

FILED  
8/28/2014 3:31:15 PM  
Donna Kay McKinney  
Bexar County District Clerk  
Accepted By: Monica Hernandez

FILED  
9/8/2014 1:54:38 PM  
Donna Kay McKinney  
Bexar County District Clerk  
Accepted By: Debra Garay

(Consolidated Under)  
**CAUSE NO. 2010-CI-10977**

<b>JOHN K. MEYER, ET AL.</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>Plaintiffs,</b>	<b>§</b>	
	<b>§</b>	
<b>vs.</b>	<b>§</b>	
	<b>§</b>	
<b>JP MORGAN CHASE BANK, N.A.</b>	<b>§</b>	
<b>INDIVIDUALLY/CORPORATELY</b>	<b>§</b>	<b>225<sup>TH</sup> JUDICIAL DISTRICT</b>
<b>AND AS TRUSTEE OF THE SOUTH</b>	<b>§</b>	
<b>TEXAS SYNDICATE TRUST</b>	<b>§</b>	
<b>and GARY P. AYMES,</b>	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	<b>BEXAR COUNTY, TEXAS</b>

**SUBPOENA REQUIRING JOHN MCBROOM  
TO APPEAR FOR ORAL AND VIDEOTAPED DEPOSITION**

TO: John McBroom  
Highland Minerals, Inc.  
201 Jackson Place  
Corpus Christi, Texas 78411

Greetings:

YOU ARE COMMANDED to attend and give testimony at a deposition on oral questions at the following time and place:

TIME: 9:30 a.m.  
DATE: September 12, 2014  
PLACE:: Highland Minerals, Inc.  
201 Jackson Place  
Corpus Christi, Texas 78411

Your deposition will also be video recorded. The notice to take your deposition is attached hereto as **Exhibit A**.

## **DUTIES OF PERSON SERVED WITH SUBPOENA**

You are advised under Texas Rules of Civil Procedure 176, a person served with a discovery subpoena has certain rights and obligations. Rule 176.6 provides:

(a) *Compliance required.* Except as provided in this subdivision, a person served with a subpoena must comply with the command stated in the subpoena unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) *Organizations.* If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) *Production of documents or tangible things.* A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A non-party's production of a document authenticates the document for use against the non-party to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

(d) *Objections.* A person commanded to produce and permit inspection and copying of designated documents and things may serve on the party requesting issuance of the subpoena--before the time specified for compliance--written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) *Protective orders.* A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things may move for a protective order under Rule 192.6(b)--before the time specified for compliance--either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve

the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

**WARNING**

**Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.**

This **subpoena** is issued at the request of Plaintiffs and Plaintiff-Intervenors, whose attorneys of record are listed below.

Date of issuance: September 12, 2014.

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, Minnesota 55415-1152  
(612) 339-2020 - Telephone  
(612) 336-9100 - Facsimile  
**ATTORNEYS FOR INTERVENOR-PLAINTIFFS,  
LINDA ALDRICH, ET AL.**

Jim L. Flegle  
State Bar No. 07118600  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Dr., Suite 900  
Dallas, Texas 75251  
(214) 572-1700 - Telephone  
(214) 572-1717 - Facsimile  
**ATTORNEYS FOR PLAINTIFFS,  
EMILIE BLAZE, ET AL.**



(Consolidated Under)  
2010-CI-10977

JOHN K. MEYER, ET AL.,  
Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST  
and GARY P. AYMES,  
Defendants.

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IN THE DISTRICT COURT

225TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**NOTICE OF INTENTION TO TAKE ORAL AND  
VIDEOTAPED DEPOSITION OF JOHN MCBROOM**

TO: John McBroom  
Highland Minerals, Inc.  
201 Jackson Place  
Corpus Christi, Texas 78411

Please take notice that on behalf of Plaintiffs and Plaintiff-Intervenors, the oral and videotaped deposition of John McBroom will be taken upon oral examination beginning at 9:30 a.m. on September 12, 2014, and his answers may be used as testimony in the above-numbered and entitled cause. Said deposition will be taken at the offices of Highland Minerals, Inc., 201 Jackson Place, Corpus Christi, Texas 78411, by an official court reporter.

Please take notice that this deposition will be video recorded.

Respectfully submitted,

John B. Massopust (pro hac vice)  
Matthew J. Gollinger (pro hac vice)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000

**EXHIBIT A**

Minneapolis, Minnesota 55415 1152  
(612) 339 2020 Telephone  
(612) 336 9100 Facsimile  
ATTORNEYS FOR INTERVENOR PLAINTIFFS,  
LINDA ALDRICH, ET AL.

Jim L. Flegle  
State Bar No. 07118600  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Dr., Suite 900  
Dallas, Texas 75251  
(214) 572 1700 Telephone  
(214) 572 1717 Facsimile  
ATTORNEYS FOR PLAINTIFFS,  
EMILIE BLAZE, ET AL.

Daniel J. T. Sciano  
State Bar No. 17881200  
Richard Tinsman  
State Bar No. 20064000  
Sharon C. Savage  
State Bar No. 0474200  
TINSMAN & SCIANO, INC.  
10107 McAllister Fwy  
San Antonio, Texas 78216  
Telephone: (210) 225 3121  
Facsimile: (210) 225-6235

George H. Spencer, Jr.  
State Bar No. 18921001  
Robert Rosenbach  
State Bar No. 17266400  
CLEMENS & SPENCER, P.C.  
112 East Pecan Street, Suite 1300  
San Antonio, Texas 78205  
Telephone: (210) 227-7121  
Facsimile: (210) 227-0732

DROUGHT, DROUGHT & BOBBITT, LLP  
2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
(210) 225-4031 Telephone  
(210) 222-0586 Telecopier

By:           /s/ James L. Drought            
James L. Drought  
State Bar No. 06135000  
ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent  
by:

U.S. Certified Mail, Return Receipt Requested to:  
 Facsimile to:  
 First Class Mail to:  
 Hand Delivery to:  
 Efiling Service to:

Mr. Patrick K. Sheehan  
Mr. Rudy Garza  
Mr. David Jed Williams  
Hornberger Sheehan Fuller Beiter Wittenberg & Garza Incorporated  
7373 Broadway, Suite 300  
San Antonio, TX 78209

Mr. John C. Eichman  
Mr. Amy S. Bowen  
Hunton & Williams LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

Mr. Fred W. Stumpf  
Boyer Short, A Professional Corporation  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

on this the 28<sup>th</sup> day of August, 2014.

          /s/ James L. Drought            
James L. Drought

**RETURN OF SUBPOENA**

I certify that I served the annexed Subpoena by delivering a copy together with a fee of \$10.00 to John McBroom, Highland Minerals, Inc., 201 Jackson Place, Corpus Christi, Texas 78411, on the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**AFFIDAVIT  
ATTACHED**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas



**AFFIDAVIT OF SERVICE**

State of Texas

County of Bexar

225th District Court

Case Number: 2010-CI-10977 Court Date: 9/12/2014 9:30 am



2014001291

Plaintiff:  
**JOHN K MEYER et al**

vs.

Defendant:  
**JP MORGAN CHASE BANK, NA INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH TEXAS SYNDICATE TRUST  
AND GARY P AYMES**

For:  
James Drought  
Drought Drought & Bobbitt, LLP  
112 E. Pecan Street, Suite 2900  
San Antonio, TX 78205

Received by Kim Tindall & Associates Inc. on the 29th day of August, 2014 at 11:52 am to be served on **John McBroom, 201 Jackson Place, Highland Minerals Inc, Corpus Christi, Nueces County, TX 78411.**

I, Ray Kershaw, being duly sworn, depose and say that on the **4th day of September, 2014 at 9:05 am, I:**

**INDIVIDUALLY and PERSONALLY Executed**, by delivering a true copy of the **\$10.00 Witness Fee and Subpoena for Deposition and Notice Of Deposition** with the date of service endorsed thereon by me, to **John McBroom** at the Work address of **600 Leopard Street Suite 1812, Corpus Christi, Nueces County, TX 78401.**

**Description of Person Served:** Age: 40s, Sex: M, Race/Skin Color: White, Height: 5'10", Weight: 200, Hair: Dark Brown, Glasses: N

I am over eighteen, not a party to nor interested in the outcome of the above numbered suit and that I am certified to serve process in the State of Texas. I have personal knowledge of the facts set forth in the foregoing affidavit and declare that the statements therein contained are true and correct. I am familiar with TRCP. I have never been convicted of a Felony or Misdemeanor involving Moral Turpitude.

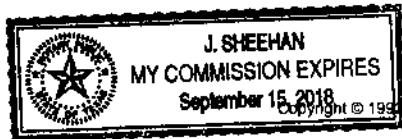
**Ray Kershaw**  
SCH-5024 Exp: 4-30-2015

**Kim Tindall & Associates Inc.**  
**16414 San Pedro Suite 900**  
**San Antonio, TX 78232**  
**(210) 697-3400**

Our Job Serial Number: ALN-2014006945  
Ref: 2014001291

Subscribed and Sworn to before me on the 4th day  
of September, 2014 by the affiant who is  
personally known to me.

NOTARY PUBLIC





CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,  
Plaintiffs,

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IN THE DISTRICT COURT

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VS.

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST AND  
GARY AYMES

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

BY  
Deputy  
[Signature]

14 SEP -4 PM 1:56

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY

**SUBPOENA ISSUED IN THE NAME OF THE STATE OF TEXAS**

**TO ANY PEACE OFFICER, CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON DULY AUTHORIZED TO SERVE OR EXECUTE SUBPOENAS:**

This Subpoena is directed to:

**JOHN FLANNERY  
4 PLUM LANE  
SAN ANTONIO, TEXAS 78218**

This Subpoena directs JOHN FLANNERY to appear at **9:30 a.m. on September 15, 2014**, for deposition pursuant to the attached Notice of Intention to Take Oral/Videotaped Deposition of John Flannery.

This Subpoena is issued at the instance and request of Defendant JPMorgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust. The attorneys of record for Defendant are: Patrick K. Sheehan and David Jed Williams, Hornberger Sheehan Fuller & Garza Incorporated, The Quarry Heights Building, 7373 Broadway, Suite 300, San Antonio, Texas 78209.

**THIS SUBPOENA IS ISSUED UNDER TEXAS RULE OF CIVIL PROCEDURE 176. RULE 176.8(a) STATES: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.**

This Subpoena is issued by David Jed Williams, attorney for Defendant, on behalf of Defendant.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
GARZA INCORPORATED**

The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209  
Tel: (210) 271-1700  
Fax: (210) 271-1730

By: /s/David Jed Williams

Patrick K. Sheehan  
State Bar No. 18175500  
Rudy A. Garza  
State Bar No. 07738200  
David Jed Williams  
State Bar No. 21518060

**HUNTON & WILLIAMS LLP**

1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
(214) 979-3000 - Telephone  
(214) 880-0011 – Facsimile  
Charles A. Gall  
State Bar No. 07281500  
John C. Eichman  
State Bar No. 06494800

**ATTORNEYS FOR DEFENDANT,  
JPMORGAN CHASE BANK, N.A.,  
IN ALL ITS CAPACITIES**

RETURN

CAME TO HAND ON THE 28<sup>th</sup> DAY OF AUGUST 2014, AT 1:45 O'CLOCK  
12 .M. AND EXECUTED (~~NOT EXECUTED~~) ON THE 28<sup>th</sup> DAY OF August 2014,  
BY DELIVERING TO **JOHN FLANNERY**, A TRUE COPY OF THIS SUBPOENA UPON  
WHICH I ENDORSED THE DATE OF DELIVERY. CAUSE OF FAILURE TO EXECUTE  
THIS SUBPOENA IS \_\_\_\_\_.

TOTAL FEES: \$ \_\_\_\_\_

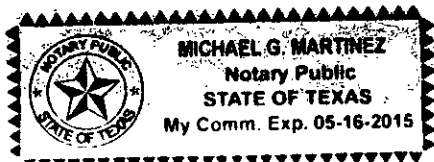
Mike McEwen  
BEXAR COUNTY, TEXAS

BY: Mike McEwen # SCH 2243  
Exp. 8-31-15

NON-PEACE OFFICER VERIFICATION

VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO THIS 29<sup>th</sup> DAY OF August 2014.



Michael G. Martinez  
Notary Public, State of Texas

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	
JPMORGAN CHASE BANK, N.A.	§	225 <sup>TH</sup> JUDICIAL DISTRICT
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
and GARY P. AYMES	§	BEXAR COUNTY, TEXAS

**DEFENDANT'S NOTICE OF INTENTION TO TAKE  
ORAL/VIDEOTAPED DEPOSITION OF JOHN FLANNERY**

Please take notice that Defendant will take the oral deposition of John Flannery at the following date, time, and place:

**Date: September 15, 2014**

**Time: 9:30 a.m.**

**Place: Tinsman & Sciano, Inc.  
10107 McAllister Frwy.  
San Antonio, Texas 78216**

The deposition will be recorded by stenographic means and will be videotaped. The deposition will continue from day to day until completed and may be used as evidence in the trial of this matter.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
GARZA INCORPORATED**

The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209  
Tel: (210) 271-1700 Fax: (210) 271-1730

By: /s/ David Jed Williams  
Patrick K. Sheehan  
State Bar No. 18175500  
Rudy A. Garza  
State Bar No. 07738200  
David Jed Williams  
State Bar No. 21518060

**HUNTON & WILLIAMS LLP**

1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202  
Tel.: (214) 979-3000; Fax: (214) 880-0011  
Charles A. Gall  
State Bar No. 07281500  
Email: [cgall@hunton.com](mailto:cgall@hunton.com)  
John C. Eichman  
State Bar No. 06494800  
Email: [jeichman@hunton.com](mailto:jeichman@hunton.com)  
Amy S. Bowen  
State Bar No. 24028216  
Email: [abowen@hunton.com](mailto:abowen@hunton.com)

**ATTORNEYS FOR DEFENDANT,  
JPMORGAN CHASE BANK, N.A.,  
IN ALL ITS CAPACITIES**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document was served upon the following, in the manner indicated, on the 28th day of August 2014:

Mr. George Spencer, Jr.  
Mr. Robert Rosenbach  
CLEMENS & SPENCER  
112 East Pecan St., Suite 1300  
San Antonio, Texas 78205

**VIA ELECTRONIC SERVICE**

Mr. James L. Drought  
Ian Bolden  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan St., Suite 2900  
San Antonio, Texas 78205

**VIA ELECTRONIC SERVICE**

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205

**VIA ELECTRONIC SERVICE**

Mr. David R. Deary  
Mr. Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

**VIA ELECTRONIC SERVICE**

Mr. John B. Massopust  
Mr. Matthew Gollinger  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

**VIA ELECTRONIC SERVICE**

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, California 94104

**VIA ELECTRONIC SERVICE**

Mr. Fred W. Stumpf  
GLAST, PHILLIPS & MURRAY  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

**VIA ELECTRONIC SERVICE**

/s/ David Jed Williams  
\_\_\_\_\_  
David Jed Williams

(Consolidated Under)  
2010-CI-10977

<b>JOHN K. MEYER, ET AL.,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>JP MORGAN CHASE BANK, N.A.</b>	§	<b>225TH JUDICIAL DISTRICT</b>
<b>INDIVIDUALLY/CORPORATELY</b>	§	
<b>AND AS TRUSTEE OF THE SOUTH</b>	§	
<b>TEXAS SYNDICATE TRUST</b>	§	
<b>and GARY P. AYMES,</b>	§	
<b>Defendants.</b>	§	<b>BEXAR COUNTY, TEXAS</b>

**PLAINTIFFS' MOTION TO COMPEL**  
(Chesapeake to Produce Documents in Response to Deposition Subpoena)

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Plaintiffs, John K. Meyer, et al., in the above-styled and numbered cause, and file this Motion to Compel Third Party Chesapeake Exploration Company ("Chesapeake") to answer Requests for Production and would respectfully show the Court the following:

**Introduction**

1. JP Morgan was the trustee of a trust known as the South Texas Syndicate ("STS") until it was forced to resign by court order dated July 19, 2013. A successor trustee has been selected and approved by the Court. However there is still litigation pending against JP Morgan.

3. On or about July 14, 2014, Plaintiffs served their first Deposition Subpoena to Chesapeake. On or about August 8, 2014, Plaintiffs served their second Deposition Subpoena to Chesapeake. Chesapeake responded by letter stating that it did not intend to produce the requested documents.



### **Texas Courts' Subpoena Power**

4. Chesapeake first complains that the Texas court's subpoena power does not extend to documents and entities in Oklahoma. Although Chesapeake may be organized in Oklahoma, it is a registered entity with the Texas Secretary of State, listing its office in Dallas, Texas and having a registered agent to serve. Plaintiffs' have simply served their subpoena upon Chesapeake's registered agent in Texas and asked a Chesapeake representative to appear within their own office.

### **Relevance**

5. The Plaintiffs are beneficiaries of the Trust and have alleged that JP Morgan breached its fiduciary duties by failing to provide information regarding the Trust and failing to prudently manage the Trust assets, including entering into oil and gas leases with certain companies at inadequate lease terms. JPMorgan has subpoenaed a number of oil and gas exploration and production companies to produce their lease files, with the notable exception of Chesapeake. The Court has already required these third parties to produce the requested documents with some limitations. JPMorgan should not be allowed to "cherry-pick" selected lease information.

### **Confidentiality**

5. Next, Chesapeake alleges that the information sought is proprietary and confidential. However, the Court has already signed two confidentiality orders that are more than sufficient to protect Chesapeake's interest.

6. On November 11, 2013, the parties to this lawsuit signed an Agreed Protective Order preventing the disclosure of confidential information and on February

13, 2013, another protective order was entered that allows third parties to designate their produced documents as confidential in this case.

7. WHEREAS, PREMISED CONSIDERED, Plaintiffs pray that this court grant Plaintiffs' Motion to Compel and order Chesapeake to appear and produce the documents requested in their Deposition Subpoenas and grant any other relief as to which they may be entitled.

Respectfully submitted,

John B. Massopust (pro hac vice)  
Matthew J. Gollinger (pro hac vice)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, Minnesota 55415 1152  
(612) 339 2020 Telephone  
(612) 336 9100 Facsimile  
ATTORNEYS FOR INTERVENOR PLAINTIFFS,  
LINDA ALDRICH, ET AL.

Jim L. Flegle  
State Bar No. 07118600  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Dr., Suite 900  
Dallas, Texas 75251  
(214) 572 1700 Telephone  
(214) 572 1717 Facsimile  
ATTORNEYS FOR PLAINTIFFS,  
EMILIE BLAZE, ET AL.

Daniel J. T. Sciano  
State Bar No. 17881200  
Richard Tinsman  
State Bar No. 20064000  
Sharon C. Savage  
State Bar No. 0474200  
TINSMAN & SCIANO, INC.  
10107 McAllister Fwy  
San Antonio, Texas 78216  
Telephone: (210) 225 3121  
Facsimile: (210) 225-6235





(Consolidated Under)  
CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
VS.	§	BEXAR COUNTY, TEXAS
	§	
JPMORGAN CHASE BANK,	§	
N.A., ET AL.,	§	
	§	
Defendants.	§	225th JUDICIAL DISTRICT

**EP ENERGY E&P COMPANY, L.P.'S OBJECTIONS TO PLAINTIFF MEYER'S  
DEPOSITION SUBPOENA DUCES TECUM TO PRODUCE DOCUMENTS**

TO: Plaintiffs John K. Meyer, et al. by and through one of their attorneys of record, James L. Drought, Drought, Drought & Bobbitt, LLP. 112 East Pecan Street, Suite 2900. San Antonio, TX 78205

EP Energy E&P Company, L.P. ("EP Energy"), a non-party to the above cited litigation, objects as follows to Plaintiffs John K. Meyer, et al.'s Deposition Subpoena Duces Tecum To Produce Documents dated August 8, 2014 (the "Subpoena") and issued at the instance and request of Plaintiffs, John K. Meyer, et al. ("Meyer") to EP Energy.<sup>1</sup>

**OBJECTIONS TO REQUESTS FOR PRODUCTION  
IN SUBPOENA DUCES TECUM**

REQUEST FOR PRODUCTION NO. 1: The executed leases.

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 2: Any option agreements, letters of intent to lease or side agreements relative to the leases.

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<sup>1</sup> Along with these Objections, EP Energy is also filing a Motion for Protection in the Judicial District Court of Harris County, Texas requesting protection from the discovery sought in the Subpoena.

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 3: Any agreements relative to amendment, modification or extension of the leases.

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 4: Any lease data sheets relative to the lease.

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 5: Sufficient documents to identify the bonus paid for the lease (total bonus and bonus per net mineral acre).

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 6: Any Lease Purchase Report ("LPR").

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

REQUEST FOR PRODUCTION NO. 7: Any receipt of paid draft relative to the lease.

**RESPONSE:** EP Energy objects to this request because it seeks documents that are proprietary, trade secrets or other confidential commercial information. EP Energy objects to this request to the extent it seeks documents that are not relevant to the parties' claims and defenses in the underlying action.

Dated: August 28, 2014.

Respectfully submitted,

*/s/ James A. Porter*

---

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P.O. Box 4660  
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COUNSEL FOR NON-PARTY  
EP ENERGY E&P COMPANY, L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of August, 2014, a true and correct copy of the foregoing document was served either via messenger, via certified mail return receipt requested, via facsimile or via U.S. Mail on all counsel of record as listed below:

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Houston, TX 77046

*/s/ James A. Porter*

\_\_\_\_\_  
James A. Porter



CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
	§	
V.	§	225TH JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
	§	
Defendant.	§	BEXAR COUNTY, TEXAS

**NOTICE OF FILING RULE 11 AGREEMENT**

Now comes JPMORGAN CHASE BANK, N.A. (“Defendant”), in the above styled and referenced cause, and files the attached Rule 11 Agreement.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER &  
GARZA INCORPORATED**  
7373 Broadway, Suite 300  
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(210) 271-1740 Fax

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*and*

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**ATTORNEYS FOR DEFENDANT  
JPMORGAN CHASE BANK, N.A., AS  
TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST**



**Hornberger Sheehan Fuller & Garza**  
INCORPORATED

September 12, 2014

Mr. Shayne D. Moses  
Moses, Palmer & Howell, L.L.P.  
Oil & Gas Building  
309 West 7th Street, Suite 815  
Fort Worth, Texas 76102

Re: Cause No. 2010-CI-10977, *John K. Meyer, et al. vs. JP Morgan Chase Bank, N.A., et al.*, in the 225th Judicial District Court of Bexar County, Texas

Dear Mr. Moses:

This letter confirms our agreement as follows with regard to the attached Order dated September 11, 2014:

1. Anadarko agrees to produce the information ordered by the Court with regard to the Diamond H. Lease only (no. 3 of Exhibit A to the Anadarko subpoena);
2. Defendants agree not to seek to enforce the Court's Order against Anadarko with regard to any other information that Anadarko has been ordered to produce under the attached Order; and
3. Anadarko agrees not to seek reconsideration of the Order and or to file a petition for writ of mandamus.

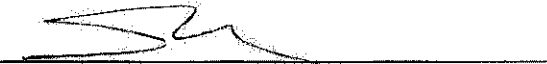
Please sign below to indicate your acceptance and agreement to the filing of this letter as a TRCP 11 agreement.

---

Sincerely,

  
Ted Williams

**AGREED AND ACCEPTED:**

  
Mr. Shayne D. Moses

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, et al.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	225TH JUDICIAL DISTRICT
JP MORGAN CHASE BANK, N.A. ,	§	
INDIVIDUALLY/CORPORATELY AND	§	
AS TRUSTEE OF THE SOUTH TEXAS	§	
SYNDICATE TRUST,	§	
	§	
Defendant.	§	BEXAR COUNTY, TEXAS

**NON-PARTY MARUBENI CORPORATION'S RESPONSE TO PLAINTIFFS' MOTION  
FOR IN CAMERA INSPECTION AND ORDER COMPELLING PRODUCTION OF  
RECORDS RESPONSIVE TO DISCOVERY SERVED ON  
JP MORGAN CHASE BANK, N.A.**

TO THE HONORABLE JUDGE OF SAID COURT:

Non-Party, Marubeni Corporation ("Marubeni"), asks the Court to deny Plaintiffs' "Motion for In Camera Inspection and Order Compelling Production of Records Responsive to Discovery Served on JP Morgan Chase Bank, N.A." and, pursuant to Texas Rule of Civil Procedure 192.6(a) and Texas Finance Code Section 59.006, for protection from Plaintiffs' discovery to Defendant, JP Morgan Chase Bank, N.A. pertaining to Marubeni and its affiliates and subsidiaries as a customer of JP Morgan, and would respectfully show the Court as follows:

**I.  
INTRODUCTION**

1. Neither Marubeni nor any of its subsidiaries or affiliates are a party to this suit. Plaintiffs, who are beneficiaries of the South Texas Syndicate ("STS") Trust, seek the disclosure from defendant, JP Morgan Chase Bank, N.A. ("JP Morgan"), of eight expansive categories of highly confidential "transactions, activities, services, or interests" by and between JP Morgan and Marubeni and/or Marubeni's affiliates or subsidiaries.

2. Marubeni has previously withheld its consent in writing to disclosure of the requested information pursuant to Texas Finance Code section 59.006 and filed a motion for protection with this Court. Plaintiffs now seek an order permitting an in camera inspection of the confidential and irrelevant information pertaining to Marubeni and its affiliates and subsidiaries and an order compelling JP Morgan to produce such information to Plaintiffs. As an entity affected by Plaintiffs' discovery request to JP Morgan, Marubeni has standing and is entitled to be heard at the September 12, 2014 oral hearing on Plaintiffs' motion on Marubeni's objections and the bases for its non-consent to the requested discovery.<sup>1</sup>

3. The Court should deny Plaintiffs' motion and protect Marubeni from disclosure by JP Morgan of the information requested in Interrogatory No. 4 pertaining to Marubeni and its affiliates and subsidiaries for the following reasons:

- ***Not relevant or reasonably calculated.*** There is no "transaction, activity, service, or interest" between JP Morgan and Marubeni or its affiliates or subsidiaries relating to any STS Trust assets. Rather, the only Marubeni entity that owns an interest in any oil and gas property that is part of the STS Trust portfolio—non-party Marubeni Eagle Ford, LP—secured its non-operating interest not from JP Morgan but through a confidential and proprietary arms-length negotiated business transaction with another non-party, Hunt Oil Company, several years (and another intervening lease transaction) after Plaintiffs contend JP Morgan "mismanaged" an initial lease transaction with Broad Oak. Plaintiffs' sole purported basis for fishing for extensive and highly confidential information regarding non-party Marubeni, therefore, does not exist.
- ***Facially overbroad.*** Plaintiffs' Interrogatory No. 4 to JP Morgan is overbroad on its face because it seeks information about Marubeni "and any of its affiliates or subsidiaries, including but not limited to Marubeni Eagle Ford, LP," it far exceeds information relating to JP Morgan's position as trustee of the STS Trust, and it inexplicably seeks a decade's worth of information.

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<sup>1</sup> See, e.g., TEX. R. CIV. P. 192.6 ("A person from whom discovery is sought, ***and any other person affected by the discovery request***, may move . . . for an order protecting that person from the discovery sought.") (emphasis added); *In re CI Host, Inc.*, 92 S.W.3d 514, 517 (Tex. 2002) (recognizing that the court should give "serious consideration" to the interests of a non-party whose information is sought in discovery).

- **Marubeni's reasonable and judicially recognized expectation and right of privacy in its financial affairs and information.** Plaintiffs cite only to the portion of section 59.006 of the Texas Finance Code that states that the statute does not create a privacy right in a customer record; however, Plaintiffs tellingly fail to acknowledge or disclose that courts have recognized that individuals and companies have a personal right and expectation of privacy in their financial affairs and information.

These and other flaws in Plaintiffs' motion will be the subject of this response and the bases for Marubeni's request for protection from disclosure by JP Morgan of such information.

## **II. BACKGROUND**

4. By letter dated August 15, 2014, Plaintiffs served a "Notice of Request for Information Pursuant to Section 59.006, Texas Finance Code," which notified Marubeni that Plaintiffs "have requested discovery of information from JP Morgan relating to Marubeni and affiliates . . . as a customer of the financial institution."<sup>2</sup> Plaintiffs' section 59.006 notice to Marubeni attached their fifth set of interrogatories to JP Morgan, one of which seeks details of eight broad and highly confidential categories of "transactions, activities, services, or interests" between JP Morgan and Marubeni and "any of its affiliates or subsidiaries:"

**INTERROGATORY NO. 4:** Describe with particularity each of the following as between You and Marubeni Corporation and any of its affiliates or subsidiaries, including, but not limited to Marubeni Eagle Ford LP, a Texas limited partnership (collectively, "Marubeni") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

- (a) Any forms of ownership or investment as between You and Marubeni from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and Marubeni from January 1, 2005 to the present.
- (c) Any forms of economic relationships as between You and Marubeni from January 1, 2005 to the present.

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<sup>2</sup> See Exhibit 1.

- (d) Any forms of loans, including lines of credit, or other facilities of credit as between You and Marubeni from January 1, 2005 to the present.
- (e) Any forms of derivative or hedging relationships as between You and Marubeni from January 1, 2005 to the present.
- (f) Any joint ventures or partnerships as between You and Marubeni from January 1, 2005 to the present.
- (g) The nature and duration of any services provided by You to Marubeni from January 1, 2005 to the present.
- (h) The amount and timing of any compensation received by You from Marubeni for any business services from January 1, 2005 to the present.<sup>3</sup>

The notice commands that Marubeni execute an attached written consent form “not later than August 29, 2014.”<sup>4</sup>

5. Marubeni responded in writing on August 28, 2014 and specified that it objects and does not consent to or otherwise authorize JP Morgan to comply with Plaintiffs’ request (Interrogatory No. 4) pertaining to Marubeni and its affiliates and subsidiaries.<sup>5</sup> Though a non-party customer like Marubeni’s procedure to object is to simply withhold written consent authorizing the financial institution to comply with the request,<sup>6</sup> Marubeni filed in this Court on August 29, 2014 a motion for protection out of an abundance of caution and to detail its

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<sup>3</sup> See Exhibit 1 at *Plaintiffs’ Fifth Set of Interrogatories to Defendant J.P. Morgan Chase Bank, N.A.* (Interrogatory No. 4), p. 9. “You,” as used by Plaintiffs in Interrogatory 4, means “JP Morgan Chase Bank, N.A., . . . including but not limited to, any and all past or present partners, officers, directors, managers, employees, attorneys, representatives, agents, shareholders, affiliates, subsidiaries, parents, successors, assigns, or any entity in which Defendant has an ownership interest, individually, collectively, or in any combination and/or permutation whatsoever.” See Exhibit 1 at *Plaintiffs’ Fifth Set of Interrogatories to Defendant J.P. Morgan Chase Bank, N.A.* (Definition No. 12), p. 5.

