A Dated August 4,  
2004, Geoffrey R. Smith and Lynn A. Smith*  
61 Columbia Street  
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TO:  
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*Plaintiff,*

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FIRST ADVISORY INCOME NOTES, LLC,  
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THIRD ALBANY INCOME NOTES, LLC,  
TIMOTHY M. McGINN, DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
T. SMITH, and NANCY McGINN,

Case No.: 1:10-CV-457  
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*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

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**DECLARATION OF JAMES D. LINNAN IN SUPPORT OF AN APPLICATION  
FOR PERMISSION TO PERMIT THE PARTIES TO AMEND THE  
DAVID L. & LYNN A. SMITH IRREVOCABLE TRUST U/A DATED AUGUST 4, 2004**

I, JAMES D. LINNAN, pursuant to 28 USC Section 1746, declare under the penalty of perjury, the following facts:

1. That I am an attorney admitted to practice before this Court and am the attorney for Geoffrey R. Smith, Trustee of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated

August 4, 2004 and Geoffrey R. Smith and Lauren T. Smith, individually. As attorney for these individuals, I am familiar with the facts and circumstances of this proceeding.

2. The history of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004, (hereinafter "the Trust"), has previously been submitted to this Court. The Court is respectfully referred to Dkt. 638, Page 1 – 5. Dkt. 626-1, Page 1 – 4.

3. It has been judicially determined that the funds utilized to establish this Trust were directly attributable to an inheritance by Lynn A. Smith from her father in 1969 and the prudent investment of those funds. It has been determined "it is undisputed that the Trust originated from bank stock in the stock account purchased in the early 1990's well prior to 2003 when the SEC alleges the scheme began here. In fact, none of the named entities, except MS and Co. existed at that time. Thus, there is no proof that fraudulently obtained funds were deposited into the stock account prior to the purchase of the bank stock in the early 1990's." Dkt. 86.

4. It is undisputed that the real property, which is currently owned by the Trust, was inherited by Lynn A. Smith from her father's estate in 1969.

5. It is, therefore, undisputed that the funds utilized to fund the Trust originally and the assets currently held by the Trust, are directly attributable and traceable to the inheritance by Lynn A. Smith from her father.

6. The Declaration of Trust is set forth at Dkt. 568-2.

7. The Declaration of Trust states at the first paragraph "This Trust is created for the benefit of the Donor's children and their issue."

8. The annuity provision contained at Paragraph SIXTH;(10) of the Declaration of Trust was contained in the original Trust document solely for the purpose of lawfully avoiding the imposition of gift taxes upon the Trust principle. A reading of the total Trust document

confirms that the purpose of the Trust, as originally drafted, was to provide funds for the children and possible future grandchildren of the Trust creators.

9. By the passage of time and amendments to the tax laws, gift tax will no longer be imposed upon the corpus of the Trust.

10. The Trust has obtained a legal analysis establishing that the amendment of the Trust, at this time, would not result in the imposition of gift taxes on the assets now held by the Trust.

11. The underlying reason for the annuity is no longer present, and the annuity is no longer necessary to carry out the stated purposes of the Trust.

12. The parties wish to, pursuant to New York State EPTL Section 7-1.9, now amend the Trust to terminate the annuity effective immediately.

13. The parties to the Trust have an absolute right to amend the provisions of the Trust under EPTL Section 7-1.9 regardless of the purpose or motive for the amendment.

14. The Creators and Trustee wish to amend the Trust and the beneficiaries wish to consent to the proposed Amendment.

15. Attached hereto and marked as Exhibit "A" is a proposed Amendment of Declaration of Trust and Cancellation of Private Annuity Contract. This document has been signed by Lynn R. Smith, as a Creator of the Trust, Geoffrey R. Smith, as the Trustee and as a beneficiary of the Trust, and Lauren T. Smith, as a beneficiary of the Trust. Upon information and belief, David L. Smith, the Co-Creator of the Trust, is ready, willing and able to execute this document.