<sup>4</sup> See Exhibit 1.

<sup>5</sup> See Exhibit 2.

<sup>6</sup> See TEX. FIN. CODE § 59.006(d) (specifying sole means of obtaining access to records of nonparty is to file motion seeking in camera inspection). When, however, a party requests records from a financial institution about one of its customers *who is a party to the suit*, the bank’s customer has the burden of preventing or limiting the financial institution’s compliance with a record request by seeking an appropriate remedy, including filing a motion to quash the record or a motion for protective order. See TEX. FIN. CODE § 59.006(e) (“A customer that is a party to the proceeding . . .”).



objections and bases for withholding consent.<sup>7</sup> On September 4, 2014, Plaintiffs filed their “Motion for In Camera Inspection and Order Compelling Production of Records Responsive to Discovery Served on JP Morgan Chase Bank, N.A.” and set the motion for oral hearing on September 12, 2014.

**III.**  
**ARGUMENT AND AUTHORITIES**

6. A court may issue an order protecting a person served with or affected by a discovery subpoena from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights. *See* TEX. R. CIV. P. 192.6(b); TEX. R. CIV. P. 176.6(e). A court has the authority to limit the scope of discovery based on the needs and circumstances of the case. TEX. R. CIV. P. 192 cmt. 7. This Court should deny Plaintiffs’s motion and protect Marubeni and its affiliates and subsidiaries from disclosure of the irrelevant yet highly confidential and sensitive information sought from JP Morgan in Interrogatory No. 4 for several reasons.

***A. Plaintiffs’ Requested Information is Not Relevant or Reasonably Calculated Because Marubeni Did Not Contract with JP Morgan Regarding STS Trust Assets***

7. First, the request for information regarding Marubeni and its affiliates and subsidiaries and the eight expansive categories of highly confidential “transactions, activities, services, or interests” enumerated in Interrogatory No. 4 is not relevant or reasonably calculated to lead to the discovery of admissible evidence. A discovery request must be reasonably tailored to include only relevant matters. *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998). Information is not discoverable if it is not relevant to the subject matter of the pending action or if it will not lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a); TEX. R.

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<sup>7</sup> *See* Non-Party Marubeni Corporation’s Motion for Protection, electronically filed on August 29, 2014.

EVID. 501. The scope of discovery is confined by the subject matter of the case and reasonable expectations of obtaining information that will help resolve the dispute. TEX. R. CIV. P. 192 cmt. 1.

8. Plaintiffs evidently theorize in this suit that JP Morgan breached its fiduciary duty to them by allegedly cutting deals relating to STS Trust assets that were favorable to certain energy companies, including apparently Marubeni or its affiliates/subsidiaries, and detrimental (*i.e.*, not fair market value) to Plaintiffs as trust beneficiaries because of JP Morgan's banking or other relationship with those energy companies:

- “The information is relevant because it sheds light on Plaintiffs’ claims of self-dealing and breach of the duty of loyalty against JP Morgan.” (Pls’ Motion at ¶ 2)
- “JP Morgan, as trustee, mismanaged the STS Trust by, among other things, entering into imprudent leases of the trust’s mineral interests in the Eagle Ford Shale.” (Pls’ Motion at ¶ 3)
- “Plaintiffs’ claims against JP Morgan turn on, among other things, its mismanagement of several lease transactions conveying mineral interests owned by the STS Trust.” (Pls’ Motion at ¶ 4)
- “Plaintiffs allege that JP Morgan’s mismanagement resulted in imprudent and low bonus compensation to the STS Trust and unfavorable lease terms.” (Pls’ Motion at ¶ 4)
- “Plaintiffs have alleged that JP Morgan breached the fiduciary duties it owed Plaintiffs as their trustee by elevating JP Morgan’s clients’ interests over Plaintiffs’ interests.” (Pls’ Motion at ¶ 15)

The only Marubeni entity that owns an interest in any oil and gas property that is part of the STS Trust portfolio—non-party Marubeni Eagle Ford, LP—secured its non-operating interest not from JP Morgan but through a confidential and proprietary arms-length negotiated business transaction with another non-party, Hunt Oil Company. Plaintiffs are well aware of this fact, as

they previously subpoenaed information from Marubeni Eagle Ford, LP (and Hunt Oil Company) pertaining to the Marubeni Eagle Ford, LP-Hunt Oil Company transaction.<sup>8</sup>

9. Plaintiffs' motion raises more questions on relevancy than it answers. How could JP Morgan "elevat[e] [Marubeni's] interests over Plaintiffs' interests when Marubeni was not even a party to a transaction with JP Morgan regarding any STS Trust properties? What evidence is there that JP Morgan even knew that Marubeni Eagle Ford, LP would be acquiring an interest in any STS Trust properties, much less that it would do so several years later in a confidential and proprietary business transaction with Hunt Oil Company?

10. As Plaintiffs' own motion discloses, Marubeni Eagle Ford, LP acquired its interest well after the initial lease transaction between JP Morgan and Broad Oak, and only after an intervening lease transaction between Broad Oak and Hunt Oil Company.<sup>9</sup> Consequently, there could not be any malfeasance by JP Morgan relative to Marubeni Eagle Ford, LP's interests in certain STS Trust properties because JP Morgan was not even part of the business transaction through which Marubeni Eagle Ford, LP acquired its interest in those certain STS Trust properties. As such, any banking or other relationship and between Marubeni and/or any of its affiliates or subsidiaries and JP Morgan is completely irrelevant to this proceeding. Plaintiffs' sole purported basis for fishing for extensive and highly confidential information regarding non-party Marubeni, therefore, does not exist.

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<sup>8</sup> See Exhibit 3. Since asserting its objections to Plaintiffs' requests, Marubeni Eagle Ford, LP has agreed and consented to its operating partner, Hunt Oil Company, producing the requested December 28, 2011 Purchase and Sale Agreement with certain redactions. Hunt Oil Company, who was also subpoenaed, has also produced at least one schedule to the agreement relating to allocated value of the properties. Further, in advising Plaintiffs' counsel that Marubeni Eagle Ford, LP did not have any correspondence with JP Morgan regarding the subject properties (in response to Request for Production No. 3 attached to Plaintiffs' subpoena), Marubeni Eagle Ford, LP's counsel emphasized that the reason was because Marubeni Eagle Ford, LP is a non-operator who acquired its interests in the subject properties from Hunt Oil Company.

<sup>9</sup> See Plaintiffs' Motion at ¶ 6 ("JP Morgan mismanaged the four leases to Broad Oak (now Laredo) of approximately 10,000 acres of STS mineral interests. . . . Broad Oak eventually sold its leasehold rights in STS acreage to Hunt and BOPCO. . . . And in December 2011, Hunt sold some of its STS interests to Marubeni.").

**B. Plaintiffs' Interrogatory No. 4 is Facially Overbroad**

11. Overbroad discovery requests are also prohibited. See *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (holding that discovery requests that were not reasonably tailored to matters relevant to the case were an impermissible fishing expedition). “A central consideration in determining overbreadth is whether the request could have been more narrowly tailored to avoid including tenuous information and still obtain the necessary, pertinent information.” *In re CSX Corp.*, 124 S.W.3d 149, 151 (Tex. 2003) (per curiam).

12. Plaintiffs' Interrogatory No. 4 to JP Morgan seeking disclosure of extensive and highly confidential information pertaining to Marubeni is overbroad on its face for the following reasons:

- the only Marubeni entity that has an interest in any STS Trust asset is Marubeni Eagle Ford, LP, yet Plaintiffs claim entitlement to discovery of highly confidential information pertaining to “Marubeni Corporation **and any of its affiliates or subsidiaries**, including, **but not limited to** Marubeni Eagle Ford LP” (emphasis added).
- Plaintiffs' attempt to fish for disclosure “with particularity” of ownership or investment information, financial relationships, forms of economic relationships, forms of loans (including lines of credit or other credit facilities), derivative or hedging relationships, joint ventures or partnerships, the nature and duration of any services, and the amount and timing of any compensation, far exceeds information relating to JP Morgan's **position as trustee of the STS Trust**.
- Plaintiffs seek disclosure of information “from January 1, 2005 to the present,” even though Marubeni Eagle Ford, LP did not acquire an interest in any STS Trust asset from Hunt Oil Company until the end of December 2011, and without any explanation or support for disclosure of a decade's worth of such extensive information.

Disclosing all financial or economic relationships between JP Morgan (and any and all JP Morgan's “past or present partners, officers, directors, managers, employees, attorneys,

representatives, agents, shareholders, affiliates, subsidiaries, parents, successors, assigns, or any entity in which Defendant has an ownership interest, individually, collectively, or in any combination and/or permutation whatsoever”) and Marubeni (“and any affiliates or subsidiaries, including, but not limited to Marubeni Eagle Ford LP”) for the last decade is the very definition of a fishing expedition, especially when Plaintiffs’ discovery requests are not reasonably tailored to issues related to the STS Trust and there are not “transactions, activities, services, or interests” by and between JP Morgan and Marubeni or its affiliates or subsidiaries relating to any STS Trust assets. *See In re CSX Corp.*, 124 S.W.3d at 151 (holding that discovery requests “may not be used simply to explore”).

***C. Plaintiff’s Requested Information is Harassing and Constitutes an Invasion of Non-Party Marubeni’s Protected Rights***

13. The Court should also deny Plaintiffs’ motion and protect Marubeni from disclosure of the information requested in Interrogatory No. 4 because Plaintiffs’ request for information from JP Morgan pertaining to Marubeni and its affiliates/subsidiaries is harassing and constitutes an invasion of Marubeni’s personal, constitutional, and/or property rights. *See* TEX. R. CIV. P. 192.6(b); *Hoffman v. Fifth Court of Appeals*, 756 S.W.2d 723, 723 (Tex. 1988). Plaintiffs seek JP Morgan to “[d]escribe with particularity” “transactions, activities, services, or interests” as between JP Morgan and Marubeni and any of Marubeni’s affiliates or subsidiaries from January 1, 2005 to the present, including highly confidential information such as details of loans, lines of credit, or other credit facilities.<sup>10</sup>

14. Setting aside the principle issue that this information, for the reasons described above, is overbroad and not at all relevant or reasonably calculated to lead to the discovery of admissible evidence (which alone is sufficient to protect disclosure of Marubeni’s information),

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<sup>10</sup> *See* Exhibit 1 at *Plaintiffs’ Fifth Set of Interrogatories to Defendant J.P. Morgan Chase Bank, N.A.* (Interrogatory No. 4), p. 9.

disclosure of such highly sensitive and confidential information regarding a non-party like Marubeni and any of Marubeni's affiliates or subsidiaries is harassing and constitutes an improper invasion of Marubeni's rights and reasonable expectations of its personal privacy interests pertaining to its personal financial and banking information. This is underscored by the fact that non-party Marubeni Eagle Ford, LP (the only Marubeni entity that owns an interest in any of the STS Trust assets) did not acquire its non-operating interest from JP Morgan.

15. Apparently in an attempt to suggest that a non-party banking customer like Marubeni does not have a reasonable expectation of, or right to privacy in, its financial affairs and information, Plaintiffs state "Section 59.006 is clear that it doesn't create a privacy right in a customer record." Tellingly, however, Plaintiffs either ignore or neglect to disclose that courts have recognized that individuals and companies have a personal right and an expectation of privacy in their financial affairs and information.<sup>11</sup> Moreover, the Texas Supreme Court has expressly recognized that trial courts should give "serious consideration" to the interests of a non-party whose information is sought in discovery.<sup>12</sup> Accordingly, Marubeni and its affiliates and subsidiaries absolutely have a judicially-recognized personal right and an expectation of privacy in their financial affairs and information, particularly when (as here) such information has absolutely no relevancy or bearing on the claims in this case.

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<sup>11</sup> See, e.g., *Turnbow v. Life Partners, Inc.*, No. 3:11-CV-1030, 2013 WL 1632795, at \*1 (N.D. Tex. Apr. 15, 2013) ("Plaintiffs' subpoena to Whitley Penn seeks Defendants' accounting records and other sensitive financial information and communications pertaining to Defendants and their business. Defendants have a personal right in such information . . ."); *Bramell v. Aspen Exploration, Inc.*, No. 4:05-CV-384, 2008 WL 4425368, at \*2 (E.D. Tex. Sep. 24, 2008) ("The Plaintiffs seek to discover documents from Cobb concerning the Defendants' financial and business records. The Defendants have established an expectation of privacy in their financial and business records. Accordingly, the Defendants have demonstrated that they have a 'personal right' regarding the same.") (citations omitted).

<sup>12</sup> *In re CI Host, Inc.*, 92 S.W.3d at 517.

**IV.**  
**CONCLUSION**

16. Plaintiffs' Interrogatory No. 4 to JP Morgan seeking disclosure of an extensive amount of highly confidential and sensitive information affecting non-party Marubeni's rights and interests is nothing more than an improper fishing expedition. Neither Marubeni nor any of its affiliates or subsidiaries acquired any interest in STS Trust property from JP Morgan; accordingly, Plaintiffs' apparent basis or relevancy for disclosure of such information—that JP Morgan entered into a questionable transaction with Marubeni and/or Marubeni's affiliates/subsidiaries—does not exist. Further, the requests are overbroad, harassing, and violate Marubeni's and its affiliates' and subsidiaries' direct and continuing interest in protecting against the disclosure of such confidential information. The Court should protect Marubeni from disclosure of such information and deny Plaintiffs' motion.

WHEREFORE, PREMISES CONSIDERED, Non-Party, Marubeni Corporation, asks the Court the Court to deny Plaintiffs' "Motion for In Camera Inspection and Order Compelling Production of Records Responsive to Discovery Served on JP Morgan Chase Bank, N.A." and, pursuant to Texas Rule of Civil Procedure 192.6(a) and Texas Finance Code Section 59.006, for protection from Plaintiffs' discovery to Defendant, JP Morgan Chase Bank, N.A. pertaining to Marubeni and its affiliates and subsidiaries as a customer of JP Morgan, and that Marubeni Corporation have such other and further relief, at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

ADAMS AND REESE LLP

By: \_\_\_\_\_

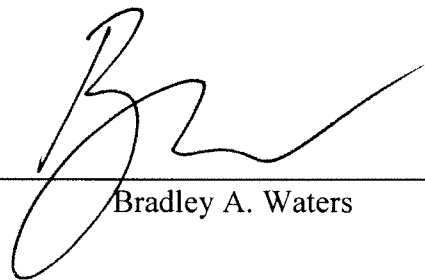


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*Attorneys for Non-Party,  
Marubeni Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all known counsel of record in accordance with Rules 21 and 21(a), Texas Rules of Civil Procedure, on this 10th day of September, 2014.



\_\_\_\_\_  
Bradley A. Waters



# **EXHIBIT 1**

— ★ ★ ★ —  
LOEWINSOHN FLEGLE DEARY  
— L.L.P. —

August 15, 2014

Marubeni Corporation  
c/o National Registered Agents, Inc.  
1999 Bryan Street, Suite 900  
Dallas, Texas 75201-3136

*Via Hand Delivery*

Re: Notice of Request for Information Pursuant to Section 59.006, Texas Finance Code

To Whom It May Concern:

We represent Plaintiffs in Cause No. 2010-CI-10977; *John K. Meyer, et al. v. JP Morgan Chase Bank N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust*; in the 225th District Court, Bexar County, Texas (“Litigation”). JP Morgan Chase Bank N.A. (“JP Morgan”) has been sued individually/corporately and in its capacity as Trustee of the South Texas Syndicate Trust.

In the Litigation, our clients have requested discovery of information from JP Morgan relating to Marubeni Corporation and affiliates (“Marubeni”) as a customer of the financial institution. A copy of our Fifth Set of Interrogatories to JP Morgan is attached. The interrogatory that potentially involves customer information concerning Marubeni is Interrogatory No. 4.

Pursuant to section 59.006, Texas Finance Code, you are hereby given notice of your rights as a customer under section 59.006(e). You, as a customer, bear the burden of preventing or limiting the financial institution’s compliance with a record request subject to section 59.006 by seeking an appropriate remedy, including filing a motion to quash the record request or a motion for a protective order. Any motion filed shall be served on the financial institution and the requesting party before the date that compliance with the request is required. A financial institution is not liable to its customer or another person for disclosure of a record in compliance with section 59.006. If we have not received your consent form, as requested below, by August 29, 2014, we will file a motion seeking an in camera inspection of the information. The service address for JP Morgan, the financial institution, is:

Marubeni Corporation  
August 15, 2014  
Page 2

JP Morgan Chase Bank N.A.  
c/o Patrick K. Sheehan, Esq.  
Hornberger Sheehan Fuller & Garza Incorporated  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209  
Fax: 210-271-1730


The service address for Plaintiffs, the requesting parties, is:

Jim L. Flegle, Esq.  
Loewinsohn Flegle Deary, LLP  
12377 Merit Drive, Suite 900  
Dallas, TX 75251  
Fax: 214-572-1717

Further, our clients request your written consent authorizing JP Morgan to comply with the request. A consent form is enclosed. If you wish to consent to the release of the information our clients have requested, please execute the attached consent form and return it to the undersigned as soon as possible, but no later than August 29, 2014.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jim L. Flegle  
(214) 572-1701  
Email: [jimf@LFDlaw.com](mailto:jimf@LFDlaw.com)

JLF/mlj  
Enclosure

**Consent for JP Morgan to Release Banking Records**

I, \_\_\_\_\_, have capacity to act on behalf of Marubeni Corporation, and affiliates, and consent to the release of the information requested in Plaintiffs' Fifth Set of Interrogatories to Defendant JP Morgan Chase Bank, N.A. and hereby authorize JP Morgan to respond to the Interrogatories and provide any information covered by the Interrogatories to the Plaintiffs.

MARUBENI CORPORATION

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, *et al.*,

*Plaintiffs,*

vs.

JP MORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST,

*Defendant.*

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IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFFS' FIFTH SET OF INTERROGATORIES  
TO DEFENDANT J.P. MORGAN CHASE BANK, N.A.**

TO: Defendant JP Morgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust, by and through its attorneys of record, Patrick K. Sheehan, David Jed Williams, Hornberger Sheehan Fuller & Garza, Inc., 7373 Broadway, Suite 300, San Antonio, TX 78209.

Pursuant to Rules 193 and 197 of the Texas Rules of Civil Procedure you are required to serve on the undersigned your full and complete written responses under oath to each of the Interrogatories set forth herein within thirty (30) days after the service of the Interrogatories.

**DEFINITIONS AND INSTRUCTIONS**

A. To the fullest extent permitted by the Texas Rules of Civil Procedure, these Interrogatories are intended to be continuing in nature. You are requested and required to supplement your answers when appropriate or necessary to make them correct and complete

B. If You contend that You may partially or entirely withhold responsive information because of a rule, privilege, immunity, or other reason' provide information sufficient for Plaintiff to assess the merits of such contention.

C. Each Interrogatory is to be read, construed and responded to separately and independently without reference to or being limited by any other Interrogatory.

D. In answering these Interrogatories, You are required to furnish all information available to You, including information in Your possession, custody or control. Such information available to You and requested herein includes information in the possession, custody, or control of Your attorneys, agents, accountants, consultants, and all other persons acting on Your behalf, and not merely such information known to You or of Your own personal knowledge.

E. If You cannot answer any of these Interrogatories in full after exercising due diligence to secure the information, You are required to so state and answer to the extent possible, specifying Your inability to answer the remainder, stating what information or knowledge You have concerning the unanswered portions and why You are unable to answer the unanswered portions.

F. As used herein, the words and phrases set out below shall have the meaning prescribed for them:

1. "Document" or "documents" shall mean every document within the widest permissible scope of the Texas Rules of Civil Procedure, including, without limitation, every original (and every copy of any original or copy which differs in any way from any original) of every writing or recording of every kind or description, whether handwritten, typed, drawn, sketched, printed, or recorded or maintained by any physical, mechanical, electronic, or electrical means whatsoever, including, without limitation, electronic communications or data bases, emails (including, without limitation, received emails, sent emails, and deleted emails together with all attachments), text messages, SMS, MMS, BBM, or other instant message system or format, books, records, papers, pamphlets, brochures, circulars, advertisements, specifications, notebooks,

worksheets, reports, lists, analyses, summaries, tax returns, financial statements, profit and loss statements, cash flow statements, balance sheets, annual or other periodic reports, calendars, appointment books, diaries, telephone bills and toll call records, expense reports, commission statements, itineraries, agendas, check books, canceled checks, receipts, agreements, applications, offers, acceptances, proposals, purchase orders, invoices, written, electronic or otherwise recorded memorials of oral communications, forecasts, photographs, photographic slides or negatives, films, film strips, tapes and recordings, and any “tangible things” as that term is used in Texas Rule of Civil Procedure 196.1.

2. As used herein, the terms “constitute, refer or relate to,” “refer or relate to,” “relating to,” “related,” “evidencing,” “reflect,” “reflecting,” “support,” “evidence” and any similar term shall mean—unless otherwise indicated—having any relationship or connection to, concerning, being connected to, commenting on, responding to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, pertaining to, comprising, constituting, proving or tending to prove or otherwise establishing any reasonable, logical or causal connection.

3. As used herein, the terms “communication” or “communications” shall mean any document, oral statement, conversation, meeting, or conference, formal or informal, under any circumstances whatsoever, whereby information of any nature was stated, written, recorded, or in any manner transmitted or transferred.

4. As used herein, the terms “fact” or “facts” shall mean all evidentiary facts presently known to you and all evidentiary facts the existence of which is presently inferred by you from the existence of any combination of evidentiary and/or ultimate facts.

5. As used herein, the terms “person” or “persons” includes any natural person and any firm, limited liability company, partnership, joint venture, hospital, institution, corporation,

business, organization, trust, association or any other business or governmental or quasi-governmental entity, political subdivision, commission, board or agency of any character whatsoever together with the partners, trustees, officers, directors, employees, or agents thereof.

6. The terms “AND” and “OR” are to be construed either disjunctively or conjunctively, whichever is appropriate, so as to bring within the scope of these Requests any information or documents that might otherwise be considered beyond its scope.

7. As used herein, the word “any” shall include the word “all,” and the word “all” shall include the word “any.”

8. The term “Relevant”, as used herein, includes by way of illustration only and not by way of limitation, the following: (1) information that either would or would not support the disclosing parties’ contentions; (2) identification of those persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties; (3) information that is likely to have an influence on or affect the outcome of a claim or defense; (4) information that deserves to be considered in the preparation, evaluation or trial of a claim or defense; and (5) information that reasonable and competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense.

9. As used herein, the words “include” and “including” shall mean “including without limitation.”

10. The terms “Petition” and/or “Lawsuit” shall refer to the petition filed in the above-captioned litigation, all amendments made thereto and all claims made therein.

11. “Defendants,” as used herein means any and all defendants named in this lawsuit, and any agents, employees, partners, managers, members, lawyers, accountants, representatives, and any other person or entity acting on behalf of a defendant or subject to their control.



12. "You," and "Your" shall mean and refer to JP Morgan Chase Bank, N.A., Individually/Corporately and as Trustee of South Texas Syndicate Trust, including but not limited to, any and all past or present partners, officers, directors, managers, employees, attorneys, representatives, agents, shareholders, affiliates, subsidiaries, parents, successors, assigns, or any entity in which Defendant has an ownership interest, individually, collectively, or in any combination and/or permutation whatsoever.

13. "Trust" as used herein refers to the trust that is the subject of this lawsuit, commonly designated and referred to as the "South Texas Syndicate." "Trust" as used herein also refers to and includes the assets, property, and/or estate of the Trust. "Trust" further includes the fiduciary relationship governing the Trustee with respect to the Trust property when that reading of the term would cause more documents or information to be covered by the term.

14. "Trust Assets" as used herein refers to the assets, property and the estate of the Trust (*i.e.*, South Texas Syndicate Trust).

15. "Trustee" shall mean Defendant JP Morgan Chase Bank, N.A., Corporately and as Trustee of the South Texas Syndicate Trust, and any individual or entity acting on its behalf.

16. As used herein, the term "Identify" as used herein shall include the following:

- a. When used in reference to a person, shall mean his full name, present or last known home address and telephone number, present or last known business address and telephone number, employer and job title;
- b. When used in reference to a firm or corporation, shall mean its full name and address, telephone number, any other names by which it is or has been known, its state of incorporation, and its principal place of business;
- c. When used in reference to someone or something other than a person, firm, or corporation, shall mean its official name, organizational form, address and telephone number;
- d. When used in reference to a document, shall mean the type of document, date, author, addressee, title, its present location, identity of its custodian and the substance of its contents;

- c. When used in reference to a communication or statement, shall mean the form of communication (*i.e.*, telephone conversation, letter, face-to-face conversation, etc.), the date of the communication and the date on which it was sent and received, the identity of the persons who were involved in the communication, the substance of the communication, the present location of the communication and the identity of its custodian; and
  - f. When used in reference to an act, meeting or other event, shall mean a description of the substance of the events constituting the act or meeting, the date of its occurrence, the identity of any documents concerning such act or meeting, and the identity of any documents concerning such act or meeting.
- G. In construing this request:
- 1. The singular shall include the plural and the plural shall include the singular.
  - 2. A masculine, feminine, or neuter pronoun shall not exclude the other genders.
  - 3. The past tense of a verb shall include the present tense, and the present tense of a verb shall include the past tense.
- H. The relevant time period is from January 1, 2005 to the present.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Describe with particularity each of the following as between You and Hunt Oil Company and any of its affiliates or subsidiaries (collectively, "Hunt Oil") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

- (a) Any forms of ownership or investment as between You and Hunt Oil from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and Hunt Oil from January 1, 2005 to the present.
- (c) Any forms of economic relationships as between You and Hunt Oil from January 1, 2005 to the present.
- (d) Any forms of loans, including lines of credit, or other facilities of credit as between You and Hunt Oil from January 1, 2005 to the present.
- (e) Any forms of derivative or hedging relationships as between You and Hunt Oil from January 1, 2005 to the present.

- (f) Any joint ventures or partnerships as between You and Hunt Oil from January 1, 2005 to the present.
- (g) The nature and duration of any services provided by You to Hunt Oil from January 1, 2005 to the present.
- (h) The amount and timing of any compensation received by You from Hunt Oil for any business services from January 1, 2005 to the present.

**RESPONSE:**

**INTERROGATORY NO. 2:** Describe with particularity each of the following as between You and Murphy Oil Corporation and any of its affiliates or subsidiaries (collectively, "Murphy Oil") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

- (a) Any forms of ownership or investment as between You and Murphy Oil from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and Murphy Oil from January 1, 2005 to the present.
- (c) Any forms of financial relationships as between You and Murphy Oil from January 1, 2005 to the present.
- (d) Any forms of economic relationships as between You and Murphy Oil from January 1, 2005 to the present.
- (e) Any forms of loans, including lines of credit, or other facilities of credit as between You and Murphy Oil from January 1, 2005 to the present.
- (f) Any forms of derivative or hedging relationships as between You and Murphy Oil from January 1, 2005 to the present.
- (g) Any joint ventures or partnerships as between You and Murphy Oil from January 1, 2005 to the present.
- (h) The nature and duration of any services provided by You to Murphy Oil from January 1, 2005 to the present.
- (i) The amount and timing of any compensation received by You from Murphy Oil for any business services from January 1, 2005 to the present.

**RESPONSE:**

**INTERROGATORY NO. 3:** Describe with particularity each of the following as between You and Bass Enterprises Production Company and any of its affiliates or subsidiaries, including but not limited to, ACB O&G TX, L.P.; ARBGT (LMB) O&G TX, L.P.; ARBGT (SRB) O&G TX, L.P.; BMT O&G TX, L.P.; CMB O&G TX, L.P.; EPB Eagleford TX, L.P.; Keystone O&G TX, L.P.; LMBI O&G TX, L.P.; MLB O&G TX, L.P.; SRBI O&G TX, L.P.; Thru Line O&G TX, L.P.; and TRB O&G TX, L.P. (collectively, "BOPCO") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

- (a) Any forms of ownership or investment as between You and BOPCO from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and BOPCO from January 1, 2005 to the present.
- (c) Any forms of economic relationships as between You and BOPCO from January 1, 2005 to the present.
- (d) Any forms of loans, including lines of credit, or other facilities of credit as between You and BOPCO from January 1, 2005 to the present.
- (e) Any forms of derivative or hedging relationships as between You and BOPCO from January 1, 2005 to the present.
- (f) Any joint ventures or partnerships as between You and BOPCO from January 1, 2005 to the present.
- (g) The nature and duration of any services provided by You to BOPCO from January 1, 2005 to the present.
- (h) The amount and timing of any compensation received for any business services provided by You to BOPCO from January 1, 2005 to the present.

**RESPONSE:**

**INTERROGATORY NO. 4:** Describe with particularity each of the following as between You and Marubeni Corporation and any of its affiliates or subsidiaries, including, but not limited to Marubeni Eagle Ford LP, a Texas limited partnership (collectively, "Marubeni") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

- (a) Any forms of ownership or investment as between You and Marubeni from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and Marubeni from January 1, 2005 to the present.
- (c) Any forms of economic relationships as between You and Marubeni from January 1, 2005 to the present.
- (d) Any forms of loans, including lines of credit, or other facilities of credit as between You and Marubeni from January 1, 2005 to the present.
- (e) Any forms of derivative or hedging relationships as between You and Marubeni from January 1, 2005 to the present.
- (f) Any joint ventures or partnerships as between You and Marubeni from January 1, 2005 to the present.
- (g) The nature and duration of any services provided by You to Marubeni from January 1, 2005 to the present.
- (h) The amount and timing of any compensation received by You from Marubeni for any business services from January 1, 2005 to the present.

**RESPONSE:**

DATE: June 25, 2014.

Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 5000  
Minneapolis, Minnesota 55415  
Telephone: (612) 339-2020  
Facsimile: (612) 336-9100  
**ATTORNEYS FOR INTERVENOR-  
PLAINTIFFS, LINDA ALDRICH, ET AL.**

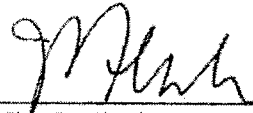
Richard Tinsman  
Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205  
Telephone: (210) 225-3121  
Facsimile: (210) 225-6235

George Spencer, Jr  
Robert Rosenbach  
CLEMENS & SPENCER, P.C.  
112 E. Pecan St., Suite 1300  
San Antonio, Texas 78205  
Telephone: (210) 227-7121  
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James L. Drought  
DROUGHT DROUGHT & BOBBITT, LLP  
112 E. Pecan St., Suite 2900  
San Antonio, Texas 78205  
Telephone: (210) 225-4031  
Facsimile: (210) 222-0586  
**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

Jim L. Flegle  
David R. Deary  
Tyler M. Simpson  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251  
Telephone: (214) 572-1700  
Facsimile: (214) 572-1717  
**ATTORNEYS FOR PLAINTIFFS,  
EMILIE BLAZE, ET AL.**

By: \_\_\_\_\_

  
Jim L. Flegle

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via email and facsimile, this 25 day of June 2014:

Patrick K. Sheehan  
David Jed Williams  
Hornberger Sheehan Fuller & Garza Inc.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209

*Via Facsimile and Email*

Kevin Beiter  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, TX 78701

*Via Facsimile and Email*

John Eichman  
Hunton & Williams  
1445 Ross Avenue, Suite 3700  
Dallas, TX 75202

*Via Hand Delivery and Email*

  
\_\_\_\_\_  
Jim L. Flegle

# **EXHIBIT 2**





**Attorneys at Law**

Alabama  
Florida  
Louisiana  
Mississippi  
Tennessee  
**Texas**  
Washington, DC

**Bradley A. Waters**

Direct: 713.308.0147  
E-Fax: 713.308.4070  
bradley.waters@arlaw.com

August 28, 2014

**Via Facsimile – (214) 572-1717**

Jim L. Flegle  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

Re: Cause No. 2010-CI-10977; *John K. Meyer, et al v. JP Morgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust*; In the 225th Judicial District Court of Bexar County, Texas

Response to Notice of Request for Information Pursuant to Texas Finance Code Section 59.006


Dear Jim:

This firm represents non-party, Marubeni Corporation (“Marubeni”), in connection with Plaintiffs’ August 15, 2014 notice of request for information from Defendant, JP Morgan Chase Bank, N.A. (“JP Morgan”) pertaining to Marubeni and its affiliates as a customer of JP Morgan pursuant to Texas Finance Code Section 59.006. Marubeni hereby objects and does not consent to or otherwise authorize JP Morgan to comply with Plaintiffs’ request (Interrogatory No. 4 of Plaintiffs’ Fifth Set of Interrogatories to Defendant J.P. Morgan Chase Bank, N.A.) pertaining to Marubeni and its affiliates and subsidiaries.

Your August 15 letter advises that Marubeni, as a customer, “bear[s] the burden of preventing or limiting the financial institution’s compliance with a record request subject to section 59.006 by seeking an appropriate remedy, including filing a motion to quash the record request or a motion for protective order.” I note that such a statutory requirement appears to apply only to “[a] customer that is a party to the proceeding.” See TEX. FIN. CODE § 59.006(e) (emphasis added). Marubeni is not a party to the above-referenced proceeding. Regardless, Marubeni also intends to file by tomorrow a *Motion for Protection* with 225th Judicial District Court of Bexar County.

Sincerely,

ADAMS AND REESE LLP



Bradley A. Waters

BAW/tr  
Enclosure

cc: **Via Facsimile – (612) 336-9100**  
John B. Massopust  
Matthew J. Gollinger  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 5000  
Minneapolis, Minnesota 55415

**Via Facsimile – (210) 222-0586**  
James L. Drought  
DROUGHT DROUGHT & BOBBITT, LLP  
112 E. Pecan Street, Suite 2900  
San Antonio, Texas 78205

**Via Facsimile – (210) 225-6235**  
Richard Tinsman  
Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205

**Via Facsimile – (210) 227-0732**  
George Spencer, Jr.  
Robert Rosenbach  
CLEMENS & SPENCER, P.C.  
112 E. Pecan Street, Suite 1300  
San Antonio, Texas 78205

**Via Facsimile – (210) 271-1730**

Patrick K. Sheehan  
David Jed Williams  
HORNBERGER SHEEHAN FULLER & GARZA INC.  
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7373 Broadway, Suite 300  
San Antonio, Texas 78209

**Via Facsimile – (512) 495-6384**

Kevin Beiter  
MCGINNIS LOCHRIDGE  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

**Via Facsimile – (214) 880-0011**

John Eichman  
HUNTON & WILLIAMS LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

# **EXHIBIT 3**



**Attorneys at Law**

Alabama  
Florida  
Louisiana  
Mississippi  
Tennessee  
Texas  
Washington, DC

**Bradley A. Waters**

Direct: 713.308.0147  
E-Fax: 713.308.4070  
bradley.waters@arlaw.com

June 12, 2014

**Via Facsimile – (612) 336-9100**

John B. Massopust  
Matthew J. Gollinger  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 5000  
Minneapolis, Minnesota 55415

**Via Facsimile – (210) 222-0586**

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112 E. Pecan Street, Suite 2900  
San Antonio, Texas 78205

**Via Facsimile – (210) 225-6235**

Richard Tinsman  
Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205

**Via Facsimile – (214) 572-1717**

Jim L. Flegle  
David R. Deary  
Carol E. Farquhar  
Tyler M. Simpson  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

**Via Facsimile – (210) 227-0732**

George Spencer, Jr.  
Robert Rosenbach  
CLEMENS & SPENCER, P.C.  
112 E. Pecan Street, Suite 1300  
San Antonio, Texas 78205  
Facsimile: (210) 227-0732

Re: Cause No. 2010-CI-10977; *John K. Meyer, et al v. JP Morgan Chase Bank, N.A., Individually/Corporately and as Trustee of the South Texas Syndicate Trust*; In the 225th Judicial District Court of Bexar County, Texas

Dear Counsel:

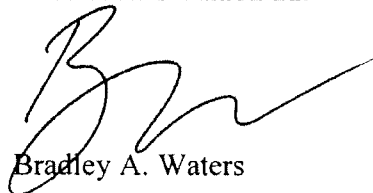
Enclosed please find Non-Party Marubeni Eagle Ford LP's Objections and Responses to the **Request for Production** section of Plaintiffs' Deposition Subpoena Duces Tecum to Produce Documents. Because Marubeni Eagle Ford LP is not producing any documents at this time, *there is no need to proceed with (and Marubeni Eagle Ford LP will not be appearing for) the Plaintiffs' Notice of Intention to Take Deposition on Written Questions to Marubeni Eagle Ford LP section of Plaintiffs' Deposition Subpoena Duces Tecum to Produce*

**Documents scheduled for Friday June 13, 2014 at 10:00 a.m.** Please notify any court reporter or notary public whom you may have scheduled to appear tomorrow for the Deposition on Written Questions of a Marubeni Eagle Ford LP records custodian of this fact. Please also note that the place listed in Plaintiffs' Notice of Intention to Take Deposition on Written Questions to Marubeni Eagle Ford LP is Marubeni Eagle Ford LP's *former* business address.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

ADAMS AND REESE LLP



Bradley A. Waters

BAW/tr  
Enclosure

cc: **Via Facsimile – (210) 271-1730**  
Patrick K. Sheehan  
David Jed Williams  
HORNBERGER SHEEHAN FULLER & GARZA INC.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, Texas 78209

**Via Facsimile – (512) 495-6384**  
Kevin Beiter  
MCGINNIS LOCHRIDGE  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

**Via Facsimile – (214) 880-0011**  
John Eichman  
HUNTON & WILLIAMS LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET AL,

Plaintiffs,

VS.

JP MORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST,

Defendant.

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IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

225TH JUDICIAL DISTRICT

**NON-PARTY MARUBENI EAGLE FORD LP'S OBJECTIONS AND RESPONSES TO  
THE REQUEST FOR PRODUCTION SECTION OF PLAINTIFFS' DEPOSITION  
SUBPOENA DUCES TECUM TO PRODUCE DOCUMENTS**

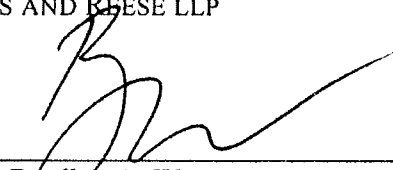
TO: Plaintiffs, John K. Mayer, et al, by and through their attorneys of record, Jim L. Flegle, David R. Deary, Carol E. Farquhar, and Tyler M. Simpson, LOEWINSOHN FLEGLE DEARY, LLP, 12377 Merit Drive, Suite 900, Dallas, Texas 75251.

Non-party, Marubeni Eagle Ford LP, in accordance with Rules 176 and 205 of the Texas Rules of Civil Procedure, hereby serves the following objections and responses to the Request for Production section of the Subpoena Duces Tecum to Produce Documents served by Plaintiffs, John K. Mayer, et al. Non-party, Marubeni Eagle Ford LP, reserves the right to amend and/or supplement these responses pursuant to the Texas Rules of Civil Procedure.

Respectfully submitted,

ADAMS AND REESE LLP

By: \_\_\_\_\_



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*Attorneys for Non-Party,  
Marubeni Eagle Ford LP*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all known counsel of record in accordance with Rules 21 and 21(a), Texas Rules of Civil Procedure, on this 12th day of June, 2014.

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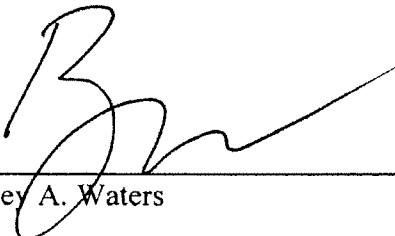
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\_\_\_\_\_  
Bradley A. Waters

**NON-PARTY MARUBENI EAGLE FORD LP'S OBJECTIONS AND RESPONSES TO  
THE REQUEST FOR PRODUCTION SECTION OF PLAINTIFFS' DEPOSITION  
SUBPOENA DUCES TECUM TO PRODUCE DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce the Purchase and Sale Agreement ("Purchase & Sale Agreement") dated December 28, 2011 between Hunt Oil Company and Marubeni Eagle Ford LP.

**RESPONSE:**

Objection. The above request seeks information from a non-party, Marubeni Eagle Ford LP, regarding a confidential and proprietary business transaction by and between two non-parties, Hunt Oil Company and Marubeni Eagle Ford LP, which is not relevant or reasonably calculated to lead to the discovery of admissible evidence in a case brought by beneficiaries of the South Texas Syndicate ("STS") Trust alleging tortious conduct by JP Morgan as trustee of the STS Trust. Further, the above request seeks the disclosure of personal, private, confidential, and/or proprietary information of non-parties, Hunt Oil Company and Marubeni Eagle Ford LP.

**REQUEST FOR PRODUCTION NO. 2:** Please produce all correspondence between Hunt Oil Company and Marubeni Eagle Ford LP regarding the Purchase & Sale Agreement and the Amendments to Oil and Gas Leases, copies of which are attached as Exhibit A.

**RESPONSE:**

Objection. The above request is vague, overbroad, unduly burdensome, and seeks information from a non-party, Marubeni Eagle Ford LP, regarding a confidential and proprietary business transaction by and between two non-parties, Hunt Oil Company and Marubeni Eagle Ford LP, which is not relevant or reasonably calculated to lead to the discovery of admissible evidence in a case brought by beneficiaries of the STS Trust alleging tortious conduct by JP Morgan as trustee of the STS Trust. Further, the above request seeks the disclosure of personal, private, confidential, and/or proprietary information of non-parties, Hunt Oil Company and Marubeni Eagle Ford LP.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all correspondence between JP Morgan and Marubeni Eagle Ford LP regarding the Purchase & Sale Agreement and the Amendments to Oil and Gas Leases, copies of which are attached as Exhibit A.

**RESPONSE:**

Objection. The above request is vague, overbroad, unduly burdensome, and seeks information from a non-party, Marubeni Eagle Ford LP, which is not relevant or reasonably calculated to lead to the discovery of admissible evidence in a case brought by beneficiaries of the STS Trust alleging tortious conduct by JP Morgan as trustee of the STS Trust. Further, the above request

seeks information which, if any exists, is available from JP Morgan, a party defendant in the case. Subject to and without waiving the foregoing objections, Marubeni Eagle Ford LP is a non-operating partner in the subject leases and, as such, would not have in the ordinary course of business corresponded directly with JP Morgan regarding the subject leases. To date, Marubeni Eagle Ford LP has not located any responsive information.

**CAUSE NO. 2010-CI-10977**

<b>JOHN K. MEYER, ET AL.,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<i>Plaintiffs,</i>	§	
	§	
<b>v.</b>	§	
	§	
<b>JP MORGAN CHASE BANK, N.A., INDIVIDUALLY/CORPORATELY AND AS TRUSTEE OF THE SOUTH TEXAS SYNDICATE TRUST,</b>	§	<b>225TH JUDICIAL DISTRICT</b>
	§	
	§	
<i>Defendants.</i>	§	
	§	
	§	<b>BEXAR COUNTY, TEXAS</b>

**PLAINTIFF-INTERVENOR WELLS FARGO BANK, N.A.’S  
MOTION FOR LEAVE TO FILE THIRD AMENDED PETITION IN INTERVENTION**

Plaintiff-Intervenor Wells Fargo Bank, N.A., as Trustee/Co-Trustee, (“Plaintiff-Intervenor”) pursuant to TEX. R. CIV. P. 63, files this Motion for Leave to File Third Amended Petition in Intervention, a copy of which is attached as Exhibit A.

**I.**

1. Plaintiff-Intervenor Wells Fargo Bank, N.A., is a national banking association and serves as trustee or co-trustee for twenty-three (23) trust entities (“Trusts”) that hold Certificates of Beneficial Interest in the South Texas Syndicate Trust (hereinafter, the “STS Trust”). Plaintiff-Intervenor filed its original Plea in Intervention in this action on January 17, 2012.

2. Plaintiff-Intervenor filed its Second Amended Plea in Intervention timely on August 28, 2014.

3. The Second Amended Plea adopts the vast majority of Plaintiffs’ Seventh Amended Petition that was filed on August 26, 2014. As part of the drafting process, some paragraphs that should have been adopted from Plaintiffs’ Seventh Amended Petition were omitted from the Second Amended Plea in Intervention. In addition, the Second Amended Plea

in Intervention contained numerous typographical and other non-substantive errors. Plaintiff-Intervenor has recognized these mistakes and requests leave to file its Third Amended Plea in Intervention in the form attached as Exhibit A.

4. Defendants will suffer no surprise or prejudice if leave to file the Third Amended Plea in Intervention is granted. The portions of the proposed Third Amended Plea in Intervention that are not contained in the Second Amended Plea in Intervention are contained in Plaintiffs' Seventh Amended Petition. Therefore, these issues, though newly adopted by Plaintiff-Intervenor, are already before the Court and the parties. There is no substantive change to the issues in the case. *Chapin & Chapin, Inc. v. Texas Sand & Gravel Co., Inc.*, 844 S.W.2d 664, 665 (Tex. 1992)(defining a substantive change in the context of pleading amendments as one that changes the nature of the trial itself.). The changes in the proposed Third Amended Plea will not change the nature of the trial itself because the changes merely adopt additional portions of Plaintiffs' Seventh Amended Petition. Furthermore, to be prejudicial, the amendment must reshape the nature of the trial—the opposing party must not be able to anticipate the amendment in light of the development of the case up to the time the amendment was requested, and the opposing party's presentation of the case must be detrimentally affected by the filing of the amendment.<sup>1</sup> *Allstate Prop. & Cas. Ins. Co. v. Gutierrez*, 281 S.W.3d 535, 539 (Tex. App. 2008). The Third Amended Plea does not reshape the nature of the trial. The Defendant is easily able to anticipate facing the issues in the Third Amended Plea, as they have already been presented in the Plaintiffs' Seventh Amended Petition. And Defendant's presentation of the case will not be detrimentally affected.

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<sup>1</sup> “In anticipating the amendment, it is not whether the opposing party did anticipate it, but rather whether it could have been anticipated.” *Allstate Prop. & Cas. Ins. Co. v. Gutierrez*, 281 S.W.3d 535, 539 (Tex. App. 2008).

5. The deposition of the Plaintiff-Intervenor corporate representative was re-noticed by Defendants on September 4, 2014 and is scheduled for September 12, 2014. This pleading is being filed in advance of that deposition and at the earliest possible time so that the Defendant has as much notice as possible of all of the statements and allegations in the Plaintiffs' Seventh Amended and Supplemental Petition that the Plaintiff-Intervenor has adopted.

6. Trial is scheduled to begin on October 27, 2014.

7. Rule 63 permits a party to request leave to amend the pleadings after the time for amendment has passed and requires that "...leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party." TEX. R. CIV. P. 63. A trial court has no discretion to refuse an amended pleading unless: (1) the opposing party presents evidence of surprise or prejudice; or (2) the amendment asserts a new cause of action or defense, and is thus prejudicial on its face, and the opposing party objects to the amendment. *Greenhalgh v. Serv. Lloyds Ins. Co.*, 787 S.W.2d 938, 939 (Tex. 1990); *Cullum v. White*, 399 S.W.3d 173, 181 (Tex.App.—San Antonio 2011, pet. denied); *Gutierrez*, 281 S.W.3d at 538-39. Further, "[a]n amendment is mandatory if it is merely procedural in nature[.]" *Gutierrez*, 281 S.W.3d at 539; *see also Chapin & Chapin, Inc.*, 844 S.W.2d at 665 (holding that change to pleadings was "procedural" because it "did not change a single substantive issue for trial."). The Third Amended Plea asserts no new cause of action, no new substance—it merely conforms the claims of Plaintiff-Intervenor to those asserted by Plaintiffs. Accordingly, the amendment is mandatory and leave should be granted. *E.g., Greenhalgh*, 787 S.W.2d 938 (holding that leave to amend was properly granted because amendment "raised no new substantive matters and because there was no showing of surprise or prejudice by [the opposing party]").

8. This motion is not filed for the purpose of delay or harassment, but only so that justice may be done. Indeed, granting Plaintiff-Intervenor leave to file an amended plea would better serve the interests of judicial efficiency, as it would permit a pleading that would accurately reflect the Plaintiff-Intervenor's positions concerning the claims at issue between the parties in this litigation.

WHEREFORE, Plaintiff-Intervenor Wells Fargo Bank, N.A., as Trustee/Co-Trustee, requests the Court grant this motion and give it leave to file its Third Amended Plea in Intervention, and for such other and further relief to which it may show itself justly entitled.

DATE: September 8, 2014.

Respectfully submitted,

/s/ Matthew J. Gollinger

John B. Massopust (*pro hac vice*)

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**ATTORNEYS FOR PLAINTIFF-  
INTERVENOR**

### **CERTIFICATE OF CONFERENCE**

On September 6, 2014, counsel for Plaintiff-Intervenor Wells Fargo Bank, N.A., contacted Defendant's counsel concerning the proposed filing of the Plaintiff-Intervenor's Third Amended Plea in Intervention, as well as the changes from the Plaintiff-Intervenor's Second Amended Plea in Intervention and the inaccuracies and errors with respect to Plaintiff-Intervenor's positions contained therein. This communication followed Defendant's re-noticing of Plaintiff-Intervenor's deposition of a corporate representative by less than 48 hours. Defendant's counsel communicated its disagreement with Plaintiff-Intervenor's proposed filing and Plaintiff-Intervenor now files this motion to protect its rights to amend its pleading in a non-substantive manner and to give the court formal notice of its efforts to meet and confer with opposing counsel on this issue.



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served via email on the below listed counsel of record via the method indicated, this 8<sup>th</sup> day of September, 2014:

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/s/ Matthew J. Gollinger  
Matthew J. Gollinger

# **EXHIBIT A**

(Consolidated Under)  
**NO. 2010-CI-10977**

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
JP MORGAN CHASE BANK, N.A.,	§	BEXAR COUNTY, TEXAS
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
	§	
	§	
Defendants.	§	225 <sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFF-INTERVENOR WELLS FARGO BANK, N.A.’S  
THIRD AMENDED PLEA IN INTERVENTION**

Pursuant to Texas Rule of Civil Procedure 60, Plaintiff-Intervenor Wells Fargo Bank, N.A., as Trustee/Co-Trustee, files this Third Amended Plea in Intervention, and states as follows:

**I.**

**IDENTITY OF PLAINTIFF-INTERVENOR**

1. Plaintiff-Intervenor Wells Fargo Bank, N.A., is a national banking association and serves as trustee or co-trustee for twenty-three (23) trust entities (“Trusts”) that hold Certificates of Beneficial Interest in the South Texas Syndicate Trust (hereinafter, the “STS Trust”). Plaintiff-Intervenor files this Third Amended Plea in Intervention in its fiduciary capacities on behalf of such Trusts.

2. Plaintiff-Intervenor has a right to intervene in this action under Texas Rule of Civil Procedure 60 because Plaintiff-Intervenor has a present justiciable interest in this litigation. The claims asserted by the Plaintiffs in Plaintiffs’ Seventh Amended and Supplemental Petition and the defenses raised by JP Morgan Chase Bank, N.A. (“Defendant”) in this suit implicate and

affect the Plaintiff-Intervenor's rights and interests, and Plaintiff-Intervenor's presence in this action is essential to the protection of such rights and interests.

## **II.**

### **HISTORY OF THE SOUTH TEXAS SYNDICATE TRUST**

3. In 1906, Jed L. Washburn and five others purchased approximately 132,000 contiguous acres in McMullen and LaSalle Counties, Texas. Title to the property was originally taken in the name of George F. Piper and subsequently transferred in 1917 to Jed L. Washburn.

4. Following Jed L. Washburn's death in 1931, A. McC. Washburn became title holder in 1932. With court approval, the STS Trust was formed and 30,000 Certificates of Beneficial Interest were issued.

5. Following A. McC. Washburn's death in 1939, John T. Pearson was appointed Trustee of the STS Trust.

6. In 1950, the surface rights to the 132,000 acres were sold, leaving the mineral estate as the sole asset of the STS Trust.

7. John T. Pearson died in 1950 without naming a Successor Trustee. The Alamo National Bank was appointed Successor Trustee of the STS Trust on February 12, 1951 by order of the District Court, 73<sup>rd</sup> Judicial District, Bexar County Texas.

8. In 2001, after several bank mergers, J.P. Morgan Chase Bank, N.A. became Successor Trustee of the STS Trust.

9. In 2008, Petrohawk #1 Discovery well was drilled on STS Trust property and produced substantial results. Additional leases for mineral rights on STS Trust property were negotiated by the Trustee in 2008 through 2011 without exercising the prudence and good judgment consistent with its fiduciary obligations to the beneficiaries of the STS Trust.

### III.

#### **SOUTH TEXAS SYNDICATE TRUST LITIGATION**

10. The subject matter of the pending Action involves the administration of the STS Trust. The Plaintiffs allege that Defendants have engaged in a pattern of neglect, mismanagement and tortious behavior that has caused hundreds of millions of dollars of damage to STS Trust assets and estate.

11. STS Trust beneficiary John K. Meyer commenced the pending Action against the Defendants for their actions as Trustee of the STS Trust in July 2010. In May 2011, STS Trust beneficiaries John Meyer Jr. and Theodore Meyer filed a Petition in Intervention in the John K. Meyer action.

12. A similar action against Defendants was commenced by STS Trust beneficiary Emilie Blaze in March 2011.

13. In June 2011, by an order of Judge Renee F. McElhaney, the Meyer and Blaze actions were consolidated.

14. On November 15, 2011, the Meyer and Blaze Plaintiffs filed Plaintiffs' Consolidated Second Amended Petition.

15. In January 2012, Plaintiff-Intervenor, as trustee or co-trustee for the twenty-three (23) Trusts holding Certificates of Beneficial Interest in the STS Trust, filed a Plea in Intervention in the pending Action in its fiduciary capacity on behalf of said Trusts.

16. On August 26, 2014, the Plaintiffs filed Plaintiffs' Seventh Amended and Supplemental Petition.

17. Collectively, Plaintiff-Intervenor, together with the other Plaintiffs and Intervenor in this Action, own, hold, and represent substantially in excess of 51% of the 30,000 total units of the STS Trust.

18. Defendants have repeatedly argued that all holders of Certificates of Beneficial Interest in the STS Trust are necessary parties to the pending action.

#### IV.

#### **PRESENT JUSTICIABLE INTERESTS**

19. Plaintiff-Intervenor serves as trustee or co-trustee for twenty-three (23) Trusts that hold Certificates of Beneficial Interest in the STS Trust and therefore is affected by the administration of the STS Trust and has an interest in and/or claim against the STS Trust.

20. Resolution of the claims asserted in the pending Action without the full participation of Plaintiff-Intervenor would be improper and, as a practical matter, may impair or impede Plaintiff-Intervenor's ability to protect its rights and interests, and intervention is therefore essential. Plaintiff-Intervenor is thus entitled to intervene in the pending Action under Texas Rule of Civil Procedure 60.

21. Allowing intervention will not prejudice the parties to the pending Action nor will it cause an excessive multiplication of issues; rather, it will increase the judicial and economic efficiency of the pending Action. Plaintiff-Intervenor previously filed (1) a Plea in Intervention in its capacity as trustee or co-trustee for twenty-four (24) trust entities, (2) an Amended Plea in Intervention and (3) a Second Amended Plea in Intervention – Plaintiff-Intervenor now files this Third Amended Plea in Intervention merely to adopt and incorporate by reference some additional statements and allegations asserted in the Plaintiffs' Seventh Amended and Supplemental Petition. Plaintiff-Intervenor was without sufficient time to review and consider

adoption of some of the statements and allegations in the Plaintiffs' Seventh Amended and Supplemental Petition by the time its Second Amended Plea in Intervention was due to be filed. This Third Amended Plea simply adopts additional allegations and clarifies Plaintiff-Intervenor's position. Therefore, it has no detrimental effect on the litigation and Plaintiff-Intervenor timely brings this Third Amended Plea in Intervention.

## V.

### CLAIMS

22. Plaintiff-Intervenor adopts and incorporates by reference all statements and allegations asserted in the Plaintiffs' Seventh Amended and Supplemental Petition as if the same were herein set forth in full, except the following specific allegations:

i. Paragraph 196 in its entirety but instead states that:

By yet again leasing an enormous block of STS Mineral Rights, and giving the block to Petrohawk, which already held 31% of the STS available mineral acres, JP Morgan's exclusive negotiations with Petrohawk resulted in a lack of market competition that breached its duty to the STS Beneficiaries.

ii. Paragraph 241, subpart 7 in its entirety but instead states that:

Failed to foster a competitive environment which artificially depressed the terms it was offered by the sole participant in the negotiations for the STS Mineral Rights.

23. Plaintiff-Intervenor reserves the right to amend its pleadings to add allegations specific to its interests relating to this matter.

## VI.

### GENERAL DENIAL

24. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Plaintiff-Intervenor denies each and every, all and singular, of the material allegations in Defendants/Counter-

Petition Plaintiffs' Counter-Petition for Declaratory Relief and Instructions from the Court, and demands strict proof thereof by a preponderance of the evidence.

## VII.

### **PRAYER FOR RELIEF**

25. WHEREFORE, Plaintiff-Intervenor requests that the parties take notice of the filing of this Plea in Intervention and prays that upon final hearing Plaintiff-Intervenor has judgment against Defendant for:

- a. Actual damages;
- b. Consequential and incidental damages;
- c. Disgorgement of all compensation, fees, and expenses paid by the STS Trust to Defendant and to third-parties at the direction of Defendant;
- d. Pre- and post-judgment interest at the highest legal rate allowed by law;
- e. All attorneys' fees, expenses, and costs in pursuing this matter;
- f. Exemplary or punitive damages in an amount to be determined at trial;
- g. An order prohibiting Defendant from using STS Trust assets, property, or revenue, to pay attorneys' fees, expenses, and costs in defending this action and any other actions brought by other beneficiaries;
- h. Such other and further relief to which Plaintiff-Intervenor may show itself to be justly entitled; and
- i. Such other, further, and different damages as allowed in accordance with the evidence and applicable law.



Dated September \_\_, 2014

Respectfully submitted,

**ZELLE HOFMANN VOELBEL & MASON LLP**

By: \_\_\_\_\_

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**ATTORNEYS FOR PLAINTIFF-  
INTERVENOR**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served on  
September \_\_, 2014, in accordance with the TEXAS RULES OF CIVIL PROCEDURE as follows:

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30 min  
JUDGE'S NOTES



CAUSE NO.: 2010CI10977

COURT: 225

DATE/TIME: 09/11/2014 08:30AM

SETTING COURT: 109

STYLE: JOHN K MEYER  
VS. JP MORGAN CHASE BANK N A ET AL

DISCOVERY LEVEL: 2

ATTORNEY(S) FOR CASE:

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IAN BOLDEN

09/01/2014-09/30/2014

THIS CASE HAS 15 OR MORE ATTORNEYS

TYPE OF MOTION OR APPLICATION:  
NON-JURY SETTING ON MOTION TO COMPEL

CONFERRING \_\_\_\_\_ ESTIMATE HEARING TIME \_\_\_\_\_  
AGREED ORDER \_\_\_\_\_ ASSIGNED COURT 45th  
DROP \_\_\_\_\_ RECORD TAKEN yes  
INTERPRETER \_\_\_\_\_ RESET DATE \_\_\_\_\_ TIME \_\_\_\_\_

B. Wagner

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
14 SEP 11 AM 8:42  
BY DEPUTY

DATE OF NOTES 9-11-14

JUDGE INITIALS B

Motion granted -  
P.O. to ~~be~~ issue  
attyp / expert eyes only -

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	
JPMORGAN CHASE BANK, N.A.	§	225 <sup>TH</sup> JUDICIAL DISTRICT
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	BEXAR COUNTY, TEXAS

**RESPONSE AND OBJECTION TO PLAINTIFF-INTERVENOR WELLS  
FARGO BANK, N.A.'S MOTION FOR LEAVE TO FILE  
THIRD AMENDED PETITION IN INTERVENTION**

Defendant JPMorgan Chase Bank, N.A. Individually/Corporately and as Former Trustee of the South Texas Syndicate Trust (“JPMorgan”), files this Response and Objection to Plaintiff-Intervenor Wells Fargo Bank, N.A.’s Motion for Leave to File Third Amended Petition in Intervention (“WF Intervenor’s Motion”).