16. Attached hereto and marked as Exhibit "B" is an Affidavit of Lynn R. Smith in compliance with EPTL 2-1.11.

17. Attached hereto and marked as Exhibit "C" is a proposed Affidavit of David L. Smith in compliance with EPTL 2-1.11.

18. Served herewith are Affidavits of the beneficiaries and Trustee, Lauren T. Smith and Geoffrey R. Smith.

Dated: Albany, New York  
January 2, 2014

Linnan & Fallon, LLP  
By /s/ James D. Linnan  
James D. Linnan (Bar Roll# 102058)  
*Attorneys for Geoffrey R. Smith,  
Trustee of the David L. & Lynn A. Smith  
Irrevocable Trust U/A Dated August 4,  
2004, Geoffrey R. Smith and Lynn A. Smith*  
61 Columbia Street  
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518-449-5400  
jdlinnan@linnan-fallon.com  
www.linnan-fallon.com





**AMENDMENT OF DECLARATION OF TRUST  
AND CANCELLATION OF  
PRIVATE ANNUITY CONTRACT**

WHEREAS, a Declaration of Trust, dated August 4, 2004, between David L. Smith and Lynn A. Smith, then residing at 2 Rolling Brook Drive, Saratoga Springs, New York, created a Trust for the benefit of the creators' children and their issue, namely Geoffrey R. Smith and Lauren T. Smith, (hereinafter, "the Trust"), and

WHEREAS, at the time of the creation of the Trust, the United States Internal Revenue Code provided that gift tax be assessed upon the transfer of funds between creators/parents and beneficiaries/children in an amount that was dependent on the gift to fund this Trust, and

WHEREAS, at the time of the creation of the Trust, the United States Internal Revenue Code further provided that in the event a private annuity agreement was created at the time of the funding of the Trust, which authorized private annuity payments in the future to the creators of the said Trust, that the gift made at the funding of the Trust could pass without the imposition of gift tax, and

WHEREAS, it was the desire of the parties to take advantage of the then applicable private annuity agreement provision to allow the creation and funding of the Trust, and the gift made pursuant thereto, to be made without the imposition of gift taxes so that the Beneficiaries would receive the full benefit of the gift without the payment of gift tax, and

WHEREAS, the Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors, and The David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 31, 2004, Transferee fulfilled the requirements of the Internal Revenue Code and assisted in the establishment and creation of the Trust that complied with the applicable provisions of the

Internal Revenue Code, and thus permitted the passing of the gift made in the Trust without the imposition of any gift tax upon the Trust or its Beneficiaries, and

WHEREAS, the Internal Revenue Code has, from time to time, been amended to provide the assets transferred at the time of the creation of the Trust, together with the accumulated principle and interest earned thereon, may now be gifted to the Beneficiaries of the Trust creators, namely the two (2) children of the creators, Geoffrey R. Smith and Lauren T. Smith, without the imposition of any gift tax, and

WHEREAS, the Private Annuity Contract payments to the Transferors contemplated in Paragraph 2 of the Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors, and The David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 31, 2004, Transferee did not vest the said Transferors with the right to such payments until September 26, 2015, and no such payments have been made, and

WHEREAS, it has been and continues to be, the desire of the Trust creators, David L. Smith and Lynn A. Smith, to create and fund the Trust for the sole "benefit of the Donors' children and their issue", without the imposition of any gift taxes, and

WHEREAS, the sole beneficiaries of the Trust are the adult children of the Donors, namely Geoffrey R. Smith and Lauren T. Smith and there are no infants who have an interest in the Trust,

NOW, THEREFORE, and pursuant to New York State Estates, Powers and Trust Law, Section 7-1.9, the Donors, David L. Smith and Lynn A. Smith, and the Trustee, Geoffrey R. Smith, by the execution of this document, do hereby amend and modify the terms and conditions of the Declaration of Trust and do hereby cancel, terminate and void the Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors, and The David L. & Lynn

A. Smith Irrevocable Trust U/A Dated August 31, 2004, Transferee, and do further terminate and void all rights, benefits, duties and/or obligations created therein as more fully set forth:

**FIRST:** The Declaration of Trust dated August 4, 2004 is hereby amended to delete, cancel and void the provisions of Paragraph **SIXTH;**(10) therein.

**SECOND:** The Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors, and The David L. and Lynn A. Smith Irrevocable Trust U/A Dated August 31, 2004, Transferee which was executed and delivered pursuant to the authority of Paragraph **SIXTH;**(10) of the Declaration of Trust, is cancelled and voided and all rights, benefits, duties and/or obligations created thereby are hereby terminated, and David L. Smith and Lynn T. Smith hereby renounce, pursuant to New York State EPTL section 2-1.11, all rights and benefits they may have, now or in the future, in the aforesaid Trust or its assets.

**THIRD:** The David L. and Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004 shall retain full title and interest in the property previously transferred to or acquired by the Trust and all principle and income earned by the Trust, during its existence, free and clear of all liens and encumbrances.


**FOURTH:** In all other respects, the provisions contained in the Declaration of Trust, dated August 4, 2004, are ratified and shall remain in full force and effect.

**FIFTH:** This document may be executed and acknowledged in separate parts by the parties hereto with the same force and effect as if the singular original had been executed by the parties.

\_\_\_\_\_  
DAVID L. SMITH

*Lynn A. Smith*  
\_\_\_\_\_  
LYNN A. SMITH

DAVID L. & LYNN A. SMITH  
IRREVOCABLE TRUST U/A DATED  
AUGUST 4, 2004

By:   
GEOFFREY R. SMITH  
TRUSTEE

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID L. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF COLORADO )  
COUNTY OF Pitkin ) ss.:

On the 3<sup>rd</sup> day of January in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared LYNN A. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

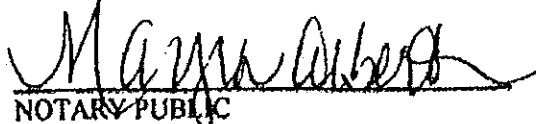
MAYRA ALBERTO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014017618  
MY COMMISSION EXPIRES OCTOBER 1, 2017

  
NOTARY PUBLIC

STATE OF COLORADO )  
COUNTY OF ) ss.:

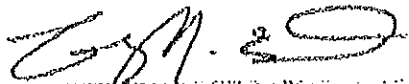

On the 3<sup>rd</sup> day of January in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared GEOFFREY R. SMITH, AS TRUSTEE OF THE DAVID L. & LYNN A. SMITH IRREVOCABLE TRUST U/A DATED AUGUST 4, 2004, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the Trust upon behalf of which the individual acted, executed the instrument.

MAYRA ALBERTO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014017618  
MY COMMISSION EXPIRES OCTOBER 1, 2017

  
NOTARY PUBLIC


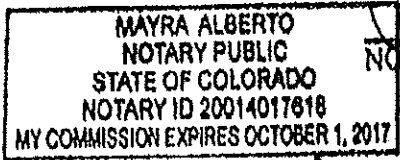
**CONSENT TO AMENDMENT OF DECLARATION OF TRUST  
AND CANCELLATION OF PRIVATE ANNUITY AGREEMENT**

The undersigned, being the remaining interested parties in the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004 hereby acknowledge that we have read the foregoing Amendment of Declaration of Trust and Cancellation of Private Annuity Contract and consent to the terms and conditions contained therein. It is further acknowledged that by the execution of this consent, that we are the only remaining interested parties in the aforesaid Trust, that we are the only children of David A. Smith and Lynn A. Smith and that there are no other children, or issue of Geoffrey R. Smith or Lauren T. Smith and that they individually and collectively consent to the amendments and cancellation set forth in the within document.

  
\_\_\_\_\_  
GEOFFREY R. SMITH  
  
\_\_\_\_\_  
LAUREN T. SMITH

STATE OF COLORADO )  
COUNTY OF Pitkin ) ss.:

On the 3rd day of January in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared GEOFFREY R. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC  
  
MAYRA ALBERTO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014017618  
MY COMMISSION EXPIRES OCTOBER 1, 2017

STATE OF COLORADO )  
COUNTY OF Pitkin ) ss.:

On the 3rd day of January in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared LAUREN T. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