**I. SUMMARY**

Two and three/quarter (2-3/4) years after Wells Fargo Bank, N.A., in its capacity as Trustee for twenty-three (23) trusts, (“Wells Fargo”) intervened in this suit with its original Plea in Intervention filed on January 17, 2012, after two prior amendments thereof, in violation of the Court’s Scheduling Order applicable in this case, and in blatant breach of Wells Fargo’s Rule 11 TRCP Agreement with JP Morgan mandating the timing required for filing an amended intervention, Wells Fargo now moves for an untimely amendment of its Plea in Intervention that totally changes the nature of its claims for twenty-three (23) Plaintiffs, and as such, is prejudicial on its face. Accordingly, WF Intervenor’s Motion should be denied.

## **II. OBJECTION TO UNTIMELY ATTEMPTED AMENDMENT OF INTERVENOR'S INTERVENTION**

### **2.01**

Pursuant to the Amended Docket Control Order signed on April 3, 2014, as amended pursuant to that certain Rule 11 Agreement dated July 8, 2014, Wells Fargo's deadline to amend its intervention pleading was August 26, 2014. On August 26, 2014, Wells Fargo requested that JPMorgan agree to allow it an additional two (2) days in which to file its Amended Plea in Intervention, thereby giving Wells Fargo time to first review the Plaintiffs' Seventh Amended and Supplemental Petition that was also due to be filed on that day. JPMorgan agreed. Attached hereto and filed herein as Exhibit 1 is the referenced Rule 11 Agreement between JPMorgan and Wells Fargo dated August 26, 2014.

### **2.02**

On August 29, 2014, Wells Fargo filed its Second Amended Plea in Intervention wherein it excepted and, therefore, did not adopt twenty-seven (27) critically important paragraphs or subparagraphs contained in Plaintiffs' Seventh Amended and Supplemental Petition.<sup>1</sup> These paragraphs/subparagraphs clearly indicated that Wells Fargo did not adopt factual allegations, basis for liability, and claims for damages regarding critical claims against JPMorgan regarding damages, self-dealing, conflicts of interest, and other claims. For example, importantly, Wells Fargo did not adopt a claim for damages against JPMorgan totaling \$585,000,000 relating to alleged "self-dealing."

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<sup>1</sup> Wells Fargo's original Plea in Intervention and First Amended Plea in Intervention also excepted and, therefore, did not adopt, numerous paragraphs and subparagraphs from Plaintiffs' prior amended petitions having to do with many of these very same factual allegations, basis for liability, and claims for damages.

### 2.03

Therefore, Wells Fargo's proposed Third Amended Plea in Intervention patently asserts new substantive matters that reshape its claims against JPMorgan and is prejudicial on its face. *See San Antonio State Hosp. v. Koehler*, 981 S.W.2d 32, 37 (Tex. App.—San Antonio 1998, pet. denied)(requested amendment was facially prejudicial because it presented a new basis for liability; where a trial amendment is prejudicial on its face, the opposing party need not demonstrate surprise or prejudice).

### 2.04

On September 8, 2014, eleven (11) days after its pleading amendment deadline, Wells Fargo filed its Motion requesting leave to amend its Plea in Intervention a third time in violation of the Court's Scheduling Order and in breach of its Rule 11 Agreement with JPMorgan. Wells Fargo advised that it intended to file an amended plea in intervention that—thoroughly breaking from prior versions of its plea in intervention—adopted Plaintiffs' current petition essentially in its totality. JPMorgan did not and could not anticipate these prejudicial amendments during the pendency of this matter up to the time the amendment was requested.

### 2.05

Discovery in this case closes on September 16, 2014, per the terms of the Court's Scheduling Order applicable herein. Although Wells Fargo alleges in its Motion that the amendment would not detrimentally affect JPMorgan's presentation of its case, nothing could be further from the truth. Although Wells Fargo's corporate representative was deposed on September 11, 2014, and was

asked about the factual allegations, basis for liability, and claims for damages which Wells Fargo now seeks to adopt, he did not answer any relevant questions claiming an alleged lack of information or claiming privilege. As a result of Wells Fargo's positions taken in the deposition, JPMorgan (i) did not have an opportunity to question Wells Fargo about the amendments, and (ii) cannot conduct discovery about Wells Fargo's proposed amendments. Therefore, if Wells Fargo's Motion were granted, and the amendments allowed, it would severely and detrimentally prejudice the presentation of JPMorgan's case, its related defenses and case defensive strategy. *See Hampden Corp. v. Remark*, 331 S.W.3d 489, 499 (Tex. App.—Dallas 2010, pet. denied).

## 2.06

For these reasons, the amendments sought by Wells Fargo are facially prejudicial and its Motion should be in all things denied.

### **III. PRAYER**

WHEREFORE, JPMorgan prays that the Court deny Plaintiff-Intervenor Wells Fargo Bank, N.A.'s Motion for Leave to File Third Amended Petition in Intervention. JPMorgan seeks such further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

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This is to certify that a true and correct copy of the foregoing was served on the following, as indicated, on September 15, 2014:

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*/s/ Patrick K. Sheehan*  
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**CAUSE NO. 2010-CI-10977**

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
	§	
VS.	§	
	§	225TH JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST,	§	
	§	
DEFENDANT.	§	BEXAR COUNTY, TEXAS

**DEFENDANT’S RESPONSE TO  
PLAINTIFFS’ MOTION FOR IN CAMERA INSPECTION AND ORDER  
COMPELLING PRODUCTION OF RECORDS RESPONSIVE TO DISCOVERY**

Defendant JPMorgan Chase Bank, N.A., Individually/Corporately and as Former Trustee of the South Texas Syndicate Trust (collectively “JPMorgan”), files its Response to Plaintiffs’ Motion for in Camera Inspection and Order Compelling Production of Records Responsive to Discovery as follows:

**I.  
INTRODUCTION**

JPMorgan is former trustee of the South Texas Syndicate Trust (the “STS Trust”). Plaintiffs filed this lawsuit nearly four years ago to recover damages allegedly suffered as a result of JPMorgan’s actions in leasing the mineral rights held in the STS Trust. Plaintiffs contend that JPMorgan, as trustee of the STS Trust, breached its fiduciary duties by, among other things, entering lease transactions with companies who were also investment and/or commercial banking customers of JPMorgan in its corporate capacity or of an affiliate.

To date, Plaintiffs have conducted a massive amount of discovery. In the course of the extensive and exhaustive discovery in this case, JPMorgan has responded to 10 sets of requests

for production and produced in excess of 150,000 pages of documents. In response to the Plaintiffs' prior deposition notices, JPMorgan has designated six corporate representatives to testify regarding hundreds of topics and sub-topics. In addition, Plaintiffs have deposed twenty-one JPMorgan employees and eight third parties. Now, despite the voluminous discovery that JPMorgan has already provided and over four years since this case was filed and previously ready for trial, Plaintiffs still seek additional information through this Motion.

The Motion relates to certain interrogatories propounded to JPMorgan relating to the banking relationships with Broad Oak Energy, Inc. ("Broad Oak"), Hunt Oil Company ("Hunt"), Murphy Oil Corporation ("Murphy"), Bass Enterprises Production Company ("BOPCO"), and Marubeni Corporation ("Marubeni") (collectively, the "Third-Parties"). The interrogatories are on their face ambiguous and overbroad and responding to them as written would be unduly burdensome. In addition, the interrogatories are objectionable under Section 59.006 of the Texas Finance Code. JPMorgan asks the Court to sustain its objections and deny the Motion.<sup>1</sup>

## **II.**

### **INTERROGATORIES AT ISSUE FROM FIFTH SET OF INTERROGATORIES<sup>2</sup>**

As noted in the Motion, on June 25, 2014, Plaintiffs served JPMorgan with their Fifth Set of Interrogatories. Interrogatory No. 1 stated as follows:

INTERROGATORY NO. 1: Describe with particularity each of the following as between You and Hunt Oil Company and any of its affiliates or subsidiaries (collectively, "Hunt Oil") and identify Your officer(s), director(s), or employee(s) best suited to testify about the substance of these transactions, activities, services, or interests:

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<sup>1</sup> As of the filing of this response, Broad Oak's successor provided its consent to Plaintiffs' notice under the Texas Finance Code and BOPCO had reached an agreement with Plaintiffs. Accordingly, JPMorgan will be supplementing its interrogatory responses relating to Broad Oak and BOPCO to provide a general summary of the business relationship during a narrowed timeframe. As a result, the only outstanding issues relate to Hunt, Murphy and Marubeni.

<sup>2</sup> JPMorgan refers to Plaintiffs' Fifth Set of Interrogatories which is attached to the Motion as Exhibit A; likewise, JPMorgan's response to Plaintiffs' Fifth Set of Interrogatories is attached to the Motion as Exhibit C.

- (a) Any forms of ownership or investment as between You and Hunt Oil from January 1, 2005 to the present.
- (b) Any forms of financial relationships as between You and Hunt Oil from January 1, 2005 to the present.
- (c) Any forms of economic relationships as between You and Hunt Oil from January 1, 2005 to the present.
- (d) Any forms of loans, including lines of credit, or other facilities of credit as between You and Hunt Oil from January 1, 2005 to the present.
- (e) Any forms of derivative or hedging relationships as between You and Hunt Oil from January 1, 2005 to the present.
- (f) Any joint ventures or partnerships as between You and Hunt Oil from January 1, 2005 to the present.
- (g) The nature and duration of any services provided by You to Hunt Oil from January 1, 2005 to the present.
- (h) The amount and timing of any compensation received by You from Hunt Oil for any business services from January 1, 2005 to the present.

Separate, identical interrogatories sought information regarding Murphy and Marubeni.<sup>3</sup> See Interrogatories Nos. 2 and 4.

**III.**  
**THE INTERROGATORIES AT ISSUE SEEK IRRELEVANT INFORMATION OR ARE OVERBROAD ON THEIR FACE**

Although the Texas Rules of Civil Procedure authorize discovery of any non-privileged matter that is relevant to the subject matter of a pending action, the scope of discovery of even relevant matters is not unlimited. *See In re Graco Children's Prods., Inc.*, 210 S.W.3d 598, 600 (Tex. 2006) (per curiam); *see also In re Allstate County Mut. Ins. Co.*, 227 S.W.3d 667, 668-69 (Tex. 2007). Under Texas Rule of Civil Procedure 192.4, the Court should limit discovery if it determines that either: (1) the discovery sought is unreasonably cumulative or duplicative, or is

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<sup>3</sup> There was also an interrogatory relating to BOPCO, but that interrogatory is no longer at issue for the purposes of the Motion.

obtainable from some other source that is more convenient, less burdensome, or less expensive; or (2) the burden or expense of the discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Tex. R. Civ. P. 192.4.

The remaining interrogatories at issue seek information relating to JPMorgan's relationship with Hunt, Murphy, and Marubeni going back to January 1, 2005. This period of time is overbroad. None of these third-parties became parties to any lease involving mineral rights of the STS Trust until 2009 at the earliest or even much later. And Murphy and Marubeni hold non-working interests in the leases, and there is no evidence they had any substantive contact with the Trustee about the leases. No good faith basis exists to support Plaintiffs' request for the sheer breadth of the information sought – even if the information were relevant, something JPMorgan disputes. For example, the interrogatories seek disclosure of information regarding “[a]ny forms of financial relationship,” “[a]ny forms of economic relationship,” “[a]ny forms of loans, including lines of credit, or other facilities of credit . . . .” between JPMorgan and each of the third-parties. JPMorgan is a very large financial institution with very diverse business activities. The Plaintiffs' inquiries can be read to cover such mundane contact as credit card or checking accounts. Such a request is “not merely an impermissible fishing expedition; it [is] an effort to dredge the lake in hopes of finding a fish.” *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995). The undue burden they would impose is obvious.

For more than 100 years, Federal law has permitted a bank to provide commercial banking services alongside fiduciary trust services. *See* Federal Reserve Act of 1913, § 11(k), 38 Stat. 251, 262. More recently, under Graham-Leach-Bliley, Congress permitted financial

institutions to broaden the scope of their services to include asset management, investment banking, insurance and securities. *See* Graham-Leach-Bliley Financial Services Modernization Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999).<sup>4</sup> In order for the commercial and investment banking relationships to be relevant at all to Plaintiffs' claim of breach of fiduciary duty based on self-dealing, Plaintiffs have to first show that JPMorgan, as trustee of the STS Trust, were influenced by those relationships and acted to the detriment of the STS Trust because of the relationships. Here, Plaintiffs do not have any evidence of influence and, therefore, the relationships are not relevant.

#### **IV. THE INTERROGATORIES ARE VAGUE AND AMBIGUOUS**

Here, many of the sub-parts to the interrogatories at issue are vague and ambiguous. *See* sub-parts (a), (b), (c) and (g), respectively. Plaintiffs' inquiries about "any forms of economic relationship" and "any forms of financial relationship" are prime examples of the ambiguity. It is virtually impossible for JPMorgan to know from the face of the interrogatories what information is being sought.

#### **V. THE FINANCE CODE DOES NOT REQUIRE THAT THE COURT ORDER PRODUCTION**

The provisions of the finance code that deal with in camera inspections state as follows:

(d) If the customer that is not a party to the proceeding does not execute the written consent requested under Subsection (c)(3) on or before the date that compliance with the request is required, the requesting party may by written motion seek an in camera inspection of the requested record as its sole means of obtaining access to the requested record. In response to a motion for in

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<sup>4</sup> There is no regulatory prohibition against a bank serving as fiduciary while simultaneously providing commercial lending or underwriting services to customers with whom the bank as fiduciary may deal. *See Board of Trustees of Afra Retirement Fund v. JPMorgan Chase Bank, N.A.*, 806 F.Supp.2d 662, 665-66 (S.D.N.Y. 2001) (noting that if it were a conflict for a bank to act as lender to someone with whom it did business on behalf of a trust customer "that conclusion would surely be reflected in the extensive regulations that govern the banking industry").

camera inspection, **the tribunal may inspect the requested record to determine its relevance to the matter before the tribunal. The tribunal may order redaction of portions of the records that the tribunal determines should not be produced and shall enter a protective order** preventing the record that it orders produced from being:

(1) disclosed to a person who is not a party to the proceeding before the tribunal; and

(2) used by a person for any purpose other than resolving the dispute before the tribunal.

TEX. FIN. CODE § 59.006(d) (emphasis added). Here, the Court is not required to inspect anything in camera; it *may* do so. Moreover, in the event the Court does conduct an in camera inspection it must first determine relevance to the case before deciding whether it will order responses (and under what protections it may require if responses are ordered).

## **VI.** **CONCLUSION AND PRAYER**

Defendant JPMorgan respectfully requests that the Court deny Plaintiffs' Motion and pray for such other and further relief to which it may be entitled.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 11<sup>th</sup> day of September, 2014.

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CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
	§	
V.	§	
	§	225TH JUDICIAL DISTRICT
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST,	§	
Defendant.	§	BEXAR COUNTY, TEXAS

**STIPULATION AND AGREEMENT REGARDING THE  
AUTHENTICATION AND ADMISSIBILITY OF BHP  
BILLITON PETROLEUM PROPERTIES (N.A.) L.P.'S DOCUMENTS**

The parties hereby stipulate and agree that the Petrohawk Lease Purchase Reports—Bates Stamped BHP0001-BHP0446—produced by BHP Billiton Petroleum Properties (N.A.) L.P. in this cause pursuant to Texas Rule of Civil Procedure 205: (i) shall be considered authentic pursuant to Texas Rule of Evidence 901 and (ii) shall be considered business records admissible as an exception to the hearsay rule pursuant to Texas Rule of Evidence 803(6) without the necessity of testimony by a custodian or other qualified witness, or any affidavit under Rule 902(10).

This stipulation and agreement extends to true and correct copies of the documents enumerated above.

**AGREED:**

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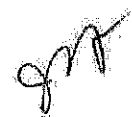
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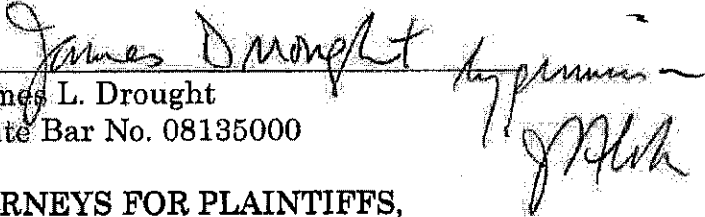
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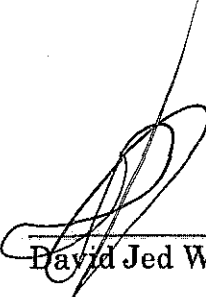
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David Jed Williams

NO. 2010-CI-10977

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	
	§	BEXAR COUNTY, TEXAS
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY AND	§	
AS TRUSTEE OF THE SOUTH TEXAS	§	
SYNDICATE TRUST and GARY P.	§	
AYMES	§	225th JUDICIAL DISTRICT

**CHESAPEAKE EXPLORATION, L.L.C.’S RESPONSE IN OPPOSITION  
TO PLAINTIFFS’ MOTION TO COMPEL**

TO THE HONORABLE JUDGE OF SAID COURT:

Chesapeake Exploration, L.L.C. (“Chesapeake”) files this Response in Opposition to Plaintiffs’ Motion to Compel Chesapeake to produce documents in response to a deposition subpoena and would respectfully show the Court as follows:

**I. BACKGROUND**

This dispute concerns Plaintiffs’ attempt to compel Chesapeake, a nonparty, to produce proprietary trade secret information concerning oil and gas leases to which neither Plaintiffs nor Defendant is a party. Plaintiffs have sued Defendant JP Morgan Chase Bank (“JP Morgan”), alleging that JP Morgan breached fiduciary duties it owed to Plaintiffs as trustee of the South Texas Syndicate (the “Trust”). Plaintiffs allege, among other things, that JP Morgan failed to prudently manage the Trust’s mineral estate by entering into oil and gas leases at inadequate lease terms.

The minerals at issue are located in McMullen and La Salle Counties. Pls.’ 7th Am. Pet. ¶ 141. JP Morgan entered into the complained-of leases in May 2008, July 2008, and December



2008. *Id.* ¶¶ 179, 192 & 209. Not surprisingly, Plaintiffs refer to 2008 as “the most critical year in the history” of the Trust. *Id.* ¶ 169.

In preparing its defense, JP Morgan recently served third-party subpoenas on a number of oil and gas companies seeking comparable lease information. At a recent hearing on the objections from these companies, the Court ruled that the companies were required to produce redacted leases from the years 2007 to 2008 only, i.e., during the “critical” time period in dispute, and a document showing the amount of bonuses paid during that same time period. This production will be subject to a protective order, under which the documents at issue can be viewed by experts and attorneys only.<sup>1</sup>

Soon after JP Morgan served its subpoenas—and more than two years after Plaintiffs filed their lawsuit—Plaintiffs served two third-party subpoenas on Chesapeake requesting the production of a number of documents related to thirty-six of Chesapeake’s oil and gas leases. Neither Plaintiffs nor JP Morgan are a party to any requested lease. Unlike the leases JP Morgan entered into and unlike the leases to be produced under the Court’s prior ruling, the leases requested from Chesapeake are not from the “critical year” of 2008 and are instead dated from October 1, 2009 through April 1, 2011. The requested leases are also spread out geographically, primarily from counties other than McMullen and La Salle, including Webb County, Frio County, Zavala County, Dimmit County, and Maverick County. Of the thirty-six requested leases, none are from McMullen County and only three are from La Salle County.

For the reasons discussed below, Plaintiffs are not entitled to any of the requested information.

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<sup>1</sup> The parties have not yet reduced these specifics to a formal order. Instead, this information can be found in Judge Stryker’s notes from the hearing, attached as **Exhibit B**.

## II. ARGUMENT

### A. **Plaintiffs are improperly seeking the production of Chesapeake's proprietary trade secret information.**

Under Texas law, a person may refuse to disclose a trade secret if such refusal will not tend to conceal fraud or otherwise work injustice. *In re Leviton Mfg. Co.*, 1 S.W.3d 898, 902 (Tex. App.—Waco 1999, orig. proceeding). This trade secret privilege accommodates two competing interests by recognizing that trade secrets are an important property interest, worthy of protection, while also recognizing the importance of the fair adjudication of lawsuits. *Id.*

As Chesapeake noted in its objections to Plaintiffs, the requested documents contain highly confidential and proprietary trade secret information that is not filed in the real property public records. This confidential information includes leases that Chesapeake has executed, agreements Chesapeake has entered into regarding the leases, data sheets relative to the leases, information related to the amount of bonus paid for the leases, Lease Purchase Reports, and any receipt or paid draft relative to the leases.

As explained in the affidavit, attached as **Exhibit A**, from Chesapeake's Land Manager for South Texas, Jerris Johnson, all of the requested information fits within the Texas Supreme Court's six-factor test for determining whether a trade secret exists. *See In re Bass*, 113 S.W.3d 735, 739–40 (Tex. 2003) (orig. proceeding) (articulating six factors that are relevant to determining whether a trade secret exists but noting that not all six factors are required to be present in every case). First, the information is not generally known outside of the company. Ex. A ¶ 5. Chesapeake does not reveal such information because the information gives Chesapeake an advantage in the oil and gas business and its disclosure could make it more difficult and expensive for Chesapeake to negotiate lease terms. *Id.* In fact, much of the

information, including the amount of bonus paid for a lease, is expressly excluded from the leases Chesapeake takes in order to preserve this confidentiality. *Id.*

Second, the information would be valuable to Chesapeake's competitors and to potential lessors because it would indicate what Chesapeake has paid for leases and the lease terms that Chesapeake has agreed to, including but not limited to, terms related to calculation of royalties. *Id.* ¶ 6.

Finally, Chesapeake preserves the confidentiality of this information by not making it publicly available in the real property records. In fact, Chesapeake does not file leases of the type sought at all, choosing instead to file only Memoranda of Leases that identify that a lease exists but that do not disclose any of the financial terms of the leases or specific terms related to retained acreage, continuous drilling obligations, pooling, royalty, surface restrictions, and other related factors. *Id.* ¶ 7.

The value of the information at issue along with the efforts Chesapeake takes to preserve its confidentiality establish that the information requested by Plaintiffs constitutes Chesapeake's proprietary trade secrets.

**B. Production of Chesapeake's trade secret information is not necessary for the fair adjudication of Plaintiffs' claim.**

When a person resisting discovery establishes that the requested information is a trade secret, the burden shifts to the requesting party to establish that the information is necessary for a fair adjudication of its claim or defense. *In re Bass*, 113 S.W.3d at 743. For information to be necessary, it must be both material and necessary to the litigation. *Id.* "A showing of relevance alone is not adequate." *In re Leviton Mfg. Co.*, 1 S.W.3d at 902.

Here, Plaintiffs do not even attempt to argue that the requested information is necessary to their claim, relying instead on a relevance argument only. *See* Pls.' Mot. ¶ 5. But even if

Plaintiffs had attempted to make such an argument, a number of factors would refute such a claim. First, Plaintiffs did not request the information until more than two years after filing the lawsuit and did so only in response to JP Morgan requesting lease information from other companies. Had the information been necessary to establishing their claim, Plaintiffs would have requested it much sooner in the litigation, rather than waiting until less than two months before the deadline to complete discovery.

Moreover, the information is not material to Plaintiffs' claim. Neither Plaintiff nor JP Morgan was in any way involved with the requested leases or with Chesapeake generally. There is simply no basis for Plaintiffs to argue that a third party's lease, entered into more than a year after Plaintiffs', is material to the claim that JP Morgan failed to prudently manage the Trust's mineral estate. As such, Chesapeake should not be required to disclose its trade secret information, regardless of whether there is a protective order in place.

**C. The requested information is not even relevant to Plaintiffs' claim.**

But even if the Court were to find that the requested information does not constitute a trade secret, Plaintiffs' request is still improper because the information is not relevant to Plaintiffs' claim. Indeed, Plaintiffs' only argument to the contrary is that the information is relevant based on the Court's prior ruling requiring certain companies to produce lease information to JP Morgan. Pls' Mot. ¶ 5. The information to be produced under the Court's ruling, however, is distinguishable from Plaintiffs' requested information.

First, Plaintiffs' requested information is not limited to the time frame provided for in the Court's ruling. As mentioned above, the Court required the other companies to produce redacted lease and bonus information from the years 2007 to 2008 only. This time period is tied directly to Plaintiffs' claim. Indeed, Plaintiffs refer to the year 2008 as "critical" to their claim on three

separate occasions in their Petition. *See* Pls.' 7th Am. Pet. ¶¶ 150, 169 & 217. All of the lease information requested from Chesapeake, however, concerns the time period from October 1, 2009 through April 1, 2011. Indeed, Chesapeake was not even in the Eagle Ford play in 2008. Plaintiffs have failed to articulate how leases executed between third parties in 2010 can be relevant to Plaintiffs' claim that JP Morgan failed to prudently manage the Trust's mineral estate in 2008. That information would not have been available to JP Morgan, or even in existence, during the relevant time frame.

Moreover, even if Plaintiffs seek to argue that the later Chesapeake leases could be used to show the value that JP Morgan could have received had it waited to enter into the leases, the requested information is still too late in time. The gist of Plaintiffs' claim is that JP Morgan could have received more for the leases if it had allowed the market to catch up to the news that the Eagle Ford Shale could be produced through horizontal drilling. But according to Plaintiffs' petition, that news was made available through a public announcement in October 2008. Pls.' 7th Am. Pet. ¶ 203. Plaintiffs further allege that by July 2009, (1) this public announcement was eight months old, (2) confirmation wells had been successfully drilled and publicized, (3) Eagle Ford leasing and drilling permit activity had accelerated, and (4) JP Morgan had been receiving interest from many production companies for more than five months. *Id.* ¶ 221. Thus, Plaintiffs petition confirms that the Chesapeake leases requested were not entered into until months after the news regarding Eagle Ford production had already influenced the market.

Finally, Plaintiffs' requested information is not geographically limited to the area in which the Trust's minerals are located. Instead, Plaintiffs have requested thirty-three leases from counties other than McMullen and La Salle, where the Trust's minerals are found. Leases from these other counties cannot be compared to Plaintiffs' leases. The decision to enter into any one

lease and pay a bonus is based on a number of considerations that will vary depending on the circumstances. Ex. A ¶ 8. Indeed, Plaintiffs recognize this point in their petition by arguing that JP Morgan failed to act as a prudent manager of the estate when it considered the management of 100,000 contiguous mineral acres under unitary control to be the same as management of a five-acre parcel in which the Trust owed a 30% interest. Pls.' 7th Am. Pet. ¶ 178. Like the size of the tract and the ownership interests involved, geography, among other things, is a factor that will affect how the parties negotiate a potential lease. As such, leases from one location are not comparable, and therefore not relevant, to leases in an entirely different location.

### **III. CONCLUSION**

With their motion, Plaintiffs seek to compel a nonparty to produce proprietary trade secret information concerning oil and gas leases to which neither Plaintiffs nor Defendant was a party. Because the requested information is neither necessary nor relevant to the adjudication of Plaintiffs' claim, Chesapeake requests that the Court deny Plaintiffs' Motion to Compel. Should the Court require production, however, Chesapeake requests that the production be subject to the Court's prior ruling, under which the documents at issue are limited in scope and can be viewed by experts and attorneys only.

Respectfully submitted,

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600 Congress Avenue, Suite 1500  
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(512) 495-6300  
(512) 474-0731 Fax

By /s/ Anthony Arguijo  
Anthony Arguijo  
State Bar No. 24079781  
aarguijo@scottdoug.com  
ATTORNEY FOR CHESAPEAKE  
EXPLORATION, L.L.C.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on counsel of record, as listed below, on September 10, 2014.

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/s/ Anthony Arguijo  
Anthony Arguijo



JOHN K. MEYER, ET AL.,

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§  
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§  
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§  
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IN THE DISTRICT COURT OF

v.

BEXAR COUNTY, TEXAS

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST and GARY P.  
AYMES

225th JUDICIAL DISTRICT

**AFFIDAVIT OF JERRIS JOHNSON**

STATE OF OKLAHOMA

§  
§  
§

COUNTY OF OKLAHOMA

Before me, the undersigned authority, on this day personally appeared Jerris Johnson, known to me to be the person whose name is subscribed below, and on his oath deposed and said as follows:

“1. My name is Jerris Johnson. I am over the age of eighteen, and have never been convicted of a felony or crime of moral turpitude, and am competent to make this affidavit. Each of the facts recited below are within my personal knowledge unless otherwise stated and are true and correct.

“2. I serve as Manager – Land, South Texas to Chesapeake Exploration, L.L.C. (“Chesapeake”). In my position as Land Manager, I have become familiar with Chesapeake’s manners of keeping records and maintaining their confidentiality.

“3. I have reviewed the subpoena duces tecum that Plaintiffs served upon Chesapeake’s registered agent on July 16, 2014, the subpoena duces tecum that Plaintiffs

served on Chesapeake's registered agent on August 13, 2014, and Plaintiffs' Motion to Compel Chesapeake to Produce Documents in Response to the Subpoena. Contrary to Plaintiffs' Motion, Chesapeake does not maintain an office in Dallas, Texas.

"4. Plaintiffs' requests seek proprietary trade secret information that Chesapeake keeps confidential. The confidential information includes leases that Chesapeake has executed, agreements Chesapeake has entered into regarding the leases, data sheets relative to the leases, information related to the amount of bonus paid for the leases, Lease Purchase Reports, and any receipt or paid draft relative to the leases.

"5. Chesapeake does not reveal such information to persons outside the company. Among other reasons, Chesapeake does not disclose the information because the information gives Chesapeake an advantage in the oil and gas business, and disclosure to Chesapeake's competitors, and to landowners and attorneys representing landowners in the Eagle Ford shale area may make it more difficult and expensive to negotiate lease terms. In fact, much of the information, including the amount of bonus paid for a lease, is typically expressly excluded from the leases Chesapeake takes in order to preserve this confidentiality.

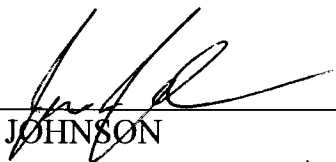
"6. The information would be valuable to Chesapeake's competitors and to potential lessors because it would indicate what Chesapeake has paid for leases and the lease terms that Chesapeake has agreed to, including but not limited to terms related to calculation of royalties.

"7. The information sought is not filed in the public real property records. In fact, Chesapeake does not file leases of the type sought at all, choosing instead to file

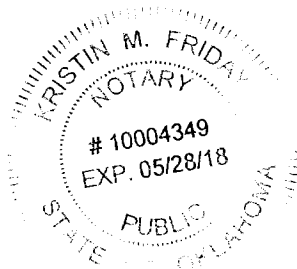
only Memoranda of Leases that identify that a lease exists but that do not disclose any of the financial terms of the leases or specific terms related to retained acreage, continuous drilling obligations, pooling, royalty, surface restrictions, and other related factors. This practice is common with most other oil and gas lessees in the industry.

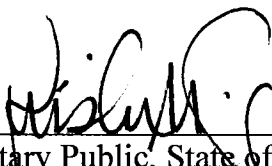
“8. Additionally, the requested information is not connected to any lease that Plaintiffs may have entered into through their trustee. The requested information concerns Chesapeake leases—with lessors who are not involved in this lawsuit—that are spread out geographically in Webb County, Frio County, Zavala County, La Salle County, and Dimmit County. The decision to enter into any one lease and pay a bonus is based on a number of considerations that will vary depending on the circumstances. As such the requested lease information cannot be compared to another situation in another geographic location.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
JERRIS JOHNSON

SUBSCRIBED AND SWORN TO BEFORE ME on this the 10<sup>th</sup> day of September, 2014.



  
\_\_\_\_\_  
Notary Public, State of Oklahoma  
Print Name: Kristin M Friday  
My Commission Expires: 5/28/18

1 1/2 hrs  
**JUDGE'S NOTES**

*me 2nd floor*

CAUSE NO.: 2010CI10977

COURT: 225

DATE/TIME: 09/03/2014 08:30AM

SETTING COURT: 109

STYLE: JOHN K MEYER

VS. JP MORGAN CHASE BANK N A ET AL

DISCOVERY LEVEL: 2

ATTORNEY(S) FOR CASE:

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- JAMES DROUGHT
- STEVEN BADGER
- MATTHEW COLLINGER
- JOHN EICHMAN
- MARK JOSEPHS
- FRED STUMPF
- DAVID BUTTERBAUGH

*Paul Galante*

*Shayne Mose*

- PATRICK SHEEHAN
- JIM FLEGLE
- JOHN MASSOPUST
- RUDY GARZA
- DAVID WILLIAMS ✓
- RICHARD TINSMAN
- IAN BOLDEN

09/01/2014-09/30/2014

*Stephannie Corette, Stephanie*

*George Spencer*

FILED  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY  
SEP - 3 AM 8:54  
2014  
DEPUTY  
DW

THIS CASE HAS 15 OR MORE ATTORNEYS

TYPE OF MOTION OR APPLICATION:

NON-JURY RESET ON MOTION TO COMPEL AND M/T SET THIRD PARTIES' OBJECTIONS FOR HEA

CONFERRING \_\_\_\_\_ ESTIMATE HEARING TIME \_\_\_\_\_

AGREED ORDER \_\_\_\_\_ ASSIGNED COURT \_\_\_\_\_

DROP \_\_\_\_\_ RECORD TAKEN \_\_\_\_\_

INTERPRETER \_\_\_\_\_ RESET DATE \_\_\_\_\_

Mary Helen Vargas, CSR, RPR  
224<sup>th</sup> Official Court Reporter  
100 Dolorosa Street  
San Antonio, TX 78205  
(210)335-2138 ..... mvargas@bexar.org

DATE OF NOTES: \_\_\_\_\_

JUDGE INITIALS \_\_\_\_\_

*Documents to be produced by 15<sup>th</sup>*

*2007-08 only leases - no addendums or other agreements*

*Experts / attys. only w/ confidentiality agreement  
all docs returned at end of case + all copies*

*one doc: bonus amount during time period (unless it changed) - not mineral acre bonus.*

*any attempt to enter into evidence - Party seeking to do so will be required to seal.*

*All info not showing location, bonus, size, continuous drilling terms, royalty, + water rights - OK -*

*copy anything else redacted*

PROPERTY OF BEXAR COUNTY DISTRICT CLERK'S OFFICE

(DK510A)

*No contact w/ lessors by anyone w/ access.*

**EXHIBIT B**

**CAUSE NO. 2010-CI-10977**

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
	§	
VS.	§	
	§	225TH JUDICIAL DISTRICT
	§	
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	
TEXAS SYNDICATE TRUST	§	
	§	
DEFENDANT.	§	BEXAR COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK N.A.’S NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT ON SELF-DEALING CLAIM**

Defendant JPMorgan Chase Bank, N.A., Individually/Corporately and as Former Trustee of the South Texas Syndicate Trust (“JPMorgan”), files its No-Evidence Motion for Partial Summary Judgment pursuant to Rule 166a(i) of the Texas Rules of Civil Procedure as follows:

**I.**  
**INTRODUCTION AND GROUNDS FOR NO-EVIDENCE SUMMARY JUDGMENT**

The South Texas Syndicate Trust (the “STS Trust”) is a liquidating trust that holds the mineral rights beneath approximately 132,000 contiguous acres of land located in La Salle and McMullen Counties, Texas in what came to be known as the “Eagle Ford shale play.” Plaintiffs are 176 of the 279 beneficiaries of the STS Trust, and they brought this lawsuit to recover damages allegedly suffered as a result of JPMorgan’s actions in leasing the mineral rights held in the STS Trust. Plaintiffs contend that JPMorgan, as trustee of the STS Trust, breached its fiduciary duties by various acts and omissions concerning certain mineral leases. Specifically, as relates to this no-evidence motion for partial summary judgment, Plaintiffs allege that JPMorgan

“permitted the commercial relationship with Petrohawk to influence STS Trust decisions to benefit Petrohawk at the expense of the trust and its beneficiaries.” (Petition, ¶ 217).<sup>1</sup>

JPMorgan concedes that in JPMorgan’s corporate capacity or through an affiliate it did have commercial or investment banking relationships with certain lessees of the mineral rights of the STS Trust. But Plaintiffs’ claim against JPMorgan for breach of fiduciary duty by self-dealing as it relates to the lease transactions with Petrohawk Properties, LP (“Petrohawk”) or Broad Oak Energy, Inc. (“Broad Oak”) fails as a matter of law because there is *no evidence* that either Pattie Ormond, who was the person negotiating for JPMorgan on behalf of the STS Trust, or any other JPMorgan employee who works on the STS Trust *was aware that the banking relationships with Petrohawk and Broad Oak even existed*. It necessarily follows that without knowledge that the banking relationships with Petrohawk and Broad Oak existed, JPMorgan, as trustee, could not have been influenced in any decision it made vis-à-vis the STS Trust by those banking relationships. Plaintiffs’ allegations relating to the banking relationships with Petrohawk and Broad Oak are nothing more than a diversionary tactic and – more fundamentally – wholly irrelevant. Accordingly, JPMorgan is entitled to no-evidence summary judgment on Plaintiffs’ claim of breach of fiduciary duty based on self-dealing as to the lease transactions with Petrohawk and Broad Oak.

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<sup>1</sup> Citations to the “Petition” refer to Plaintiffs’ Seventh Amended Petition filed on August 26, 2014.

## **II.** **PLAINTIFFS' ALLEGATIONS**

The following factual allegations are relevant to this motion:

### **A. The Petrohawk Leases**

In 2008, in a series of six separate lease transactions, JPMorgan leased approximately 80,000 acres to Petrohawk Properties, LP (the "Petrohawk Leases"). (Petition, ¶¶ 177-216). The negotiation of all six leases was handled for JPMorgan, on behalf of the STS Trust, by Ms. Pattie Ormond. (*Id.*).

In May of 2008, JPMorgan granted to Petrohawk, two mineral leases, one covering 12,073.48 acres and the other covering 12,772.93 acres. (Petition, ¶ 179). In July 2008, JPMorgan entered another lease with Petrohawk covering approximately 16,903 acres of mineral rights. (Petition, ¶ 192).

Then in December 2008, JPMorgan executed an additional three leases with Petrohawk for 3,845 acres, 15,457 acres, and 18,473 acres. (Petition, ¶¶ 209 and 210).

According to Plaintiffs, the terms of the Petrohawk Leases were unfavorable to the beneficiaries. Moreover, Plaintiffs also allege that:

During the critical period of 2008, Petrohawk was JP Morgan's banking client to which JP Morgan furnished and provided, as part of a group, a line of credit facility ranging from hundreds of millions to one and a half billion dollars. JP Morgan was, therefore, directly interested in Petrohawk's success and earnings. JP Morgan put itself in a situation where there was or could have been a conflict between its self-interest and its duty to the STS beneficiaries in violation of its duty of loyalty. . . .

(Petition ¶ 217).

According to Plaintiffs, in negotiating the Petrohawk Leases, because of Petrohawk's commercial relationship with JPMorgan, Petrohawk negotiated with JPMorgan directly,

deviating from its “customary practice” to use another company to negotiate and enter leases purportedly to avoid putting potential competitors on notice that they were buying up acreage. (*Id.*).

### **B. The Broad Oak Lease Transactions**

In 2006 and 2007, JPMorgan, through Ms. Pattie Ormond as mineral manager, leased approximately 10,373 acres to Broad Oak Energy, Inc. (“Broad Oak”) and Texas Lone Star Petroleum in a series of four lease transactions for bonuses ranging from \$160 to \$200 per acre. (Petition, ¶ 218).

According to Plaintiffs, JPMorgan extended the terms of the smallest of the four leases to seven years, for no consideration. The larger three leases were extended for six years for only \$50 per acre consideration. Plaintiffs allege that “[a]t the time of the lease extensions, a commercial relationship existed between JPMorgan and Broad Oak.” (Petition, ¶ 220).

## **III. ARGUMENTS AND AUTHORITIES**

### **A. Applicable Standard**

After an adequate time for discovery, a party may move for no-evidence summary judgment on the ground that no evidence of one or more essential elements of a claim on which the adverse party bears the burden of proof at trial. *See* Tex. R. Civ. P. 166a(i); *see also*, *Flameout Design & Fabrication, Inc. v. Pennzoil Caspian Corp.*, 994 S.W.2d 830, 834 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1999, no pet.). After a no-evidence motion is filed, “[t]he burden then shifts to the non-movant to produce evidence raising a genuine issue of material fact on the elements specified in the motion,” and “[t]he trial court must grant the motion unless the non-movant presents more than a scintilla of evidence raising a fact issue on the challenged elements.” *Foreman v. Whitty*, 392 S.W.3d 265, 271 (Tex. App.—San Antonio 2012, no pet.).



“Less than a scintilla of evidence exists when the evidence is so weak as to do no more than create a mere surmise or suspicion of a fact.” *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003).

If the non-movant fails to come forward with evidence, the trial court must grant the no-evidence motion for summary judgment on all claims containing the element or elements that were specifically challenged by the motion. *See Lampasas v. Spring Ctr., Inc.*, 988 S.W.2d 428, 436 (Tex. App.-Houston [14<sup>th</sup> Dist.] 1999, no pet.). Rule 166a(i) prevents the non-movant from standing solely on its pleadings, but instead requires it to bring forward sufficient evidence to withstand a motion for instructed verdict. *See Id.*

**B. No-Evidence of Self-Dealing**

To prevail on their claim for breach of fiduciary duty/breach of trust, Plaintiffs must establish the following elements: “(1) a fiduciary relationship between the plaintiff and defendant; (2) breach of the fiduciary duty; and (3) a causal connection between the breach and either injury to the plaintiff or benefit to the defendant.” *Kastner v. Martin & Drought, Inc.*, 04-07-00342-CV, 2009 WL 260601 at \*5 (Tex.App.-San Antonio Feb. 4, 2009, pet. denied). Plaintiffs’ claim for breach of fiduciary duty/breach of trust is based, in part, on allegations that JPMorgan engaged in self-dealing.

The gravamen of a claim of breach of fiduciary duty based on self-dealing is that a fiduciary gains an advantage, profits, or otherwise benefits from the complained of transaction or transactions at the beneficiary’s expense. *See Texas Bank and Trust Co. v. Moore*, 595 S.W.2d 502, 507 (Tex. 1980) (self-dealing where nephew of decedent serving in fiduciary role took possession of decedent’s property pursuant to transfers he made under power of attorney); *see also, In the Estate of Edythe A. Miller*, --S.W.3d--, 2014 WL 3970766, \*5 (Tex.App.-Tyler,

Aug. 13, 2014) (self-dealing where son signed agreement for incapacitated mother, pursuant to power of attorney, authorizing son to make non-interest bearing loans to himself from his mother's funds).

Here, Plaintiffs allege that the lease transactions with Petrohawk and Broad Oak were tainted by self-dealing. However, Plaintiffs cannot point to any evidence that Pattie Ormond, the mineral manager who negotiated and entered the leases with Petrohawk and Broad Oak for JPMorgan, as trustee of the STS Trust, even knew that the banking relationships with Petrohawk and Broad Oak existed. Plaintiffs' contention that Petrohawk used a different strategy in negotiating the Petrohawk Leases – negotiating directly with JPMorgan – because of the commercial banking relationship that existed is nonsensical. Without any knowledge of the banking relationships, Ms. Ormond could not have been influenced by those relationships in her negotiations with Petrohawk and Broad Oak. Plaintiffs cannot point to a single shred of *evidence* of self-dealing.

The allegation that JPMorgan, as lender to Petrohawk, was “directly interested in Petrohawk's success and earnings” is not evidence of self-dealing. Likewise, the claim that at the time of the 2009 lease extensions with Broad Oak “a commercial relationship existed between JP Morgan and Broad Oak,” is irrelevant. There is nothing improper, under federal or state law, about JPMorgan serving as trustee of the STS Trust and entering lease transactions with Petrohawk and Broad Oak, companies with which JPMorgan in its corporate capacity, or through an affiliate, may have had a banking relationship.

For more than 100 years, Federal law has permitted a bank to provide commercial banking services alongside fiduciary trust services. *See* Federal Reserve Act of 1913, § 11(k), 38 Stat. 251, 262. More recently, under Graham-Leach-Bliley, Congress permitted financial

institutions to broaden the scope of their services to include asset management, investment banking, insurance and securities. *See* Graham-Leach-Bliley Financial Services Modernization Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999).<sup>2</sup>

Likewise, under state law, JPMorgan was also permitted to enter lease transactions with Petrohawk and Broad Oak even though they may have been commercial or investment banking customers of JPMorgan. Section 113.053 of the Texas Trust Code sets forth the universe of entities to whom a trustee is prohibited from selling or leasing property as: (i) an affiliate; (ii) director; (iii) officer; (iv) employee, (v) relative, (vi) employer, (vii) partner, or (viii) other business associate of a trustee. The fact that a person with whom a bank trustee does business had a banking relationship with the bank did not make that entity a “business associate” of the trustee under Section 113.053 of the Texas Trust Code. *InterFirst Bank Dallas, N.A. v. Risser*, 739 S.W.2d 882, 896 (Tex. App.—Texarkana 1987, no writ) (noting that a “business associate” did not include a customer of a bank because it requires “more than just a party with whom a contract is made and more than just a relationship of a business to a customer.”).

To survive this no-evidence motion for partial summary judgment, Plaintiff must present more than a scintilla of evidence that JPMorgan, as trustee of the STS Trust, “permitted the commercial relationship with Petrohawk [and Broad Oak] to influence STS Trust decisions to benefit Petrohawk [and Broad Oak] at the expense of the trust and its beneficiaries.” (Petition, ¶ 217; *see* ¶ 220). Such evidence must do more than create a “mere surmise or suspicion.” This they cannot do. Accordingly, JPMorgan is entitled to summary judgment on Plaintiffs’ claim

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<sup>2</sup> Indeed, financial institutions are one of the most regulated industries; however, there is no regulatory prohibition against a bank serving as fiduciary while simultaneously providing commercial lending or underwriting services to customers with whom the bank as fiduciary may deal. *See Board of Trustees of Afra Retirement Fund v. JPMorgan Chase Bank, N.A.*, 806 F.Supp.2d 662, 665-66 (S.D.N.Y. 2001) (noting that if it were a conflict for a bank to act as lender to someone with whom it did business on behalf of a trust customer “that conclusion would surely be reflected in the extensive regulations that govern the banking industry”).

for breach of fiduciary duty based upon allegations of self-dealing relating to the lease transactions with Petrohawk and Broad Oak.

WHEREFORE, JPMorgan respectfully requests that the Court enter an order granting JPMorgan's no-evidence motion for partial summary judgment and such further relief to which it may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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/s/ John C. Eichman  
John C. Eichman



Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 9<sup>TH</sup> day of September, 2014.

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\_\_\_\_\_/s/ David Jed Williams  
David Jed Williams

**EXHIBIT A**

**DOCUMENTS REQUESTED**

1. A true and correct copy of the executed Oil & Gas Lease, dated July 15, 2009, entered into between the B. Naylor Morton Trust U/A and Susan N. Moulton.
2. A true and correct copy of the executed letter agreement, dated June 26, 2009, sent by Justin Long and addressed to Brad C. Blackwood, Land Manager, EOG Resources, Inc., 539 North Carancahua, Suite 900, Corpus Christi, Texas 78478-0028.
3. A true and correct copy of any lease/contracts approval forms associated with the agreements referenced in Requests 1 and 2 above.



**PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION NO. 2**

3. On or about November 8, 2013, Plaintiffs served JP Morgan with their Sixth Requests for Production. On or about December 11, 2013, JP Morgan served its responses.

4. Plaintiffs made the following request:

REQUEST FOR PRODUCTION NO. 2: Produce the STS Tax Opinion prepared by Cox & Smith.

5. Defendant has refused to produce the tax opinion claiming it is withheld under the attorney/client and work-product privileges. The objection should be overruled and JP Morgan required to produce the document. A true and correct copy of JP Morgan's Responses is attached as Exhibit A.

6. In November 2010, JP Morgan provided the STS Beneficiaries with a "Summary of the Tax Opinion on the U.S. Federal Income Tax classification of the South Texas Syndicate Trust." The opinion was prepared by Cox & Smith. Though repeatedly requested, JP Morgan has refused to produce the tax opinion. On information and belief, the tax opinion was paid for with STS Trust assets.

7. One of the issues addressed in the unproduced opinion is apparently whether or not the STS Trust was or is a "liquidating trust."

8. JP Morgan's experts now criticize Plaintiffs' experts for not taking into account the "federal income tax classification" of the STS Trust as a "liquidating trust," for not understanding the "implications" of a liquidating trust, for not understanding the "purpose" of the STS Trust, and for various other tax-law related reasons. On information and belief, these topics are addressed in the unproduced Cox & Smith opinion.

9. JP Morgan's refusal to produce the opinion and use of experts to affirmatively discuss "liquidating trust" tax status violates the shield-sword doctrine. The tax opinion should be produced.

**PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION NO. 1**

10. On or about August 7, 2013, Plaintiffs' served JP Morgan with their Fourth Requests for Production. On or about November 15, 2013, JP Morgan served its Second Amended Responses.

11. Plaintiffs made the following request:

REQUEST FOR PRODUCTION NO. 1: Produce all the Specialty Asset budgets addressed by Kevin Smith in his deposition on July 29, 2013 for the years 2007, 2008, 2009, 2010 and 2011.

12. Defendant refused to produce the documents and raised numerous unfounded objections. A true and correct copy of JP Morgan's objections are attached as Exhibit B. Further, JP Morgan was ordered to produce the Specialty Asset budget for 2008 at a hearing on July 29, 2014. To date, the budget has not been produced. The budget should be produced or JP Morgan should amend its response to indicate that no Specialty Asset budget could be located.

WHEREFORE, Plaintiffs pray that this Court set this matter for hearing and that upon hearing hereof, enter an order removing JP Morgan's objections and requiring Defendant to provide answers to Plaintiffs' Requests for Production identified herein, and ordering the requested documents be produced, and granting any other additional relief to which Plaintiffs may be justly entitled.

DATE: September 8, 2014.

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JOHN K. MEYER, ET AL.

By: /s/ Jim L. Flegle  
Jim L. Flegle

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, *ET AL.*,

*Plaintiffs,*

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST,

*Defendant.*

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IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

FIAT

(Plaintiffs' Motion to Compel Second and Sixth Requests for Production)

Plaintiffs' Motion to Compel Second and Sixth Request for Production is hereby set for hearing on September 12, 2014 at 8:30 a.m. in the Presiding Judicial District Court, Room 109, Bexar County Courthouse, San Antonio, Texas.

SIGNED this 9<sup>th</sup> day of September, 2014

  
\_\_\_\_\_  
JUDGE PRESIDING

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via e-Service and email on September 8, 2014:

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/s/ John McKenzie  
John McKenzie



# **Exhibit A**

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,  
Plaintiffs,

§  
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§

IN THE DISTRICT COURT

V.

225TH JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST  
and GARY P. AYMES,  
Defendants.

BEXAR COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSES TO PLAINTIFFS'  
SIXTH REQUEST FOR PRODUCTION**

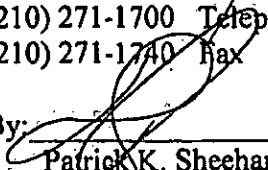
Defendant JPMorgan Chase Bank, N.A., Individually/Corporately, ("J.P. Morgan")

submits these Responses to Plaintiff's Sixth Request for Production.

Respectfully submitted,

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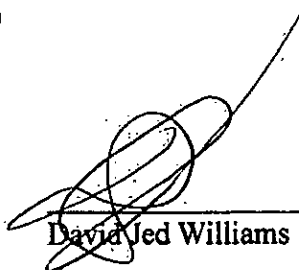
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**VIA CERTIFIED MAIL**



---

David Jed Williams

**DEFENDANT'S RESPONSES TO PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce the standard monthly reports prepared by Bertram Hayes-Davis for the April 2008 through July 2012 time period. (See page 18 of Bert Hayes-Davis' deposition.)

**OBJECTIONS:**

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to reports relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not limited solely to reports relating to STS.

**REQUEST FOR PRODUCTION NO. 2:** Produce the STS Tax Opinion prepared by Cox & Smith.

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under attorney-client and work product privileges.

**REQUEST FOR PRODUCTION NO. 3:** Produce the Fiduciary Governance Committee Minutes for the years 2008, 2009, and 2010.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to minutes relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the

subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not limited solely to minutes relating to STS.

**REQUEST FOR PRODUCTION NO. 4:** Produce all audits of the STS Trust prepared by Carneiro Chumney.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 5:** Produce all audits of the STS Trust prepared by any other accounting firm.

**RESPONSE:**

Defendant is not aware of any audits of the STS Trust prepared by any other accounting firm.

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents sent or received regarding the OCC's Conflict of Interest examination. (See DEFENDANTS\_137997[sic]).

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under the attorney-client, work product and bank examination privileges.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to examinations relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not limited solely to examinations relating to STS.

**REQUEST FOR PRODUCTION NO. 7:** Produce all correspondence between the OCC and JPM regarding the specialty asset group from 2007-2010.

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under the bank examination privilege.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to correspondence regarding STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not limited solely to correspondence relating to STS.

**REQUEST FOR PRODUCTION NO. 8:** Produce the "set of guidelines and policies" Patricia Schultz-Ormond needed to adhere to. (See page 53 of Patricia Schultz-Ormond's June 10, 2013 deposition).

**RESPONSE:**

Defendant has produced documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 9:** Produce all invoices submitted by Robert Buehler regarding the STS Trust during the 2007-2010 time period.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 10:** Produce all correspondence and checks made payable to Robert Buehler in payment of invoices referenced in Request for Production No. 9 above.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 11:** Produce all agreements between STS and Robert Buehler.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 12:** Produce all meeting agendas referring to or mentioning the STS Trust. (See page 69 of Patricia Schultz-Ormond's June 10, 2013 deposition.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact privileged information.

**REQUEST FOR PRODUCTION NO. 13:** Produce the list of transactions submitted to the National Mineral Manager. (See page 69 of Patricia Schultz-Ormond's June 10, 2013 deposition.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact non-STs client identifying information, as not relevant and confidential.



**REQUEST FOR PRODUCTION NO. 14:** Produce the JPM internal database regarding bonuses for the 2007-2010 time period. (See page 72 of Patricia Schultz-Ormond's deposition.)

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to transactions relating to STS and would include the entire JPM database.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not limited solely to transactions relating to STS.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has produced information responsive to this request for certain counties for the 2007-2010 time period.

**REQUEST FOR PRODUCTION NO. 15:** Produce all materials developed to market the Eagle Ford shale strategy discussed by Mr. Minter in his deposition in connection with Exhibits 654 and 655. (Page reference from deposition will be supplemented upon receipt of Minter's deposition.)

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 16:** Produce all written documentation pertaining to the 2 to 3 presentations Petrohawk made to Pattie Ormond at the JPM offices in 2008 which were described by Bob Buehler in his deposition. (Page reference from deposition will be supplemented upon receipt of Minter's deposition.)

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

# **Exhibit B**

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,  
Plaintiffs,

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

V.

225TH JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST  
and GARY P. AYMES,  
Defendants.

BEXAR COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S SECOND AMENDED RESPONSES  
TO PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION**

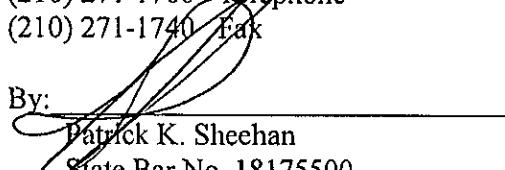
Defendant JPMorgan Chase Bank, N.A., Individually/Corporately, ("J.P. Morgan")  
submits these Second Amended Responses to Plaintiff's Fourth Request for Production.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER BEITER  
WITTENBERG & GARZA INCORPORATED**

7373 Broadway, Suite 300  
San Antonio, Texas 78209  
(210) 271-1700 Telephone  
(210) 271-1740 Fax

By:

  
Patrick K. Sheehan  
State Bar No. 18175500  
Kevin M. Beiter  
State Bar No. 02059065  
Rudy A. Garza  
State Bar No. 07738200  
David Jed Williams  
State Bar No. 21518060

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document was served upon the following on November 15, 2013 by the method indicated:

Mr. Steven J. Badger  
Ms. Ashley Bennett Jones  
ZELLE HOFMANN VOELBEL & MASON LLP  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3975

**VIA FACSIMILE**

Mr. David R. Deary  
Mr. Jim L. Flegle  
Mr. Jeven R. Sloan  
LOEWINSOHN FLEGLE DEARY, L.L.P.  
12377 Merit Drive, Suite 900  
Dallas, Texas 75251

**VIA FACSIMILE**

Mr. James L. Drought  
DROUGHT DROUGHT & BOBBITT, LLP  
112 East Pecan, Suite 2900  
San Antonio, Texas 78205

**VIA FACSIMILE**

Mr. John B. Massopust  
Mr. Matthew J. Gollinger  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, MN 55415-1152

**VIA FACSIMILE**

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Mr. Jeffrey J. Towers  
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San Antonio, Texas 78205

**VIA FACSIMILE**

Mr. Richard Tinsman  
Ms. Sharon C. Savage  
TINSMAN & SCIANO, INC.  
10107 McAllister Freeway  
San Antonio, Texas 78205

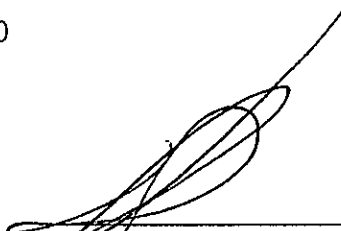
**VIA FACSIMILE**

Mr. Michael S. Christian  
ZELLE HOFMANN VOELBEL & MASON  
44 Montgomery Street, Suite 3400  
San Francisco, California 94104

**VIA FACSIMILE**

Mr. Fred W. Stumpf  
Mr. Kelly M. Walne  
Boyer Short  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77045

VIA FACSIMILE



---

David Jed Williams

**DEFENDANT'S SECOND AMENDED RESPONSES TO PLAINTIFFS' FOURTH  
REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all the Specialty Asset budgets addressed by Kevin Smith in his deposition on July 29, 2013 for the years 2007, 2008, 2009, 2010 and 2011.

**RESPONSE:**

No items have been identified – after a diligent search – that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 2:** Produce Patricia Schultz-Ormond's job application.

**RESPONSE:**

Defendant has produced responsive documents within its possession or control, if any.

**REQUEST FOR PRODUCTION NO. 3:** Produce H.L. Tompkins' job application.

**RESPONSE:**

Defendant has not located responsive documents.

**REQUEST FOR PRODUCTION NO. 4:** Produce the job postings for a senior mineral manager position for the year 2005.

**RESPONSE:**

Defendant will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 5:** Produce the job postings for a senior mineral manager position for the year H.L. Tompkins was hired by J.P. Morgan Chase Bank, N.A.

**RESPONSE:**

Defendant will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 6:** Produce all communications between any JP Morgan office and Patricia Schultz-Ormond regarding assistance provided to Patricia Schultz-Ormond during 2008 and 2009.

**OBJECTIONS:**

1. Defendant objects to this request in purporting to require the production of electronically stored information ("ESI") in addition to the ESI that was produced under the Court's December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court "must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information." Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiver of these objections, Defendant is unaware of any responsive documents other than those documents that have already been produced to Plaintiffs.

**REQUEST FOR PRODUCTION NO. 7:** Produce all of Patricia Schultz-Ormond's monthly "administrative reports" for the years 2007, 2008, and 2009 (see bates-number Defendants088119 which references the administrative reports).

**RESPONSE:**

Defendant is unaware of what documents may be responsive to this request because Defendant does not know what Ms. Ormond meant in the email by the term "administrative reports." However, in the event responsive documents are located, Defendants reserve the right to redact non-STS client identifying information.

**REQUEST FOR PRODUCTION NO. 8:** Produce all the risk management guidelines the Office of the Comptroller of the Currency issued to nationally chartered banks, for the years 2007, 2008, 2009 and 2010.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited to guidelines applicable to Defendant and bears no relation to Defendant's role as Trustee of South Texas Syndicate trust.
2. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not even limited to guidelines applicable to Defendant and bears no relation to Defendant's role as Trustee of South Texas Syndicate trust.

**RESPONSE:**

Subject to and without waiver of these objections, Defendant is unaware of what documents may be responsive to this request because Defendant does not know what Plaintiffs mean by "risk management guidelines" the Office of the Comptroller of the Currency issued to nationally chartered banks." Further, these documents, if they exist, are presumably publically available to Plaintiffs.

**REQUEST FOR PRODUCTION NO. 9:** Produce the expert report prepared by Dr. Norman S. Neidell in Cause No, 09-04-00036-CVL; *JP Morgan Chase Bank NA, in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.



**REQUEST FOR PRODUCTION NO. 10:** Produce the expert report prepared by Dr. Jory A. Pacht in Cause No. 09-04-00036-CVL; *JP Morgan Chase Bank MA., in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.

**REQUEST FOR PRODUCTION NO. 11:** Produce the expert report prepared by Dr. James A. Murtha in Cause No 09-04-00036-CVL; *JP Morgan Chase Bank N.A., in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.