MAYRA ALBERTO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014017618  
MY COMMISSION EXPIRES OCTOBER 1, 2017

  
NOTARY PUBLIC

UNITED STATES DISTRICT COURT  
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TIMOTHY M. McGINN, DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
T. SMITH, and NANCY McGINN,

Case No.: 1:10-CV-457  
(GLS/DRH)

*Defendants,*

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*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**AFFIDAVIT OF DEFENDANT/RELIEF DEFENDANT,  
LYNN A. SMITH**

**LYNN A. SMITH**, being duly sworn, deposes and says:

1. That I was a co-creator and donor of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004 and I was a party to the Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors and The David L. & Lynn A. Smith Irrevocable Trust U/A

8/04/04 Dated August 31, 2004, Transferee, which was executed and delivered pursuant to Paragraph SIXTH:(10) of the Declaration of Trust dated August 4, 2004. I have executed and delivered an Amendment of Declaration of Trust and Cancellation of Private Annuity Contract document wherein I have agreed to amend the original Trust and have further renounced any and all rights I may have now or in the future to any benefits from the Trust by way of the Declaration of Trust and the Private Annuity Contract executed pursuant to the terms of the Declaration of Trust.

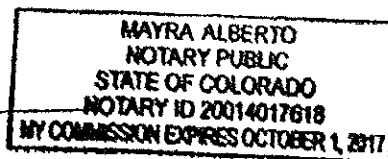
2. I have not received, and I shall not receive in the future, any consideration in money or monies worth for such renunciation from any person.

3. I make this Affidavit in compliance with New York State EPTL Section 2-1.11(2).

  
LYNN A. SMITH

Sworn to before me this  
2<sup>nd</sup> day of January, 2014.

  
Notary Public





UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
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GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**AFFIDAVIT OF DEFENDANT, DAVID L. SMITH**

**DAVID L. SMITH**, being duly sworn, deposes and says:

1. That I was a co-creator of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004 and I was a party to the Private Annuity Contract between David L. Smith & Lynn A. Smith, as Transferors, and The David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 31, 2004, Transferee which was executed and delivered pursuant to Paragraph

SIXTH;(10) of the Declaration of Trust dated August 4, 2004. I have executed and delivered an Amendment of Declaration of Trust and Cancellation of Private Annuity Contract document wherein I have agreed to amend the original Trust and have further renounced any and all rights I may have now or in the future to any benefits from the Trust by way of the Declaration of Trust document and the Private Annuity Contract executed pursuant to the terms of the Declaration of Trust.

2. I have not received, and I shall not receive in the future, any consideration in money or monies worth for such renunciation from any person.

3. I make this Affidavit in compliance with New York EPTL Section 2-1.11(2).

---

DAVID L. SMITH

Sworn to before me this  
\_\_\_ day of January, 2014.

---

Notary Public

UNITED STATES DISTRICT COURT  
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of the David L. and Lynn A. Smith Irrevocable Trust  
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T. SMITH, and NANCY MCGINN,

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*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**AFFIDAVIT OF DEFENDANT/ INTERVENOR,  
GEOFFREY R. SMITH**

**GEOFFREY R. SMITH**, being duly sworn, deposes and says:

1. I am the Trustee of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004, (hereinafter, "the Trust"), and I am one of two living beneficiaries to the Trust. My sister, Lauren T. Smith is the only other beneficiary.

2. I have been advised that the creators of the Trust originally provided at Paragraph SIXTH;(10) of the Declaration of Trust authority for the creation of a private annuity agreement by the Trust for the purposes of lawfully avoiding gift tax upon the principle originally utilized to fund the Trust.

3. I am further advised that the gift tax laws have changed and that the assets currently held by the Trust can remain in the Trust, gift tax free, without the necessity of the continuation of an authorization for a private annuity or the Private Annuity Contract dated August 31, 2004.

4. I am advised that the creators of the Trust wish to amend the Trust to delete Paragraph SIXTH;(10) of the Declaration of Trust and to terminate the right of the Trust to enter into a private annuity agreement and to revoke, cancel and terminate the Private Annuity Contract which was established pursuant to the terms of that provision on August 31, 2004.