**REQUEST FOR PRODUCTION NO. 12:** Produce all other experts reports exchanged between the parties in Cause No. 09-04-00036-CVL; *JP Morgan Chase Bank NA, in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 216<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 13:** Produce any option agreements regarding the STS granted to Petrohawk Properties, L.P. in 2008 or 2009.

**RESPONSE:**

Defendant is unaware of any responsive documents.

**REQUEST FOR PRODUCTION NO. 14:** Produce the detailed memorandum prepared by Mark Anderson addressing trust structure alternatives.

**RESPONSE:**

Defendant has produced the responsive document.

**REQUEST FOR PRODUCTION NO. 15:** Produce any mineral manager meeting notes, list of transactions, list of pending transactions, or new inquiries submitted to the national mineral manager by any mineral manager in 2008 or 2009 (see Patricia Schultz-Ormond deposition pgs. 69-70 dated June 10, 2013.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact non-STS client identifying information.

**REQUEST FOR PRODUCTION NO. 16:** Produce all documents evidencing any sixty (60) day extension extending the Broad Oak / Hunt leases which are referred to as Lease No. 3598 and 3599 from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information ("ESI") in addition to the ESI that was produced under the Court's December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court "must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information." Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 17:** Produce all documents evidencing any sixty (60) day extension extending the Broad Oak / Hunt leases which are referred to as Lease No. 3598 and 3599 from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	

S. Carl Everett

Guzick

**REQUEST FOR PRODUCTION NO. 18:** Produce all documents evidencing any payment received for the 60 (sixty) day extension for the Broad Oak / Hunt Lease No. 3599 which extended the lease from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information ("ESI") in addition to the ESI that was produced under the Court's December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court "must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information." Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013

<u>Search Terms</u>
Broad Oak
Hunt Oil
@broadoakenergy.com
@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett Guzick

**REQUEST FOR PRODUCTION NO. 19:** Produce all documents evidencing any payment received for the August 2012 amendments to the Broad Oak / Hunt Lease No. 3063 and Lease No. 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI

to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett Guzick	

**REQUEST FOR PRODUCTION NO. 20:** Produce all documents evidencing what acreage was held by production under the Broad Oak / Hunt Lease No 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information ("ESI") in addition to the ESI that was produced under the Court's December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or

produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	



**REQUEST FOR PRODUCTION NO. 21:** Produce all documents evidencing any attempt to lease the acreage not held by production under the Broad Oak / Hunt Lease No. 4184 since its termination in February 2013.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	

@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett
Guzick

**REQUEST FOR PRODUCTION NO. 22:** Produce all documents evidencing any attempt to lease the acreage that was previously leased under the Broad Oak / Hunt Lease No. 3083 subsequent to its termination in March 2013.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 23:** Produce all Consents to Assignments made by you regarding the Broad Oak / Hunt Lease Nos. 3598, 3599, 3083, and 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In

addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 24:** Produce all documents evidencing all consideration received for amending the Broad Oak/Hunt Lease Nos. 3598, 3599, 3083, and 4184 in July 2009 and October 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	

@broadoakenergy.com
@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett
Guzick

**REQUEST FOR PRODUCTION NO. 25:** Produce all documents evidencing all consideration received for amending the Broad Oak / Hunt Lease No 3083 in March 2008.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information ("ESI") in addition to the ESI that was produced under the Court's December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court "must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information." Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 26:** Produce all documents showing all wells drilled around the acreage subject to the four (4) Broad Oak / Hunt Leases Nos. 3589, 3599, 8038, 4184 that would require the lessee to drill an offset well.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant

cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	



**REQUEST FOR PRODUCTION NO. 27:** Produce the mid-year reviews created or completed by Patricia Schultz-Ormond for the years 2005, 2006, 2007, 2008, and 2009.

**RESPONSE:**

Defendant has produced documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 28:** Produce any title opinions prepared for the Cullen leases (approximately 15,000 acres).

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 29:** Produce statements 1, 2 and 3 to Schedule E for the 2001 STS tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 30:** Produce statements 1 and 2 to Schedule E for the 2002 STS tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 31:** Produce Schedule E and all attached statements for the STS 2010 tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 32:** Produce the 2012 STS income tax return.

**RESPONSE:**

Defendant has produced the requested documents.



in Intervention contained numerous typographical and other non-substantive errors. Plaintiff-Intervenor has recognized these mistakes and requests leave to file its Third Amended Plea in Intervention in the form attached as Exhibit A.

4. Defendants will suffer no surprise or prejudice if leave to file the Third Amended Plea in Intervention is granted. The portions of the proposed Third Amended Plea in Intervention that are not contained in the Second Amended Plea in Intervention are contained in Plaintiffs' Seventh Amended Petition. Therefore, these issues, though newly adopted by Plaintiff-Intervenor, are already before the Court and the parties. There is no substantive change to the issues in the case. *Chapin & Chapin, Inc. v. Texas Sand & Gravel Co., Inc.*, 844 S.W.2d 664, 665 (Tex. 1992)(defining a substantive change in the context of pleading amendments as one that changes the nature of the trial itself.). The changes in the proposed Third Amended Plea will not change the nature of the trial itself because the changes merely adopt additional portions of Plaintiffs' Seventh Amended Petition. Furthermore, to be prejudicial, the amendment must reshape the nature of the trial—the opposing party must not be able to anticipate the amendment in light of the development of the case up to the time the amendment was requested, and the opposing party's presentation of the case must be detrimentally affected by the filing of the amendment.<sup>1</sup> *Allstate Prop. & Cas. Ins. Co. v. Gutierrez*, 281 S.W.3d 535, 539 (Tex. App. 2008). The Third Amended Plea does not reshape the nature of the trial. The Defendant is easily able to anticipate facing the issues in the Third Amended Plea, as they have already been presented in the Plaintiffs' Seventh Amended Petition. And Defendant's presentation of the case will not be detrimentally affected.

---

<sup>1</sup> "In anticipating the amendment, it is not whether the opposing party did anticipate it, but rather whether it could have been anticipated." *Allstate Prop. & Cas. Ins. Co. v. Gutierrez*, 281 S.W.3d 535, 539 (Tex. App. 2008).

5. The deposition of the Plaintiff-Intervenor corporate representative was re-noticed by Defendants on September 4, 2014 and is scheduled for September 12, 2014. This pleading is being filed in advance of that deposition and at the earliest possible time so that the Defendant has as much notice as possible of all of the statements and allegations in the Plaintiffs' Seventh Amended and Supplemental Petition that the Plaintiff-Intervenor has adopted.

6. Trial is scheduled to begin on October 27, 2014.

7. Rule 63 permits a party to request leave to amend the pleadings after the time for amendment has passed and requires that "...leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party." TEX. R. CIV. P. 63. A trial court has no discretion to refuse an amended pleading unless: (1) the opposing party presents evidence of surprise or prejudice; or (2) the amendment asserts a new cause of action or defense, and is thus prejudicial on its face, and the opposing party objects to the amendment. *Greenhalgh v. Serv. Lloyds Ins. Co.*, 787 S.W.2d 938, 939 (Tex. 1990); *Cullum v. White*, 399 S.W.3d 173, 181 (Tex.App.—San Antonio 2011, pet. denied); *Gutierrez*, 281 S.W.3d at 538-39. Further, "[a]n amendment is mandatory if it is merely procedural in nature[.]" *Gutierrez*, 281 S.W.3d at 539; *see also Chapin & Chapin, Inc.*, 844 S.W.2d at 665 (holding that change to pleadings was "procedural" because it "did not change a single substantive issue for trial."). The Third Amended Plea asserts no new cause of action, no new substance—it merely conforms the claims of Plaintiff-Intervenor to those asserted by Plaintiffs. Accordingly, the amendment is mandatory and leave should be granted. *E.g., Greenhalgh*, 787 S.W.2d 938 (holding that leave to amend was properly granted because amendment "raised no new substantive matters and because there was no showing of surprise or prejudice by [the opposing party]").

8. This motion is not filed for the purpose of delay or harassment, but only so that justice may be done. Indeed, granting Plaintiff-Intervenor leave to file an amended plea would better serve the interests of judicial efficiency, as it would permit a pleading that would accurately reflect the Plaintiff-Intervenor's positions concerning the claims at issue between the parties in this litigation.

WHEREFORE, Plaintiff-Intervenor Wells Fargo Bank, N.A., as Trustee/Co-Trustee, requests the Court grant this motion and give it leave to file its Third Amended Plea in Intervention, and for such other and further relief to which it may show itself justly entitled.

DATE: September 8, 2014.

Respectfully submitted,

/s/ Matthew J. Gollinger

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Matthew J. Gollinger (*pro hac vice*)

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**ATTORNEYS FOR PLAINTIFF-  
INTERVENOR**

**CERTIFICATE OF CONFERENCE**

On September 6, 2014, counsel for Plaintiff-Intervenor Wells Fargo Bank, N.A., contacted Defendant's counsel concerning the proposed filing of the Plaintiff-Intervenor's Third Amended Plea in Intervention, as well as the changes from the Plaintiff-Intervenor's Second Amended Plea in Intervention and the inaccuracies and errors with respect to Plaintiff-Intervenor's positions contained therein. This communication followed Defendant's re-noticing of Plaintiff-Intervenor's deposition of a corporate representative by less than 48 hours. Defendant's counsel communicated its disagreement with Plaintiff-Intervenor's proposed filing and Plaintiff-Intervenor now files this motion to protect its rights to amend its pleading in a non-substantive manner and to give the court formal notice of its efforts to meet and confer with opposing counsel on this issue.

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, *ET AL.*,

*Plaintiffs,*

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST,

*Defendant.*

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IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**FIAT**

(Plaintiff-Intervenor Wells Fargo Bank, N.A.'s Motion for Leave to File  
Third Amended Petition in Intervention)

Plaintiff-Intervenor Wells Fargo Bank, N.A.'s Motion for Leave to File Third Amended  
Petition in Intervention is hereby set for hearing on September 15, 2014 at 8:30 a.m. in the  
Presiding Judicial District Court, Room 109, Bexar County Courthouse, San Antonio, Texas.

SIGNED this 9<sup>th</sup> day of September, 2014



JUDGE PRESIDING



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served via email on the below listed counsel of record via the method indicated, this 8<sup>th</sup> day of September, 2014:

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Rudy Garza  
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/s/ Matthew J. Gollinger  
Matthew J. Gollinger

# **EXHIBIT A**



affect the Plaintiff-Intervenor's rights and interests, and Plaintiff-Intervenor's presence in this action is essential to the protection of such rights and interests.

## II.

### HISTORY OF THE SOUTH TEXAS SYNDICATE TRUST

3. In 1906, Jed L. Washburn and five others purchased approximately 132,000 contiguous acres in McMullen and LaSalle Counties, Texas. Title to the property was originally taken in the name of George F. Piper and subsequently transferred in 1917 to Jed L. Washburn.

4. Following Jed L. Washburn's death in 1931, A. McC. Washburn became title holder in 1932. With court approval, the STS Trust was formed and 30,000 Certificates of Beneficial Interest were issued.

5. Following A. McC. Washburn's death in 1939, John T. Pearson was appointed Trustee of the STS Trust.

6. In 1950, the surface rights to the 132,000 acres were sold, leaving the mineral estate as the sole asset of the STS Trust.

7. John T. Pearson died in 1950 without naming a Successor Trustee. The Alamo National Bank was appointed Successor Trustee of the STS Trust on February 12, 1951 by order of the District Court, 73<sup>rd</sup> Judicial District, Bexar County Texas.

8. In 2001, after several bank mergers, J.P. Morgan Chase Bank, N.A. became Successor Trustee of the STS Trust.

9. In 2008, Petrohawk #1 Discovery well was drilled on STS Trust property and produced substantial results. Additional leases for mineral rights on STS Trust property were negotiated by the Trustee in 2008 through 2011 without exercising the prudence and good judgment consistent with its fiduciary obligations to the beneficiaries of the STS Trust.

### III.

#### SOUTH TEXAS SYNDICATE TRUST LITIGATION

10. The subject matter of the pending Action involves the administration of the STS Trust. The Plaintiffs allege that Defendants have engaged in a pattern of neglect, mismanagement and tortious behavior that has caused hundreds of millions of dollars of damage to STS Trust assets and estate.

11. STS Trust beneficiary John K. Meyer commenced the pending Action against the Defendants for their actions as Trustee of the STS Trust in July 2010. In May 2011, STS Trust beneficiaries John Meyer Jr. and Theodore Meyer filed a Petition in Intervention in the John K. Meyer action.

12. A similar action against Defendants was commenced by STS Trust beneficiary Emilie Blaze in March 2011.

13. In June 2011, by an order of Judge Renee F. McElhaney, the Meyer and Blaze actions were consolidated.

14. On November 15, 2011, the Meyer and Blaze Plaintiffs filed Plaintiffs' Consolidated Second Amended Petition.

15. In January 2012, Plaintiff-Intervenor, as trustee or co-trustee for the twenty-three (23) Trusts holding Certificates of Beneficial Interest in the STS Trust, filed a Plea in Intervention in the pending Action in its fiduciary capacity on behalf of said Trusts.

16. On August 26, 2014, the Plaintiffs filed Plaintiffs' Seventh Amended and Supplemental Petition.

17. Collectively, Plaintiff-Intervenor, together with the other Plaintiffs and Intervenor in this Action, own, hold, and represent substantially in excess of 51% of the 30,000 total units of the STS Trust.

18. Defendants have repeatedly argued that all holders of Certificates of Beneficial Interest in the STS Trust are necessary parties to the pending action.

#### IV.

#### PRESENT JUSTICIABLE INTERESTS

19. Plaintiff-Intervenor serves as trustee or co-trustee for twenty-three (23) Trusts that hold Certificates of Beneficial Interest in the STS Trust and therefore is affected by the administration of the STS Trust and has an interest in and/or claim against the STS Trust.

20. Resolution of the claims asserted in the pending Action without the full participation of Plaintiff-Intervenor would be improper and, as a practical matter, may impair or impede Plaintiff-Intervenor's ability to protect its rights and interests, and intervention is therefore essential. Plaintiff-Intervenor is thus entitled to intervene in the pending Action under Texas Rule of Civil Procedure 60.

21. Allowing intervention will not prejudice the parties to the pending Action nor will it cause an excessive multiplication of issues; rather, it will increase the judicial and economic efficiency of the pending Action. Plaintiff-Intervenor previously filed (1) a Plea in Intervention in its capacity as trustee or co-trustee for twenty-four (24) trust entities, (2) an Amended Plea in Intervention and (3) a Second Amended Plea in Intervention – Plaintiff-Intervenor now files this Third Amended Plea in Intervention merely to adopt and incorporate by reference some additional statements and allegations asserted in the Plaintiffs' Seventh Amended and Supplemental Petition. Plaintiff-Intervenor was without sufficient time to review and consider

adoption of some of the statements and allegations in the Plaintiffs' Seventh Amended and Supplemental Petition by the time its Second Amended Plea in Intervention was due to be filed. This Third Amended Plea simply adopts additional allegations and clarifies Plaintiff-Intervenor's position. Therefore, it has no detrimental effect on the litigation and Plaintiff-Intervenor timely brings this Third Amended Plea in Intervention.

V.

CLAIMS

22. Plaintiff-Intervenor adopts and incorporates by reference all statements and allegations asserted in the Plaintiffs' Seventh Amended and Supplemental Petition as if the same were herein set forth in full, except the following specific allegations:

i. Paragraph 196 in its entirety but instead states that:

By yet again leasing an enormous block of STS Mineral Rights, and giving the block to Petrohawk, which already held 31% of the STS available mineral acres, JP Morgan's exclusive negotiations with Petrohawk resulted in a lack of market competition that breached its duty to the STS Beneficiaries.

ii. Paragraph 241, subpart 7 in its entirety but instead states that:

Failed to foster a competitive environment which artificially depressed the terms it was offered by the sole participant in the negotiations for the STS Mineral Rights.

23. Plaintiff-Intervenor reserves the right to amend its pleadings to add allegations specific to its interests relating to this matter.

VI.

GENERAL DENIAL

24. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Plaintiff-Intervenor denies each and every, all and singular, of the material allegations in Defendants/Counter-

Petition Plaintiffs' Counter-Petition for Declaratory Relief and Instructions from the Court, and demands strict proof thereof by a preponderance of the evidence.

**VII.**

**PRAYER FOR RELIEF**

25. WHEREFORE, Plaintiff-Intervenor requests that the parties take notice of the filing of this Plea in Intervention and prays that upon final hearing Plaintiff-Intervenor has judgment against Defendant for:

- a. Actual damages;
- b. Consequential and incidental damages;
- c. Disgorgement of all compensation, fees, and expenses paid by the STS Trust to Defendant and to third-parties at the direction of Defendant;
- d. Pre- and post-judgment interest at the highest legal rate allowed by law;
- e. All attorneys' fees, expenses, and costs in pursuing this matter;
- f. Exemplary or punitive damages in an amount to be determined at trial;
- g. An order prohibiting Defendant from using STS Trust assets, property, or revenue, to pay attorneys' fees, expenses, and costs in defending this action and any other actions brought by other beneficiaries;
- h. Such other and further relief to which Plaintiff-Intervenor may show itself to be justly entitled; and
- i. Such other, further, and different damages as allowed in accordance with the evidence and applicable law.



Dated September \_\_, 2014

Respectfully submitted,

**ZELLE HOFMANN VOELBEL & MASON LLP**

By:

---

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**ATTORNEYS FOR PLAINTIFF-  
INTERVENOR**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been served on  
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(Consolidated Under)  
CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.	§	IN THE DISTRICT COURT
	§	
VS.	§	
	§	225 <sup>TH</sup> JUDICIAL DISTRICT
JPMORGAN CHASE BANK, N.A.	§	
INDIVIDUALLY/CORPORATELY	§	
AND AS TRUSTEE OF THE SOUTH	§	BEXAR COUNTY, TEXAS

**DEFENDANT'S FIFTH AMENDED ANSWER**

Defendant JPMorgan Chase Bank, N.A., Individually/Corporately and as the former trustee of the South Texas Syndicate Trust (collectively referred to herein as "Defendant"), files this Fifth Amended Answer to Plaintiffs' Seventh Amended and Supplemental Petition and to any hereafter amended petition and would show the Court as follows:

**I. GENERAL DENIAL**

1.01

Subject to, reserving and without waiving its Plea in Abatement, Defendant denies generally the allegations contained in Plaintiffs' Seventh Amended and Supplemental Petition and demands strict proof thereof.

**II. DEFENSES AND AFFIRMATIVE DEFENSES**

2.01

Defendant asserts the defenses of the doctrine of estoppel, equitable estoppel and quasi-estoppel.

2.02

Defendant asserts the defense of unclean hands.

2.03

Defendant asserts the defense of laches.

2.04

Defendant asserts the defense of merger in that any negotiations or agreements conducted prior to the Final Judgment dated February 12, 1951, merged into the Final Judgment dated February 12, 1951.

2.05

Defendant asserts the defense of res judicata and collateral estoppel and asserts that the Plaintiffs' claims regarding resignation and specific performance constitute an impermissible collateral attack on the Final Judgment dated February 12, 1951.

2.06

Defendant denies that the trustee of the South Texas Syndicate Trust ("STS") entered into any transaction on behalf of or relating to STS that constituted self-dealing, but if it did any such transaction was fair and equitable to the beneficiaries and was otherwise fully in compliance with the trustee's duties to the beneficiaries.

2.07

Defendant denies that the trustee of the STS entered into any transaction on behalf of or relating to STS that constituted a conflict of interest, but if it did any such transaction was entered into in good faith, was reasonable and was otherwise fully in compliance with the trustee's duties to the beneficiaries.

2.08

Plaintiffs' claims for breach of fiduciary duty/breach of trust relating to or arising out of alleged self-dealing and/or conflicts of interest in connection with transactions with third-parties who are or have been customers of the commercial banking or investment banking businesses of

JPMorgan Chase Bank, N.A. (“JPMorgan”) are barred under federal law, including but not limited to the Federal Reserve Act of 1913, § 11(k), 38 Stat. 251, 262; Gramm-Leach-Bliley Financial Services Modernization Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999); and 12 C.F.R. § 9.5 et seq.

#### 2.09

Plaintiffs’ claims for breach of fiduciary duty/breach of trust relating to or arising out of alleged self-dealing and/or conflicts of interest in connection with transactions with third-parties who are or have been customers of the commercial banking or investment banking businesses of JPMorgan are barred under Texas Trust Code § 113.053, because those third-parties are not “business associates” of JPMorgan or do not otherwise fall within the scope of that provision.

#### 2.10

Plaintiffs’ claims for breach of fiduciary duty/breach of trust relating to the mineral leases and amendments the trustee entered into all fail or are barred because the trustee complied with its obligations under the Uniform Prudent Investor Act, Texas Trust Code § 117.001 et seq. Plaintiffs’ claims also fail because they are based on hindsight in violation of Texas Trust Code § 117.001 et seq.

#### 2.11

Defendant affirmatively pleads that the Plaintiffs’ claims are barred by the applicable statutes of limitations pursuant to Texas Civil Practice & Remedies Code §§ 16.003 and 16.004.

#### 2.12

Defendant affirmatively pleads that at all pertinent times, the Defendant was acting in accordance with the terms and provisions of the STS Trust.

2.13

Defendant pleads that the Plaintiffs are not entitled to recover in the capacity in which they sue in that they are not entitled to bring this action on behalf of the STS Trust or on behalf of beneficiaries that are not parties to this proceeding pursuant to Texas Rule of Civil Procedure 93(2).

2.14

Defendant pleads that there is a defect of parties Plaintiff pursuant to Texas Rule of Civil Procedure 93(4).

2.15

Defendant affirmatively pleads that the Plaintiffs are not entitled to bring this action on behalf of the STS Trust or on behalf of beneficiaries that are not parties to this proceeding.

2.16

Defendant affirmatively pleads that the Plaintiffs' causes of action should be dismissed because of their failure to join all necessary parties to this proceeding.

2.17

Defendant affirmatively pleads that the Plaintiffs' causes of action should be dismissed because of their failure to join the current trustee of the STS Trust – BOKF, N.A., d/b/a Bank of Texas – as a necessary party to this proceeding.

2.18

Defendant affirmatively pleads that the Plaintiffs' damages should be reduced by any appropriate offset and/or credit.

2.19

Defendant denies that it is liable for exemplary damages. However, if Defendant is found liable for exemplary damages, Defendant pleads the caps and protections provided under the Texas Damages Act, Chapter 41 of the Texas Civil Practice & Remedies Code, and the Due Process Clauses of the United States and Texas Constitutions. *See* U.S. Const. amend. XIV; Tex. Const. art. I, §§ 13 and 19.

2.20

Any award of punitive damages would violate Defendant's right to due process and other rights under the Texas and United States Constitution.

### **III. REIMBURSEMENT AND RECOVERY OF ATTORNEYS' FEES AND COSTS**

3.01

Defendant seeks reimbursement and recovery of its reasonable and necessary attorneys' fees and costs as may be equitable and just from Plaintiffs or from the STS Trust under Texas Property Code § 114.064.

### **IV. PRODUCTION OF DOCUMENTS**

4.01

Defendant hereby places Plaintiffs on notice that Defendant intends to use any document produced by Plaintiffs in any pretrial proceeding at trial.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiffs take nothing by this suit, and that, upon final trial, Defendant recovers its attorneys' fees, costs, costs of court, together with such other and further relief to which Defendant may be justly entitled.





**VERIFICATION**

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

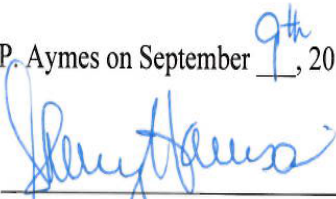
Before me, the undersigned notary, on this day personally appeared Gary P. Aymes, the affiant, whose identity is known to me. After I administered the oath, affiant testified as follows:

“My name is Gary P. Aymes. I am capable of making this verification. I have read paragraphs 2.13 and 2.14 of Defendant’s Fifth Amended Answer. The facts stated in these two paragraphs are within my personal knowledge and are true and correct.”

  
\_\_\_\_\_  
Gary P. Aymes

Sworn to and subscribed before me by Gary P. Aymes on September 9<sup>th</sup>, 2014.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My commission expires: 7-8-2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record, as indicated, on this 9<sup>th</sup> day of September 2014.

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\_\_\_\_\_  
/s/ Patrick K. Sheehan  
Patrick K. Sheehan



lease terms and valuations for the STS Trust's mineral interests. They are more than merely relevant for discovery purposes; the Leases are admissible evidence. *See id.* (relevance standards for admissibility higher than those for discoverability).

2. The Lease are not trade secrets or otherwise protected from discovery under any applicable privilege. They are ordinary commercial leases of mineral interests. And even if the Leases were trade secrets, the protective order entered in this case provides more than adequate protection of Saint Mary's interests. Saint Mary's relevance and confidentiality objections are without merit, and the relief to which it has availed itself—the complete suppression of admissible evidence—is not supported by its confidentiality concerns. This Court should therefore enter an order compelling Saint Mary's to produce the Leases.

## I.

### BACKGROUND

3. Plaintiffs' claims against JP Morgan turn on, among other things, its mismanagement of several lease transactions conveying mineral interests owned by the STS Trust. *See* Seventh Amended Petition ("Petition") ¶¶ 169-239. The main asset of the STS Trust is an undivided 100% interest to mineral rights under 132,000 contiguous acres in La Salle and McMullen Counties, Texas. *See id.* ¶ 141. La Salle and McMullen counties lie in a geological formation known as the Eagle Ford. Plaintiffs allege that JP Morgan's mismanagement resulted in imprudent and low bonus compensation to the STS Trust and unfavorable lease terms, such as inadequate development requirements, resulting in delayed royalty payments. *See id.* ¶¶ 177-217. JP Morgan has since been removed as Trustee of the STS Trust.

4. JP Morgan's mismanagement spans several lease transactions. Specifically, Plaintiffs allege that in 2008 JP Morgan's commercial client Petrohawk approached JP Morgan about leasing all available STS acreage (approximately 79,524.77 acres). *See id.* ¶ 179. At the

time Petrohawk approached JP Morgan, Petrohawk was a well-known unconventional shale player. *See id.* at ¶ 217. Because Petrohawk was well-known, its involvement in a play, if known publically, would cause bonus payments for acreage in that play to rise. *See id.* For this reason, Petrohawk used a “stealth” land acquisition strategy at the time it contacted JP Morgan. *See id.* As part of its stealth acquisition strategy, Petrohawk also used a Corpus Christi entity (First Rock) to act as lessee for Eagle Ford acreage. *See id.* But, even though Petrohawk had been using First Rock to lease acreage from other Eagle Ford mineral owners, it openly approached JP Morgan. *See id.* JP Morgan agreed to keep Petrohawk’s interest in STS acreage confidential, and subsequently leased over 79,000 STS acres to Petrohawk in three lease transactions spanning March to December 2008. *See id.* ¶¶ 177-217.

5. JP Morgan executed the 2008 leases to Petrohawk without any competitive bidding and without conducting any due diligence. *See id.* ¶ 216. The imprudent and rushed leasing process for the 2008 Petrohawk leases resulted in bonus compensation to the STS Trust of \$150-\$200 per acre. *See id.* ¶ 210. Experts in this case have opined that the proper exercise of diligence and prudence in this case would have required holding back 60,000 of the STS acres leased to Petrohawk in 2008. Half of these 60,000 STS acres would then have been leased no earlier than October 1, 2009 with the remaining half leased no earlier than May 1, 2010.

6. After Petrohawk acquired the approximately 80,000 acres of mineral interests from the STS Trust, BHP Billiton acquired Petrohawk for \$15.1 billion in July 2011. *See id.* ¶ 217. The undeveloped STS Trust acreage was valued at \$12,125 per acre in that sale, or approximately \$970 million. *See id.* The STS Trust received only \$14.9 million in bonus compensation for those same mineral interests. *See id.* ¶ 144.

7. JP Morgan also mismanaged the four leases to Broad Oak, Inc. (now Laredo) of approximately 10,000 acres of STS mineral interests. Plaintiffs allege that JP Morgan failed to pursue STS acreage leased by Broad Oak that should have been released due to Broad Oak's failure to develop the acreage. *See id.* ¶¶ 218-234. If JP Morgan had pursued this acreage, the acreage would have been available to bring to market in 2010. *See id.* ¶¶ 220-221. Instead, in 2009 JP Morgan allowed Broad Oak to extend, for little or no consideration, four leases some of which were set to expire in two weeks. *See id.* At the time it renewed these leases, JP Morgan knew or should have known that the Eagle Ford acreage had increased in value due to the Eagle Ford discovery. *See id.* ¶ 221. Broad Oak eventually sold its leasehold rights in STS acreage to Hunt Oil Company and Bass Enterprises Production Company ("BOPCO"). *See id.* ¶ 225. In April 2011, BOPCO sold its interest to Murphy Oil Corporation. *See id.* ¶ 227. And in December 2011, Hunt sold some of its STS interests to Marubeni Corporation. *See id.* ¶ 228.

8. The Leases convey mineral acreage in the Eagle Ford. They are also close in time to the dates on which JP Morgan entered into the imprudent leases to Petrohawk and Broad Oak. Moreover, JP Morgan has subpoenaed a number of oil and gas exploration and production companies to produce their lease files. The Court has already required these nonparties to produce the requested documents with some limitations.

## II.

### THE SUBPOENA TO SAINT MARY'S

9. On or about August 8, 2014, Plaintiffs subpoenaed the Leases and answers to depositions on written questions from Saint Mary's.<sup>1</sup> On August 28, 2014, Saint Mary's responded

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<sup>1</sup> The subpoena to Saint Mary's is attached hereto as Exhibit A.

by objecting to the subpoenas and moving for a protective order. The eight Leases requested from Saint Mary's were all dated from April 24, 2008 through May 31, 2010.

### III.

#### ARGUMENTS AND AUTHORITIES

10. The Leases are not trade secrets. A trade secret is "any formula, pattern, device, or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not know or use it." *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003). Saint Mary's has the burden of showing that the requested information is a trade secret under Texas Rule of Evidence 507. See *In re Continental Gen. Tire, Inc.*, 979 S.W.2d 609, 610 (Tex. 1998); *Boeing Co. v. Abbott*, 412 S.W.3d 1, 10 (Tex. App.—Austin 2012, pet. filed). Courts consider and weigh six factors in making a trade secret determination:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of the measures taken to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended in developing the information; and
- (6) the ease or difficulty with which the information could be acquired or duplicated by others.