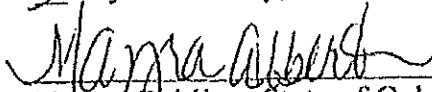
5. I am further advised that the creators of the Trust wish to terminate the Private Annuity Contract dated August 31, 2004 and that the beneficiaries of the annuity created thereby, David L. Smith and Lynn A. Smith, wish to renounce and terminate any rights which they may have now, or in the future, pursuant to the terms of the Private Annuity Contract.

6. As Trustee of the Trust, I believe it is in the best interest of the Trust and as a beneficiary I believe it is in the best interest of the beneficiaries of the Trust, the Donors' children, to terminate the authority for private annuity agreements and to cancel and void the Private Annuity Contract dated August 31, 2004 and its provisions.

7. As a beneficiary of the Trust, I consent to the Amendment of Declaration of Trust to delete the authority granted by Paragraph SIXTH;(10) and to cancel, void and terminate the Private Annuity Contract dated August 31, 2004.

  
\_\_\_\_\_  
GEOFFREY R. SMITH

Sworn to before me this  
3<sup>rd</sup> day of January, 2014.

  
\_\_\_\_\_  
Notary Public - State of Colorado

MAYRA ALBERTO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014017618  
MY COMMISSION EXPIRES OCTOBER 1, 2017

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

vs.

McGINN, SMITH & CO., INC.,  
McGINN, SMITH ADVISORS, LLC,  
McGINN, SMITH CAPITAL HOLDINGS CORP.,  
FIRST ADVISORY INCOME NOTES, LLC,  
FIRST EXCELSIOR INCOME NOTES, LLC,  
FIRST INDEPENDENT INCOME NOTES, LLC,  
THIRD ALBANY INCOME NOTES, LLC,  
TIMOTHY M. McGINN, DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, Trustee  
of the David L. and Lynn A. Smith Irrevocable Trust  
U/A 8/04/04, GEOFFREY R. SMITH, LAUREN  
T. SMITH, and NANCY McGINN,

Case No.: 1:10-CV-457  
(GLS/DRH)

*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

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**AFFIDAVIT OF DEFENDANT,  
LAUREN T. SMITH**

**LAUREN T. SMITH**, being duly sworn, deposes and says:

1. I am a beneficiary of the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 4, 2004, (hereinafter, "the Trust"), and I am one of two living beneficiaries to the Trust. My brother, Geoffrey R. Smith is the only other beneficiary.

2. I have been advised that the creators of the Trust originally provided at Paragraph SIXTH;(10) of the Declaration of Trust authority for the creation of a private annuity agreement by the Trust for the purposes of lawfully avoiding gift tax upon the principle originally utilized to fund the Trust.

3. I am further advised that the gift tax laws have changed and that the assets currently held by the Trust can remain in the Trust, gift tax free, without the necessity of the continuation of authorization for a private annuity or the Private Annuity Contract dated August 31, 2004.

4. I am advised that the creators of the Trust wish to amend the Declaration of Trust to delete Paragraph SIXTH;(10) of the Declaration of Trust to terminate the right of the Trust to enter into a private annuity agreement and to revoke, cancel and terminate the Private Annuity Contract which was established pursuant to the terms of that provision on August 31, 2004.

5. I am further advised that the creators of the Trust wish to terminate the Private Annuity Contract dated August 31, 2004 and that the beneficiaries of the annuity created thereby, David L. Smith and Lynn A. Smith, wish to renounce and terminate any rights which they may have now, or in the future, pursuant to the terms of that Private Annuity Contract.

6. As a beneficiary of the Trust, I believe it is in the best interest of the beneficiaries of the Trust, the Donors' children, to terminate the authority for private annuity agreements and to cancel and void the Private Annuity Contract dated August 31, 2004 and its provisions.

7. As a beneficiary of the Trust, I consent to the Amendment of Declaration of Trust to delete the authority granted by Paragraph SIXTH;(10) and I further consent to cancel, void and terminate the Private Annuity Contract dated August 31, 2004.

  
LAUREN T. SMITH

Sworn to before me this  
3<sup>rd</sup> day of January, 2014.

  
Notary Public - State of Colorado