*In re Bass*, 113 S.W.3d at 740. The Civil Practice and Remedies Code definition of a trade secret is similar to the formulation applied in *In re Bass*. See TEX. CIV. PRAC. & REM. CODE § 134A.002(6).

11. At least one Texas court has held that leasing information is not a trade secret. *Boeing*, 412 S.W.3d at 11-12. In *Boeing*, an allegedly disgruntled former employee of Boeing sought production of a lease concerning a property at a former Air Force base in San Antonio,

Texas under a Texas Public Information Act (“PIA”) request. *Id.* at 5. The lease at issue was negotiated over a number of years between Boeing and the Port Authority of San Antonio. *Id.* Boeing used the property to service various aircraft for the United States Air Force. *Id.* at 6. Boeing considered the lease a trade secret. *Id.* at 9. Boeing objected first to the Texas Attorney General and then sued the Attorney General when he denied Boeing’s request to exclude the lease from production. *Id.* Boeing, through its trial witnesses, argued that the lease was a trade secret because, among other things—

- it was kept in a file cabinet at Boeing’s offices and was accessible only to senior staff members,
- Boeing was concerned about the financial terms included in the lease falling into the hands of a competitor,
- a competitor could use the information contained in the lease to submit a more favorable bid with the U.S. government in future leases and contracts, and
- the lease information was highly valuable to Boeing.

*Id.* at 10-12.

12. The trial court disagreed with Boeing’s trade secret contentions and ordered that Boeing produce the lease. In affirming the trial court’s order, the court of appeals held that Boeing did not meet factor (3) because “[t]here was no evidence that the Port was contractually obligated to Boeing to protect the Lease information, such as through a confidentiality agreement.” *Id.* at 11. The court also noted that “there [was] no evidence that Boeing informed the Port at the time it entered into the Lease that it considered the Lease information confidential or a trade secret.” *Id.* Likewise, the court held that Boeing did not satisfy factor (4) because Boeing’s “argument fail[ed] to take into account the myriad of other factors that might influence the cost of any lease a competitor might obtain from other municipalities, such as size and location of the property.” *Id.*



13. Similarly, here Saint Mary's has failed to adequately show that the Leases are trade secrets. First, the Leases were negotiated in arm's length transactions (i.e., an adversarial setting). Second, as to factors (4) and (5), there is no evidence that the terms used in the Leases were developed by the effort behind a trade secret. Terms like royalty and bonus payments, while valuable to Saint Mary's, are hardly any more valuable than the financial information contained in the leases in *Boeing*. Saint Mary's offers no rebuttal to *Boeing*. Indeed, it cites no cases in its motion to quash.

**A. The Protective Order currently in place adequately protects any allegedly confidential information.**

14. Even assuming the Leases are trade secrets, any confidentiality concerns raised can be resolved through the Protective Order currently in place in this action. *See In re Continental General Tire, Inc.*, 979 S.W.2d 609, 613 (Tex. 1998). The Texas Supreme Court has held that when a discovery respondent has established a trade secret "[t]he burden then shifts to the requesting party to establish that the information is necessary for a fair adjudication of its claims." *Id.* If the requesting party meets this burden, "the trial court should ordinarily compel disclosure of the information, subject to an appropriate protective order." *Id.*

15. Plaintiffs need access to the Leases for a fair adjudication of their case against JP Morgan. The Leases share significant geographical and temporal similarities with the Petrohawk and Broad Oak leases at issue here. The Leases convey Eagle Ford acreage. The conduct that Plaintiffs challenge focuses on JP Morgan's actions in 2008, 2010, and 2012. The Leases span 2008 through 2010. Simply put, the Plaintiffs are entitled to discovery on comparable lease transactions to show market valuations and market lease terms during the 2003-2012 timeframe. Production of the Leases is necessary to obtain a fair adjudication on the issues of liability and damages for Plaintiffs' breach of fiduciary duty claims against JP Morgan. The Leases shed light

on the appropriate market valuation and lease terms for the STS leases entered into by JP Morgan. *See, e.g., Williams v. State*, 406 S.W.3d 273 (Tex. App.—San Antonio 2013, pet. filed) (“[C]ourts have given appraisers a wide degree of latitude based on their experience when determining admissibility.”); *Bd. of Regents of Univ. of Texas Sys. v. Puett*, 519 S.W.2d 667, 672 (Tex. Civ. App.—Austin 1975, writ ref’d n.r.e.) (“Generally, sales occurring within five years of the date of taking of the subject property may be considered comparable.”).

16. A protective order will adequately protect Saint Mary’s interests. Saint Mary’s concerns regarding disclosure of their negotiating priorities and processes are overstated on their face. The Leases would only reveal the outcome of Lease negotiations—not the process and priorities that produced these outcomes. But even if Saint Mary’s concerns were valid, it still has not, and cannot, show how an appropriate protective order would not safeguard its interests.

**B. The Subpoena to Saint Mary’s is narrow in scope and directly relevant to the claims in this action.**

17. The same factors that establish the Leases to be necessary for a fair adjudication of Plaintiffs’ claims also show the Leases to be relevant to those claims. Saint Mary’s nevertheless contends that the Leases are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Complete similarity between comparable transactions, including a complete identity of parties and matching seller motivations, is not the test in Texas for determining whether discovery should proceed. Indeed market data is the “the most common method of determining market value.” *Religious of Sacred Heart of Texas v. City of Houston*, 836 S.W.2d 606, 617 (Tex. 1992). Comparable sales evidence is one of the “four main types of evidence that are allowed to be introduced into evidence as bearing upon the hypothetical market issues.” *See id.* at 616. Market data like the Leases is not only discoverable, it is admissible as evidence. *Jampole*, 673

S.W.2d at 573 (“[D]iscovery is not limited to information that will be admissible at trial . . . [T]he law circumscribes a significantly larger class of discoverable evidence to include anything reasonably calculated to lead to the discovery of material evidence.”). And, as a general rule, transactions within five years of the transaction at issue may be considered comparable transactions. *See Puett*, 519 S.W.2d at 672.

#### IV.

#### CONCLUSION AND PRAYER

The subpoena to Saint Mary’s seeks relevant information for use in proving many key facts at issue in this case. The Leases are not trade secrets. Any confidential information can be protected through the Protective Order currently in place. As such, this Court should GRANT this Motion, compel Saint Mary’s to produce the Leases, compel Saint Mary’s to answer the questions in the depositions on written questions, and award Plaintiffs any other such relief as justice requires.

DATE: September 8, 2014.

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Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

By: /s/ Jim L. Flegle  
Jim L. Flegle

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, *ET AL.*,

*Plaintiffs,*

JPMORGAN CHASE BANK, N.A.,  
INDIVIDUALLY/CORPORATELY AND  
AS TRUSTEE OF THE SOUTH TEXAS  
SYNDICATE TRUST,

*Defendant.*

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IN THE DISTRICT COURT

225<sup>th</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

FIAT

(Plaintiffs' Motion to Compel Production of Oil and Gas Leases from  
SM Energy Company)

Plaintiffs' Motion to Compel Production of Oil and Gas Leases from SM Energy Company is hereby set for hearing on September 12, 2014 at 8:30 a.m. in the Presiding Judicial District Court, Room m109, Bexar County Courthouse, San Antonio, Texas.

SIGNED this 8<sup>th</sup> day of September, 2014

  
\_\_\_\_\_  
JUDGE PRESIDING

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via e-Service and email on September 8, 2014:

John Eichman, Esq.  
Charles Gall, Esq.  
Hunton & Williams  
1445 Ross Avenue  
Suite 3700  
Dallas, TX 75202

Patrick K. Sheehan, Esq.  
David Jed Williams, Esq.  
Hornberger Sheehan Fuller & Garza Inc.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209

Kevin Beiter, Esq.  
McGinnis Lochridge  
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Fred W. Stumpf, Esq.  
Boyer Short  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

Jesse R. Pierce  
Pierce & O'Neill, LLP  
4203 Montrose Boulevard  
Houston, Texas 77006

*/s/ John McKenzie*  
\_\_\_\_\_  
John McKenzie

# **Exhibit A**

(Consolidated Under)  
2010-CI-10977

<b>JOHN K. MEYER, ET AL.,</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>Plaintiffs,</b>	<b>§</b>	
	<b>§</b>	
<b>vs.</b>	<b>§</b>	
	<b>§</b>	
<b>JP MORGAN CHASE BANK, N.A.</b>	<b>§</b>	<b>225<sup>TH</sup> JUDICIAL DISTRICT</b>
<b>INDIVIDUALLY/CORPORATELY</b>	<b>§</b>	
<b>AND AS TRUSTEE OF THE SOUTH</b>	<b>§</b>	
<b>TEXAS SYNDICATE TRUST,</b>	<b>§</b>	
<b>Defendant.</b>	<b>§</b>	<b>BEXAR COUNTY, TEXAS</b>

**DEPOSITION SUBPOENA DUCES TECUM TO PRODUCE DOCUMENTS**  
**ISSUED IN THE NAME OF THE STATE OF TEXAS**

**TO ANY PEACE OFFICER, CONSTABLE OF THE STATE OF TEXAS OR  
OTHER PERSON DULY AUTHORIZED TO SERVE OR EXECUTE  
SUBPOENAS:**

The Subpoena is directed to:

**CUSTODIAN OF RECORDS FOR:**

**SM Energy Company  
Corporation Service Company d/b/a CDC-Lawyers Incorporating  
Service Company  
211 E. 7<sup>th</sup> Street, Ste. 620  
Austin, Texas 78701**

This Subpoena directs the Custodian of Records for SM ENERGY COMPANY, to appear at **10:00 a.m. on August 29, 2014**, before a notary public at the following location:

**1776 Lincoln Street, Ste. 700  
Denver, CO 80203**

and answer under oath written questions to be propounded by counsel for Plaintiffs and to produce for inspection and photocopying the documents and records described on Exhibit "A" attached to the Notice Duces Tecum of Intent to Take Deposition by Written Questions served with and attached to this Subpoena.



This Subpoena is issued at the instance and request of Plaintiffs, John K. Meyer, et al. The attorney of record for Plaintiff is: James L. Drought, Drought, Drought & Bobbitt, L.L.P., 112 E. Pecan St., Suite 2900, San Antonio, Texas 78205.

**THIS SUBPOENA IS ISSUED UNDER TEXAS RULE OF CIVIL PROCEDURE 176. RULE 176.8(a) STATES: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.**

This Subpoena is issued by James L. Drought, attorney for Plaintiffs, on behalf of Plaintiffs.

Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
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**ATTORNEYS FOR  
INTERVENOR-PLAINTIFFS,  
LINDA ALDRICH, ET AL.**

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State Bar No. 20064000

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Robert Rosenbach  
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2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
(210) 225-4031 Telephone  
(210) 222-0586 Telecopier

By:                     /s/                      
James L. Drought  
State Bar No. 06135000  
**ATTORNEYS FOR PLAINTIFFS,**  
**JOHN K. MEYER, ET AL.**

**RETURN**

CAME ON TO HAND ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2014, AT \_\_\_\_  
O'CLOCK \_\_\_\_M. AND EXECUTED (NOT EXECUTED) ON THE \_\_\_\_ DAY OF  
\_\_\_\_\_, 2014, BY DELIVERING TO \_\_\_\_\_, A TRUE COPY OF THIS  
SUBPOENA UPON WHICH I ENDORSED THE DATE OF DELIVERY. CAUSE  
OF FAILURE TO EXECUTE THIS SUBPOENA IS  
\_\_\_\_\_.

TOTAL FEES: \$ \_\_\_\_\_

\_\_\_\_\_  
DALLAS COUNTY, TEXAS

By: \_\_\_\_\_

**NON-PEACE OFFICER VERIFICATION**

VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

(Consolidated Under)  
2010-CI-10977

JOHN K. MEYER, ET AL.,  
Plaintiffs,

vs.

JP MORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST,  
Defendant.

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IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**NOTICE OF INTENTION TO TAKE DEPOSITION BY WRITTEN QUESTION  
WITH DUCES TECUM**

Plaintiff, John K. Meyer, et al, will take a deposition by written questions of the Custodian of Records for **SM Energy Company**. at the following date, time, and place:

Date: **August 29, 2014**  
Time: **10:00 a.m.**  
Place: **SM Energy Company  
1776 Lincoln Street, Ste. 700  
Denver, CO 80203**

Notice is further given that the witness shall produce at the deposition for inspection and photocopying the documents and records listed and described on the attached Exhibit "A".

Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
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**ATTORNEYS FOR  
INTERVENOR-PLAINTIFFS,**

**LINDA ALDRICH, ET AL.**

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**ATTORNEYS FOR PLAINTIFFS,  
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(210) 222-0586 Telecopier

By:                   /s/                    
James L. Drought  
State Bar No. 06135000  
**ATTORNEYS FOR PLAINTIFFS,**  
**JOHN K. MEYER, ET AL.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent  
by:

\_\_\_\_\_ U.S. Certified Mail, Return Receipt Requested to:  
\_\_\_\_\_ Facsimile to:  
\_\_\_\_\_ First Class Mail to:  
\_\_\_\_\_ Hand Delivery to:  
  √  \_\_\_\_\_ E-filing Service to:

Mr. Patrick K. Sheehan  
Mr. David Jed Williams  
Hornberger Sheehan Fuller & Garza Incorporated  
7373 Broadway, Suite 300  
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Kevin M. Beiter  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701

Mr. Charles A. Gall  
Mr. John C. Eichman  
Hunton & Williams LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

Mr. Fred W. Stumpf  
Boyer Short, A Professional Corporation  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77046

on this the 8<sup>th</sup> day of August, 2014.

*/s/*  
\_\_\_\_\_  
James L. Drought

(Consolidated Under)  
2010-CI-10977

JOHN K. MEYER, ET AL.,  
Plaintiffs,

vs.

JP MORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST,  
Defendant.

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IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEPOSITION ON WRITTEN QUESTIONS PROPOUNDED UPON THE  
WITNESS, CUSTODIAN OF RECORDS FOR SM ENERGY COMPANY**

1. Please state your full name, business address, and official title.

**ANSWER:**

---

2. Did you receive a subpoena for the production of the documents and records listed and described on Exhibit "A" attached to these questions?

**ANSWER:**

---

3. Have these documents and records been produced for this deposition, bates numbered, and delivered to the officer taking this deposition?

**ANSWER:**

---

4. Are you the custodian of these documents or records for **SM ENERGY COMPANY**?

**ANSWER:**

---



5. What is the Bates number range for the documents and records produced for this deposition?

**ANSWER:**

---

6. Are the documents and records produced for this deposition originals or photocopies of the original documents?

**ANSWER:**

---

7. Are the documents and records produced for this deposition memoranda, reports, records or data compilations of acts, events, or conditions made at or near the time by or from information transmitted by, a person with knowledge?

**ANSWER:**

---

8. Are these documents and records kept in the course of a regularly conducted business activity of **SM ENERGY COMPANY**?

**ANSWER:**

---

9. Was it the regular practice of the business activity of **SM ENERGY COMPANY** to make the memorandum, report, record or data compilation reflected in these documents and records?

**ANSWER:**

---

---

WITNESS, CUSTODIAN OF RECORDS FOR  
**SM ENERGY COMPANY**

I \_\_\_\_\_, a Notary Public in and for the State of Texas, do hereby certify that the forgoing answers of the witness were made by the said witness and sworn to and subscribed before me.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

## **REQUEST FOR PRODUCTION**

Please produce the following documents relating to the leases described below:

- The executed leases;
  - Any option agreements, letters of intent to lease or side agreements relative to the leases;
  - Any agreements relative to amendment, modification or extension of the leases;
  - Any lease data sheets relative to the lease;
  - Sufficient documents to identify the bonus paid for the lease (total bonus and bonus per net mineral acre);
  - Any Lease Purchase Report ("LPR") and;
  - Any receipt or paid draft relative to the lease
- 

**NO. 1:** Oil and Gas Lease dated April 24, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 7,287.96 acres in Webb County, Texas.

**NO. 2:** Oil and Gas Lease dated September 28, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 370.10 acres in Webb County, Texas.

**NO. 3:** Oil and Gas Lease dated October 1, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 3,573.66 acres in Webb County, Texas.

**NO. 4:** Oil and Gas Lease dated May 1, 2009 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,928.62 acres in Webb County, Texas.

**NO. 5:** Oil and Gas Lease dated December 10, 2009 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,617.33 acres in Webb County, Texas.

**NO. 6:** Oil and Gas Lease dated March 2, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,846.15 acres in Webb County, Texas.

**NO. 7:** Oil and Gas Lease dated May 1, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 18,303.34 acres in Webb County, Texas.

**NO. 8:** Oil and Gas Lease dated May 31, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,846.15 acres in Webb County, Texas.

(Consolidated Under)  
CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiffs,</i>	§	
	§	
JP MORGAN CHASE BANK, N.A.,	§	
INDIVIDUALLY/CORPORATELY AND	§	225 <sup>th</sup> JUDICIAL DISTRICT
AS TRUSTEE OF THE SOUTH TEXAS	§	
SYNDICATE TRUST,	§	
	§	
	§	
<i>Defendant.</i>	§	BEXAR COUNTY, TEXAS

**PLAINTIFFS’ MOTION TO COMPEL  
(Second and Sixth Requests for Production)**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Plaintiffs, John K. Meyer, et al., in the above-styled and numbered cause, and file this Motion to Compel Defendant JP Morgan Chase Bank, N.A. (“JP Morgan”) to answer Plaintiffs’ Requests for Production and would respectfully show the Court the following:

**INTRODUCTION**

1. JP Morgan was the trustee of a trust known as the South Texas Syndicate (“STS”) until it was forced to resign by court order dated July 19, 2013. A successor trustee is in the process of being selected.

2. Plaintiffs are beneficiaries of the trust and have alleged that JP Morgan breached its fiduciary duties by failing to provide information regarding the trust and failing to properly manage the trust. Plaintiffs have sought to obtain information regarding the trust through discovery, but JP Morgan has refused to provide such information as follows:

## **PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION NO. 2**

3. On or about November 8, 2013, Plaintiffs served JP Morgan with their Sixth Requests for Production. On or about December 11, 2013, JP Morgan served its responses.

4. Plaintiffs made the following request:

REQUEST FOR PRODUCTION NO. 2: Produce the STS Tax Opinion prepared by Cox & Smith.

5. Defendant has refused to produce the tax opinion claiming it is withheld under the attorney/client and work-product privileges. The objection should be overruled and JP Morgan required to produce the document. A true and correct copy of JP Morgan's Responses is attached as Exhibit A.

6. In November 2010, JP Morgan provided the STS Beneficiaries with a "Summary of the Tax Opinion on the U.S. Federal Income Tax classification of the South Texas Syndicate Trust." The opinion was prepared by Cox & Smith. Though repeatedly requested, JP Morgan has refused to produce the tax opinion. On information and belief, the tax opinion was paid for with STS Trust assets.

7. One of the issues addressed in the unproduced opinion is apparently whether or not the STS Trust was or is a "liquidating trust."

8. JP Morgan's experts now criticize Plaintiffs' experts for not taking into account the "federal income tax classification" of the STS Trust as a "liquidating trust," for not understanding the "implications" of a liquidating trust, for not understanding the "purpose" of the STS Trust, and for various other tax-law related reasons. On information and belief, these topics are addressed in the unproduced Cox & Smith opinion.

9. JP Morgan's refusal to produce the opinion and use of experts to affirmatively discuss "liquidating trust" tax status violates the shield-sword doctrine. The tax opinion should be produced.

**PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION NO. 1**

10. On or about August 7, 2013, Plaintiffs' served JP Morgan with their Fourth Requests for Production. On or about November 15, 2013, JP Morgan served its Second Amended Responses.

11. Plaintiffs made the following request:

REQUEST FOR PRODUCTION NO. 1: Produce all the Specialty Asset budgets addressed by Kevin Smith in his deposition on July 29, 2013 for the years 2007, 2008, 2009, 2010 and 2011.

12. Defendant refused to produce the documents and raised numerous unfounded objections. A true and correct copy of JP Morgan's objections are attached as Exhibit B. Further, JP Morgan was ordered to produce the Specialty Asset budget for 2008 at a hearing on July 29, 2014. To date, the budget has not been produced. The budget should be produced or JP Morgan should amend its response to indicate that no Specialty Asset budget could be located.

WHEREFORE, Plaintiffs pray that this Court set this matter for hearing and that upon hearing hereof, enter an order removing JP Morgan's objections and requiring Defendant to provide answers to Plaintiffs' Requests for Production identified herein, and ordering the requested documents be produced, and granting any other additional relief to which Plaintiffs may be justly entitled.

DATE: September 8, 2014.

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Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.

By: /s/ Jim L. Flegle  
Jim L. Flegle



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via e-Service and email on September 8, 2014:

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David Jed Williams, Esq.  
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Kevin Beiter, Esq.  
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Boyer Short  
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Houston, TX 77046

*/s/ John McKenzie*

\_\_\_\_\_

John McKenzie

# **Exhibit A**

CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET. AL.,  
Plaintiffs,

V.

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST  
and GARY P. AYMES,  
Defendants.

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IN THE DISTRICT COURT

225TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S RESPONSES TO PLAINTIFFS'  
SIXTH REQUEST FOR PRODUCTION**

Defendant JPMorgan Chase Bank, N.A., Individually/Corporately, ("J.P. Morgan")  
submits these Responses to Plaintiff's Sixth Request for Production.

Respectfully submitted,

**HORNBERGER SHEEHAN FULLER BEITER  
WITTENBERG & GARZA INCORPORATED**

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By: \_\_\_\_\_

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State Bar No. 02059065  
Rudy A. Garza  
State Bar No. 07738200  
David Jed Williams  
State Bar No. 21518060

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document was served upon the following on December 11, 2013 by the method indicated:

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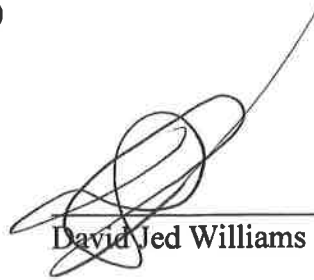
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Mr. Fred W. Stumpf  
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Houston, Texas 77045

**VIA CERTIFIED MAIL**



David Jed Williams

**DEFENDANT'S RESPONSES TO PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce the standard monthly reports prepared by Bertram Hayes-Davis for the April 2008 through July 2012 time period. (See page 18 of Bert Hayes-Davis' deposition.)

**OBJECTIONS:**

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to reports relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. See TRCP 192 cmt. 1. For example, this request is not limited solely to reports relating to STS.

**REQUEST FOR PRODUCTION NO. 2:** Produce the STS Tax Opinion prepared by Cox & Smith.

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under attorney-client and work product privileges.

**REQUEST FOR PRODUCTION NO. 3:** Produce the Fiduciary Governance Committee Minutes for the years 2008, 2009, and 2010.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to minutes relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the

subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not limited solely to minutes relating to STS.

**REQUEST FOR PRODUCTION NO. 4:** Produce all audits of the STS Trust prepared by Carneiro Chumney.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 5:** Produce all audits of the STS Trust prepared by any other accounting firm.

**RESPONSE:**

Defendant is not aware of any audits of the STS Trust prepared by any other accounting firm.

**REQUEST FOR PRODUCTION NO. 6:** Produce all documents sent or received regarding the OCC's Conflict of Interest examination. (See DEFENDANTS\_137997[sic]).

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under the attorney-client, work product and bank examination privileges.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to examinations relating to STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not limited solely to examinations relating to STS.

**REQUEST FOR PRODUCTION NO. 7:** Produce all correspondence between the OCC and JPM regarding the specialty asset group from 2007-2010.

**CLAIM OF PRIVILEGE:**

Documents responsive to this Request have been or will be withheld from production under the bank examination privilege.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to correspondence regarding STS.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not limited solely to correspondence relating to STS.

**REQUEST FOR PRODUCTION NO. 8:** Produce the "set of guidelines and policies" Patricia Schultz-Ormond needed to adhere to. (See page 53 of Patricia Schultz-Ormond's June 10, 2013 deposition).

**RESPONSE:**

Defendant has produced documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 9:** Produce all invoices submitted by Robert Buehler regarding the STS Trust during the 2007-2010 time period.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.



**REQUEST FOR PRODUCTION NO. 10:** Produce all correspondence and checks made payable to Robert Buehler in payment of invoices referenced in Request for Production No. 9 above.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 11:** Produce all agreements between STS and Robert Buehler.

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 12:** Produce all meeting agendas referring to or mentioning the STS Trust. (See page 69 of Patricia Schultz-Ormond's June 10, 2013 deposition.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact privileged information.

**REQUEST FOR PRODUCTION NO. 13:** Produce the list of transactions submitted to the National Mineral Manager. (See page 69 of Patricia Schultz-Ormond's June 10, 2013 deposition.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact non-STS client identifying information, as not relevant and confidential.

**REQUEST FOR PRODUCTION NO. 14:** Produce the JPM internal database regarding bonuses for the 2007-2010 time period. (See page 72 of Patricia Schultz-Ormond's deposition.)

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request seeks confidential, private, and/or proprietary information pertaining to Defendant and/or its clients.
2. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited solely to transactions relating to STS and would include the entire JPM database.
3. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not limited solely to transactions relating to STS.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has produced information responsive to this request for certain counties for the 2007-2010 time period.

**REQUEST FOR PRODUCTION NO. 15:** Produce all materials developed to market the Eagle Ford shale strategy discussed by Mr. Minter in his deposition in connection with Exhibits 654 and 655. (Page reference from deposition will be supplemented upon receipt of Minter's deposition.)

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 16:** Produce all written documentation pertaining to the 2 to 3 presentations Petrohawk made to Pattie Ormond at the JPM offices in 2008 which were described by Bob Buehler in his deposition. (Page reference from deposition will be supplemented upon receipt of Minter's deposition.)

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request.

# **Exhibit B**

JOHN K. MEYER, ET. AL.,  
Plaintiffs,

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IN THE DISTRICT COURT

V.

225TH JUDICIAL DISTRICT

JPMORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST  
and GARY P. AYMES,  
Defendants.

BEXAR COUNTY, TEXAS

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S SECOND AMENDED RESPONSES  
TO PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION**

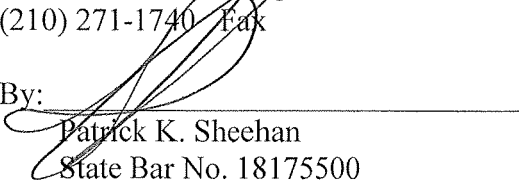
Defendant JPMorgan Chase Bank, N.A., Individually/Corporately, ("J.P. Morgan")  
submits these Second Amended Responses to Plaintiff's Fourth Request for Production.

Respectfully submitted,

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Rudy A. Garza  
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David Jed Williams  
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document was served upon the following on November 15, 2013 by the method indicated:

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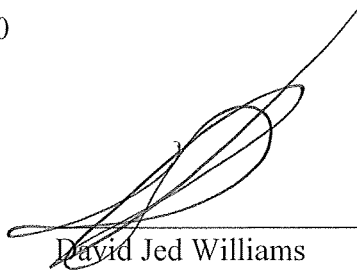
**VIA FACSIMILE**

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**VIA FACSIMILE**

Mr. Fred W. Stumpf  
Mr. Kelly M. Walne  
Boyer Short  
Nine Greenway Plaza, Suite 3100  
Houston, Texas 77045

VIA FACSIMILE



David Jed Williams

**DEFENDANT'S SECOND AMENDED RESPONSES TO PLAINTIFFS' FOURTH  
REQUEST FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Produce all the Specialty Asset budgets addressed by Kevin Smith in his deposition on July 29, 2013 for the years 2007, 2008, 2009, 2010 and 2011.

**RESPONSE:**

No items have been identified – after a diligent search – that are responsive to this Request.

**REQUEST FOR PRODUCTION NO. 2:** Produce Patricia Schultz-Ormond's job application.

**RESPONSE:**

Defendant has produced responsive documents within its possession or control, if any.

**REQUEST FOR PRODUCTION NO. 3:** Produce H.L. Tompkins' job application.

**RESPONSE:**

Defendant has not located responsive documents.

**REQUEST FOR PRODUCTION NO. 4:** Produce the job postings for a senior mineral manager position for the year 2005.

**RESPONSE:**

Defendant will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 5:** Produce the job postings for a senior mineral manager position for the year H.L. Tompkins was hired by J.P. Morgan Chase Bank, N.A.

**RESPONSE:**

Defendant will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 6:** Produce all communications between any JP Morgan office and Patricia Schultz-Ormond regarding assistance provided to Patricia Schultz-Ormond during 2008 and 2009.

**OBJECTIONS:**

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiver of these objections, Defendant is unaware of any responsive documents other than those documents that have already been produced to Plaintiffs.

**REQUEST FOR PRODUCTION NO. 7:** Produce all of Patricia Schultz-Ormond's monthly "administrative reports" for the years 2007, 2008, and 2009 (see bates-number Defendants088119 which references the administrative reports).



**RESPONSE:**

Defendant is unaware of what documents may be responsive to this request because Defendant does not know what Ms. Ormond meant in the email by the term “administrative reports.” However, in the event responsive documents are located, Defendants reserve the right to redact non-STS client identifying information.

**REQUEST FOR PRODUCTION NO. 8:** Produce all the risk management guidelines the Office of the Comptroller of the Currency issued to nationally chartered banks, for the years 2007, 2008, 2009 and 2010.

**OBJECTIONS:**

Defendant objects to this Request on the following bases:

1. This Request is overly broad, harassing, and unduly burdensome. For example, this request is not limited to guidelines applicable to Defendant and bears no relation to Defendant’s role as Trustee of South Texas Syndicate trust.
2. This Request seeks information that is not relevant to the subject matter of this case for discovery purposes and is beyond the scope of discovery as confined by the subject matter of this case. *See* TRCP 192 cmt. 1. For example, this request is not even limited to guidelines applicable to Defendant and bears no relation to Defendant’s role as Trustee of South Texas Syndicate trust.

**RESPONSE:**

Subject to and without waiver of these objections, Defendant is unaware of what documents may be responsive to this request because Defendant does not know what Plaintiffs mean by “risk management guidelines” the Office of the Comptroller of the Currency issued to nationally chartered banks.” Further, these documents, if they exist, are presumably publically available to Plaintiffs.

**REQUEST FOR PRODUCTION NO. 9:** Produce the expert report prepared by Dr. Norman S. Neidell in Cause No, 09-04-00036-CVL; *JP Morgan Chase Bank NA, in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.

**REQUEST FOR PRODUCTION NO. 10:** Produce the expert report prepared by Dr. Jory A. Pacht in Cause No. 09-04-00036-CVL; *JP Morgan Chase Bank MA., in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.

**REQUEST FOR PRODUCTION NO. 11:** Produce the expert report prepared by Dr. James A. Murtha in Cause No 09-04-00036-CVL; *JP Morgan Chase Bank N.A., in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 218<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested document.

**REQUEST FOR PRODUCTION NO. 12:** Produce all other experts reports exchanged between the parties in Cause No. 09-04-00036-CVL; *JP Morgan Chase Bank NA, in its capacity as Trustee of the South Texas Syndicate Trust vs. Pioneer Natural Resources USA, Inc. and EOG Resources, Inc.*, in the 216<sup>th</sup> Judicial District of La Salle County, Texas.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 13:** Produce any option agreements regarding the STS granted to Petrohawk Properties, L.P. in 2008 or 2009.

**RESPONSE:**

Defendant is unaware of any responsive documents.

**REQUEST FOR PRODUCTION NO. 14:** Produce the detailed memorandum prepared by Mark Anderson addressing trust structure alternatives.

**RESPONSE:**

Defendant has produced the responsive document.

**REQUEST FOR PRODUCTION NO. 15:** Produce any mineral manager meeting notes, list of transactions, list of pending transactions, or new inquiries submitted to the national mineral manager by any mineral manager in 2008 or 2009 (see Patricia Schultz-Ormond deposition pgs. 69-70 dated June 10, 2013.)

**RESPONSE:**

Defendants have been unable to locate any documents responsive to this request. However, in the event responsive documents are located, Defendants reserve the right to redact non-STS client identifying information.

**REQUEST FOR PRODUCTION NO. 16:** Produce all documents evidencing any sixty (60) day extension extending the Broad Oak / Hunt leases which are referred to as Lease No. 3598 and 3599 from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett Guzick	

**REQUEST FOR PRODUCTION NO. 17:** Produce all documents evidencing any sixty (60) day extension extending the Broad Oak / Hunt leases which are referred to as Lease No. 3598 and 3599 from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	

S. Carl Everett

Guzick

**REQUEST FOR PRODUCTION NO. 18:** Produce all documents evidencing any payment received for the 60 (sixty) day extension for the Broad Oak / Hunt Lease No. 3599 which extended the lease from July 2012 to September 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013

<u>Search Terms</u>
Broad Oak
Hunt Oil
@broadoakenergy.com
@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett
Guzick

**REQUEST FOR PRODUCTION NO. 19:** Produce all documents evidencing any payment received for the August 2012 amendments to the Broad Oak / Hunt Lease No. 3063 and Lease No. 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI

to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 20:** Produce all documents evidencing what acreage was held by production under the Broad Oak / Hunt Lease No 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or



produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<b><u>Search Terms</u></b>	
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@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 21:** Produce all documents evidencing any attempt to lease the acreage not held by production under the Broad Oak / Hunt Lease No. 4184 since its termination in February 2013.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<b><u>Search Terms</u></b>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	

@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett Guzick

**REQUEST FOR PRODUCTION NO. 22:** Produce all documents evidencing any attempt to lease the acreage that was previously leased under the Broad Oak / Hunt Lease No. 3083 subsequent to its termination in March 2013.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 23:** Produce all Consents to Assignments made by you regarding the Broad Oak / Hunt Lease Nos. 3598, 3599, 3083, and 4184.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In

addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<b><u>Search Terms</u></b>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 24:** Produce all documents evidencing all consideration received for amending the Broad Oak/Hunt Lease Nos. 3598, 3599, 3083, and 4184 in July 2009 and October 2012.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
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@huntoil.com
David Braddock
Bill Osborn
Curtis Riddle
S. Carl Everett
Guzick

**REQUEST FOR PRODUCTION NO. 25:** Produce all documents evidencing all consideration received for amending the Broad Oak / Hunt Lease No 3083 in March 2008.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
Hunt Oil	
@broadoakenergy.com	
@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	
Guzick	

**REQUEST FOR PRODUCTION NO. 26:** Produce all documents showing all wells drilled around the acreage subject to the four (4) Broad Oak / Hunt Leases Nos. 3589, 3599, 8038, 4184 that would require the lessee to drill an offset well.

**OBJECTION:**

Defendant objects to this Request on the following basis:

1. Defendant objects to this request in purporting to require the production of electronically stored information (“ESI”) in addition to the ESI that was produced under the Court’s December 19, 2012 Order Regarding ESI-Related Motions. Any ESI to be produced in addition to the ESI already produced under that Order is not reasonably available to Defendant in the ordinary course of its business. Defendant



cannot – through reasonable effort – retrieve the data or information requested or produce it in the form requested. Defendant therefore objects to complying with these requests with regard to any additional ESI production under TRCP 196.4. In addition, in the event the Court orders that Defendant must produce any additional ESI, the Court “must order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.” Defendant therefore objects to the production of any such additional ESI without payment of its reasonable expenses.

**RESPONSE:**

Subject to and without waiving this objection, Defendant has previously documents responsive to this Request. Further, Defendant will conduct an additional search of ESI to attempt to locate and produce any additional responsive documents. Such search will apply the following search terms to ESI for the following custodians and time periods:

<u>Custodian</u>	<u>Time Periods</u>
Patricia Schultz Ormond	10/1/2005-12/23/2009
H.L. Tompkins	10/1/2009-8/31/2013
<u>Search Terms</u>	
Broad Oak	
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@huntoil.com	
David Braddock	
Bill Osborn	
Curtis Riddle	
S. Carl Everett	

**REQUEST FOR PRODUCTION NO. 27:** Produce the mid-year reviews created or completed by Patricia Schultz-Ormond for the years 2005, 2006, 2007, 2008, and 2009.

**RESPONSE:**

Defendant has produced documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 28:** Produce any title opinions prepared for the Cullen leases (approximately 15,000 acres).

**RESPONSE:**

Defendant has produced and/or will produce documents responsive to this Request, if any.

**REQUEST FOR PRODUCTION NO. 29:** Produce statements 1, 2 and 3 to Schedule E for the 2001 STS tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 30:** Produce statements 1 and 2 to Schedule E for the 2002 STS tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 31:** Produce Schedule E and all attached statements for the STS 2010 tax return.

**RESPONSE:**

Defendant has produced the requested documents.

**REQUEST FOR PRODUCTION NO. 32:** Produce the 2012 STS income tax return.

**RESPONSE:**

Defendant has produced the requested documents.

(Consolidated Under)  
CAUSE NO. 2010-CI-10977

JOHN K. MEYER, ET AL.,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiffs,</i>	§	
	§	
JP MORGAN CHASE BANK, N.A.,	§	
INDIVIDUALLY/CORPORATELY AND	§	225 <sup>th</sup> JUDICIAL DISTRICT
AS TRUSTEE OF THE SOUTH TEXAS	§	
SYNDICATE TRUST,	§	
	§	
	§	
<i>Defendant.</i>	§	BEXAR COUNTY, TEXAS

**PLAINTIFFS’ MOTION TO COMPEL PRODUCTION OF OIL AND GAS LEASES FROM SM ENERGY COMPANY**

Plaintiffs move to compel production of oil and gas leases (the “Leases”) and responses to depositions on written questions from nonparty SM Energy Company (“Saint Mary’s”). The Leases are responsive to subpoenas that Plaintiffs properly noticed and served on Saint Mary’s. Saint Mary’s has nevertheless refused to produce the Leases or answer the questions presented in the depositions on written questions. It has instead objected that the Leases are confidential and irrelevant to Plaintiffs’ claims and moved for a protective order quashing the subpoenas.

1. The Leases are “reasonably calculated to lead to the discovery of material evidence” and are therefore relevant. *Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984) *disapproved of on other grounds by Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992). Plaintiffs are beneficiaries of a trust (the “STS Trust”). They claim that from 2008 through 2012 Defendant JP Morgan Chase Bank, N.A. (“JP Morgan”), as trustee, mismanaged the STS Trust by, among other things, entering into imprudent leases of the trust’s mineral interests in the Eagle Ford Shale. The Leases likewise convey mineral interests in the Eagle Ford Shale and are proximal in time to the imprudent leases entered into by JP Morgan. The Lease are therefore highly probative of prudent

lease terms and valuations for the STS Trust's mineral interests. They are more than merely relevant for discovery purposes; the Leases are admissible evidence. *See id.* (relevance standards for admissibility higher than those for discoverability).

2. The Lease are not trade secrets or otherwise protected from discovery under any applicable privilege. They are ordinary commercial leases of mineral interests. And even if the Leases were trade secrets, the protective order entered in this case provides more than adequate protection of Saint Mary's interests. Saint Mary's relevance and confidentiality objections are without merit, and the relief to which it has availed itself—the complete suppression of admissible evidence—is not supported by its confidentiality concerns. This Court should therefore enter an order compelling Saint Mary's to produce the Leases.

## I.

### BACKGROUND

3. Plaintiffs' claims against JP Morgan turn on, among other things, its mismanagement of several lease transactions conveying mineral interests owned by the STS Trust. *See* Seventh Amended Petition ("Petition") ¶¶ 169-239. The main asset of the STS Trust is an undivided 100% interest to mineral rights under 132,000 contiguous acres in La Salle and McMullen Counties, Texas. *See id.* ¶ 141. La Salle and McMullen counties lie in a geological formation known as the Eagle Ford. Plaintiffs allege that JP Morgan's mismanagement resulted in imprudent and low bonus compensation to the STS Trust and unfavorable lease terms, such as inadequate development requirements, resulting in delayed royalty payments. *See id.* ¶¶ 177-217. JP Morgan has since been removed as Trustee of the STS Trust.

4. JP Morgan's mismanagement spans several lease transactions. Specifically, Plaintiffs allege that in 2008 JP Morgan's commercial client Petrohawk approached JP Morgan about leasing all available STS acreage (approximately 79,524.77 acres). *See id.* ¶ 179. At the

time Petrohawk approached JP Morgan, Petrohawk was a well-known unconventional shale player. *See id.* at ¶ 217. Because Petrohawk was well-known, its involvement in a play, if known publically, would cause bonus payments for acreage in that play to rise. *See id.* For this reason, Petrohawk used a “stealth” land acquisition strategy at the time it contacted JP Morgan. *See id.* As part of its stealth acquisition strategy, Petrohawk also used a Corpus Christi entity (First Rock) to act as lessee for Eagle Ford acreage. *See id.* But, even though Petrohawk had been using First Rock to lease acreage from other Eagle Ford mineral owners, it openly approached JP Morgan. *See id.* JP Morgan agreed to keep Petrohawk’s interest in STS acreage confidential, and subsequently leased over 79,000 STS acres to Petrohawk in three lease transactions spanning March to December 2008. *See id.* ¶¶ 177-217.

5. JP Morgan executed the 2008 leases to Petrohawk without any competitive bidding and without conducting any due diligence. *See id.* ¶ 216. The imprudent and rushed leasing process for the 2008 Petrohawk leases resulted in bonus compensation to the STS Trust of \$150-\$200 per acre. *See id.* ¶ 210. Experts in this case have opined that the proper exercise of diligence and prudence in this case would have required holding back 60,000 of the STS acres leased to Petrohawk in 2008. Half of these 60,000 STS acres would then have been leased no earlier than October 1, 2009 with the remaining half leased no earlier than May 1, 2010.

6. After Petrohawk acquired the approximately 80,000 acres of mineral interests from the STS Trust, BHP Billiton acquired Petrohawk for \$15.1 billion in July 2011. *See id.* ¶ 217. The undeveloped STS Trust acreage was valued at \$12,125 per acre in that sale, or approximately \$970 million. *See id.* The STS Trust received only \$14.9 million in bonus compensation for those same mineral interests. *See id.* ¶ 144.

7. JP Morgan also mismanaged the four leases to Broad Oak, Inc. (now Laredo) of approximately 10,000 acres of STS mineral interests. Plaintiffs allege that JP Morgan failed to pursue STS acreage leased by Broad Oak that should have been released due to Broad Oak's failure to develop the acreage. *See id.* ¶¶ 218-234. If JP Morgan had pursued this acreage, the acreage would have been available to bring to market in 2010. *See id.* ¶¶ 220-221. Instead, in 2009 JP Morgan allowed Broad Oak to extend, for little or no consideration, four leases some of which were set to expire in two weeks. *See id.* At the time it renewed these leases, JP Morgan knew or should have known that the Eagle Ford acreage had increased in value due to the Eagle Ford discovery. *See id.* ¶ 221. Broad Oak eventually sold its leasehold rights in STS acreage to Hunt Oil Company and Bass Enterprises Production Company ("BOPCO"). *See id.* ¶ 225. In April 2011, BOPCO sold its interest to Murphy Oil Corporation. *See id.* ¶ 227. And in December 2011, Hunt sold some of its STS interests to Marubeni Corporation. *See id.* ¶ 228.

8. The Leases convey mineral acreage in the Eagle Ford. They are also close in time to the dates on which JP Morgan entered into the imprudent leases to Petrohawk and Broad Oak. Moreover, JP Morgan has subpoenaed a number of oil and gas exploration and production companies to produce their lease files. The Court has already required these nonparties to produce the requested documents with some limitations.

## II.

### THE SUBPOENA TO SAINT MARY'S

9. On or about August 8, 2014, Plaintiffs subpoenaed the Leases and answers to depositions on written questions from Saint Mary's.<sup>1</sup> On August 28, 2014, Saint Mary's responded

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<sup>1</sup> The subpoena to Saint Mary's is attached hereto as Exhibit A.

by objecting to the subpoenas and moving for a protective order. The eight Leases requested from Saint Mary's were all dated from April 24, 2008 through May 31, 2010.

### III.

#### ARGUMENTS AND AUTHORITIES

10. The Leases are not trade secrets. A trade secret is “any formula, pattern, device, or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003). Saint Mary's has the burden of showing that the requested information is a trade secret under Texas Rule of Evidence 507. See *In re Continental Gen. Tire, Inc.*, 979 S.W.2d 609, 610 (Tex. 1998); *Boeing Co. v. Abbott*, 412 S.W.3d 1, 10 (Tex. App.—Austin 2012, pet. filed). Courts consider and weigh six factors in making a trade secret determination:

- (1) the extent to which the information is known outside the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of the measures taken to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended in developing the information; and
- (6) the ease or difficulty with which the information could be acquired or duplicated by others.

*In re Bass*, 113 S.W.3d at 740. The Civil Practice and Remedies Code definition of a trade secret is similar to the formulation applied in *In re Bass*. See TEX. CIV. PRAC. & REM. CODE § 134A.002(6).

11. At least one Texas court has held that leasing information is not a trade secret. *Boeing*, 412 S.W.3d at 11-12. In *Boeing*, an allegedly disgruntled former employee of Boeing sought production of a lease concerning a property at a former Air Force base in San Antonio,



Texas under a Texas Public Information Act (“PIA”) request. *Id.* at 5. The lease at issue was negotiated over a number of years between Boeing and the Port Authority of San Antonio. *Id.* Boeing used the property to service various aircraft for the United States Air Force. *Id.* at 6. Boeing considered the lease a trade secret. *Id.* at 9. Boeing objected first to the Texas Attorney General and then sued the Attorney General when he denied Boeing’s request to exclude the lease from production. *Id.* Boeing, through its trial witnesses, argued that the lease was a trade secret because, among other things—

- it was kept in a file cabinet at Boeing’s offices and was accessible only to senior staff members,
- Boeing was concerned about the financial terms included in the lease falling into the hands of a competitor,
- a competitor could use the information contained in the lease to submit a more favorable bid with the U.S. government in future leases and contracts, and
- the lease information was highly valuable to Boeing.

*Id.* at 10-12.

12. The trial court disagreed with Boeing’s trade secret contentions and ordered that Boeing produce the lease. In affirming the trial court’s order, the court of appeals held that Boeing did not meet factor (3) because “[t]here was no evidence that the Port was contractually obligated to Boeing to protect the Lease information, such as through a confidentiality agreement.” *Id.* at 11. The court also noted that “there [was] no evidence that Boeing informed the Port at the time it entered into the Lease that it considered the Lease information confidential or a trade secret.” *Id.* Likewise, the court held that Boeing did not satisfy factor (4) because Boeing’s “argument fail[ed] to take into account the myriad of other factors that might influence the cost of any lease a competitor might obtain from other municipalities, such as size and location of the property.” *Id.*

13. Similarly, here Saint Mary's has failed to adequately show that the Leases are trade secrets. First, the Leases were negotiated in arm's length transactions (i.e., an adversarial setting). Second, as to factors (4) and (5), there is no evidence that the terms used in the Leases were developed by the effort behind a trade secret. Terms like royalty and bonus payments, while valuable to Saint Mary's, are hardly any more valuable than the financial information contained in the leases in *Boeing*. Saint Mary's offers no rebuttal to *Boeing*. Indeed, it cites no cases in its motion to quash.

**A. The Protective Order currently in place adequately protects any allegedly confidential information.**

14. Even assuming the Leases are trade secrets, any confidentiality concerns raised can be resolved through the Protective Order currently in place in this action. *See In re Continental General Tire, Inc.*, 979 S.W.2d 609, 613 (Tex. 1998). The Texas Supreme Court has held that when a discovery respondent has established a trade secret “[t]he burden then shifts to the requesting party to establish that the information is necessary for a fair adjudication of its claims.” *Id.* If the requesting party meets this burden, “the trial court should ordinarily compel disclosure of the information, subject to an appropriate protective order.” *Id.*

15. Plaintiffs need access to the Leases for a fair adjudication of their case against JP Morgan. The Leases share significant geographical and temporal similarities with the Petrohawk and Broad Oak leases at issue here. The Leases convey Eagle Ford acreage. The conduct that Plaintiffs challenge focuses on JP Morgan's actions in 2008, 2010, and 2012. The Leases span 2008 through 2010. Simply put, the Plaintiffs are entitled to discovery on comparable lease transactions to show market valuations and market lease terms during the 2003-2012 timeframe. Production of the Leases is necessary to obtain a fair adjudication on the issues of liability and damages for Plaintiffs' breach of fiduciary duty claims against JP Morgan. The Leases shed light

on the appropriate market valuation and lease terms for the STS leases entered into by JP Morgan. *See, e.g., Williams v. State*, 406 S.W.3d 273 (Tex. App.—San Antonio 2013, pet. filed) (“[C]ourts have given appraisers a wide degree of latitude based on their experience when determining admissibility.”); *Bd. of Regents of Univ. of Texas Sys. v. Puett*, 519 S.W.2d 667, 672 (Tex. Civ. App.—Austin 1975, writ ref’d n.r.e.) (“Generally, sales occurring within five years of the date of taking of the subject property may be considered comparable.”).

16. A protective order will adequately protect Saint Mary’s interests. Saint Mary’s concerns regarding disclosure of their negotiating priorities and processes are overstated on their face. The Leases would only reveal the outcome of Lease negotiations—not the process and priorities that produced these outcomes. But even if Saint Mary’s concerns were valid, it still has not, and cannot, show how an appropriate protective order would not safeguard its interests.

**B. The Subpoena to Saint Mary’s is narrow in scope and directly relevant to the claims in this action.**

17. The same factors that establish the Leases to be necessary for a fair adjudication of Plaintiffs’ claims also show the Leases to be relevant to those claims. Saint Mary’s nevertheless contends that the Leases are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. Complete similarity between comparable transactions, including a complete identity of parties and matching seller motivations, is not the test in Texas for determining whether discovery should proceed. Indeed market data is the “the most common method of determining market value.” *Religious of Sacred Heart of Texas v. City of Houston*, 836 S.W.2d 606, 617 (Tex. 1992). Comparable sales evidence is one of the “four main types of evidence that are allowed to be introduced into evidence as bearing upon the hypothetical market issues.” *See id.* at 616. Market data like the Leases is not only discoverable, it is admissible as evidence. *Jampole*, 673

S.W.2d at 573 (“[D]iscovery is not limited to information that will be admissible at trial . . . [T]he law circumscribes a significantly larger class of discoverable evidence to include anything reasonably calculated to lead to the discovery of material evidence.”). And, as a general rule, transactions within five years of the transaction at issue may be considered comparable transactions. *See Puett*, 519 S.W.2d at 672.

#### **IV.**

#### **CONCLUSION AND PRAYER**

The subpoena to Saint Mary’s seeks relevant information for use in proving many key facts at issue in this case. The Leases are not trade secrets. Any confidential information can be protected through the Protective Order currently in place. As such, this Court should GRANT this Motion, compel Saint Mary’s to produce the Leases, compel Saint Mary’s to answer the questions in the depositions on written questions, and award Plaintiffs any other such relief as justice requires.

DATE: September 8, 2014.

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Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
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**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

By: /s/ Jim L. Flegle  
Jim L. Flegle

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the below listed counsel of record via e-Service and email on September 8, 2014:

John Eichman, Esq.  
Charles Gall, Esq.  
Hunton & Williams  
1445 Ross Avenue  
Suite 3700  
Dallas, TX 75202

Patrick K. Sheehan, Esq.  
David Jed Williams, Esq.  
Hornberger Sheehan Fuller & Garza Inc.  
The Quarry Heights Building  
7373 Broadway, Suite 300  
San Antonio, TX 78209

Kevin Beiter, Esq.  
McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
Austin, TX 78701

Fred W. Stumpf, Esq.  
Boyer Short  
Nine Greenway Plaza, Suite 3100  
Houston, TX 77046

Jesse R. Pierce  
Pierce & O'Neill, LLP  
4203 Montrose Boulevard  
Houston, Texas 77006

*/s/ John McKenzie*

\_\_\_\_\_  
John McKenzie

# **Exhibit A**

(Consolidated Under)  
2010-CI-10977

<b>JOHN K. MEYER, ET AL.,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiffs,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>JP MORGAN CHASE BANK, N.A.</b>	§	<b>225<sup>TH</sup> JUDICIAL DISTRICT</b>
<b>INDIVIDUALLY/CORPORATELY</b>	§	
<b>AND AS TRUSTEE OF THE SOUTH</b>	§	
<b>TEXAS SYNDICATE TRUST,</b>	§	
<b>Defendant.</b>	§	<b>BEXAR COUNTY, TEXAS</b>

**DEPOSITION SUBPOENA DUCES TECUM TO PRODUCE DOCUMENTS**  
**ISSUED IN THE NAME OF THE STATE OF TEXAS**

**TO ANY PEACE OFFICER, CONSTABLE OF THE STATE OF TEXAS OR  
OTHER PERSON DULY AUTHORIZED TO SERVE OR EXECUTE  
SUBPOENAS:**

The Subpoena is directed to:

**CUSTODIAN OF RECORDS FOR:**

**SM Energy Company  
Corporation Service Company d/b/a CDC-Lawyers Incorporating  
Service Company  
211 E. 7<sup>th</sup> Street, Ste. 620  
Austin, Texas 78701**

This Subpoena directs the Custodian of Records for SM ENERGY COMPANY, to appear at **10:00 a.m. on August 29, 2014**, before a notary public at the following location:

**1776 Lincoln Street, Ste. 700  
Denver, CO 80203**

and answer under oath written questions to be propounded by counsel for Plaintiffs and to produce for inspection and photocopying the documents and records described on Exhibit "A" attached to the Notice Duces Tecum of Intent to Take Deposition by Written Questions served with and attached to this Subpoena.



This Subpoena is issued at the instance and request of Plaintiffs, John K. Meyer, et al. The attorney of record for Plaintiff is: James L. Drought, Drought, Drought & Bobbitt, L.L.P., 112 E. Pecan St., Suite 2900, San Antonio, Texas 78205.

**THIS SUBPOENA IS ISSUED UNDER TEXAS RULE OF CIVIL PROCEDURE 176. RULE 176.8(a) STATES: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT IN THE COUNTY IN WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.**

This Subpoena is issued by James L. Drought, attorney for Plaintiffs, on behalf of Plaintiffs.

Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
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(612) 336-9100 - Facsimile  
**ATTORNEYS FOR  
INTERVENOR-PLAINTIFFS,  
LINDA ALDRICH, ET AL.**

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**ATTORNEYS FOR PLAINTIFFS,  
EMILIE BLAZE, ET AL.**

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Richard Tinsman  
State Bar No. 20064000

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DROUGHT, DROUGHT & BOBBITT, LLP  
2900 Weston Centre  
112 East Pecan Street  
San Antonio, Texas 78205  
(210) 225-4031 Telephone  
(210) 222-0586 Telecopier

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
James L. Drought  
State Bar No. 06135000  
**ATTORNEYS FOR PLAINTIFFS,  
JOHN K. MEYER, ET AL.**

**RETURN**

CAME ON TO HAND ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2014, AT \_\_\_\_  
O'CLOCK \_\_\_\_M. AND EXECUTED (NOT EXECUTED) ON THE \_\_\_\_ DAY OF  
\_\_\_\_\_, 2014, BY DELIVERING TO \_\_\_\_\_, A TRUE COPY OF THIS  
SUBPOENA UPON WHICH I ENDORSED THE DATE OF DELIVERY. CAUSE  
OF FAILURE TO EXECUTE THIS SUBPOENA IS  
\_\_\_\_\_.

TOTAL FEES: \$ \_\_\_\_\_

\_\_\_\_\_  
DALLAS COUNTY, TEXAS

By: \_\_\_\_\_

**NON-PEACE OFFICER VERIFICATION**

VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

(Consolidated Under)  
2010-CI-10977

JOHN K. MEYER, ET AL.,  
Plaintiffs,

vs.

JP MORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST,  
Defendant.

§  
§  
§  
§  
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§  
§

IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**NOTICE OF INTENTION TO TAKE DEPOSITION BY WRITTEN QUESTION  
WITH DUCES TECUM**

Plaintiff, John K. Meyer, et al, will take a deposition by written questions of the Custodian of Records for **SM Energy Company**. at the following date, time, and place:

Date: **August 29, 2014**

Time: **10:00 a.m.**

Place: **SM Energy Company  
1776 Lincoln Street, Ste. 700  
Denver, CO 80203**

Notice is further given that the witness shall produce at the deposition for inspection and photocopying the documents and records listed and described on the attached Exhibit "A".

Respectfully submitted,

John B. Massopust (*pro hac vice*)  
Matthew J. Gollinger (*pro hac vice*)  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
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**ATTORNEYS FOR  
INTERVENOR-PLAINTIFFS,**

**LINDA ALDRICH, ET AL.**

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2900 Weston Centre  
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(210) 225-4031 Telephone  
(210) 222-0586 Telecopier

By:                     /s/                      
                    James L. Drought  
                    State Bar No. 06135000  
**ATTORNEYS FOR PLAINTIFFS,**  
**JOHN K. MEYER, ET AL.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent  
by:

<u>          </u>	U.S. Certified Mail, Return Receipt Requested to:
<u>          </u>	Facsimile to:
<u>          </u>	First Class Mail to:
<u>          </u>	Hand Delivery to:
<u>  √  </u>	E-filing Service to:

Mr. Patrick K. Sheehan  
Mr. David Jed Williams  
Hornberger Sheehan Fuller & Garza Incorporated  
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San Antonio, TX 78209

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McGinnis Lochridge  
600 Congress Avenue, Suite 2100  
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Mr. Charles A. Gall  
Mr. John C. Eichman  
Hunton & Williams LLP  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202



(Consolidated Under)  
2010-CI-10977

JOHN K. MEYER, ET AL.,  
Plaintiffs,

vs.

JP MORGAN CHASE BANK, N.A.  
INDIVIDUALLY/CORPORATELY  
AND AS TRUSTEE OF THE SOUTH  
TEXAS SYNDICATE TRUST,  
Defendant.

§  
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§

IN THE DISTRICT COURT

225<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEPOSITION ON WRITTEN QUESTIONS PROPOUNDED UPON THE  
WITNESS, CUSTODIAN OF RECORDS FOR SM ENERGY COMPANY**

1. Please state your full name, business address, and official title.

**ANSWER:**

---

2. Did you receive a subpoena for the production of the documents and records listed and described on Exhibit "A" attached to these questions?

**ANSWER:**

---

3. Have these documents and records been produced for this deposition, bates numbered, and delivered to the officer taking this deposition?

**ANSWER:**

---

4. Are you the custodian of these documents or records for **SM ENERGY COMPANY**?

**ANSWER:**

---



5. What is the Bates number range for the documents and records produced for this deposition?

**ANSWER:**

---

6. Are the documents and records produced for this deposition originals or photocopies of the original documents?

**ANSWER:**

---

7. Are the documents and records produced for this deposition memoranda, reports, records or data compilations of acts, events, or conditions made at or near the time by or from information transmitted by, a person with knowledge?

**ANSWER:**

---

8. Are these documents and records kept in the course of a regularly conducted business activity of **SM ENERGY COMPANY**?

**ANSWER:**

---

9. Was it the regular practice of the business activity of **SM ENERGY COMPANY** to make the memorandum, report, record or data compilation reflected in these documents and records?

**ANSWER:**

---

---

WITNESS, CUSTODIAN OF RECORDS FOR  
**SM ENERGY COMPANY**

I \_\_\_\_\_, a Notary Public in and for the State of Texas, do hereby certify that the forgoing answers of the witness were made by the said witness and sworn to and subscribed before me.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS \_\_\_\_ day of \_\_\_\_\_, 2014.

---

Notary Public, State of Texas

## **REQUEST FOR PRODUCTION**

Please produce the following documents relating to the leases described below:

- The executed leases;
  - Any option agreements, letters of intent to lease or side agreements relative to the leases;
  - Any agreements relative to amendment, modification or extension of the leases;
  - Any lease data sheets relative to the lease;
  - Sufficient documents to identify the bonus paid for the lease (total bonus and bonus per net mineral acre);
  - Any Lease Purchase Report (“LPR”) and;
  - Any receipt or paid draft relative to the lease
- 

**NO. 1:** Oil and Gas Lease dated April 24, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 7,287.96 acres in Webb County, Texas.

**NO. 2:** Oil and Gas Lease dated September 28, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 370.10 acres in Webb County, Texas.

**NO. 3:** Oil and Gas Lease dated October 1, 2008 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 3,573.66 acres in Webb County, Texas.

**NO. 4:** Oil and Gas Lease dated May 1, 2009 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,928.62 acres in Webb County, Texas.

**NO. 5:** Oil and Gas Lease dated December 10, 2009 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,617.33 acres in Webb County, Texas.

**NO. 6:** Oil and Gas Lease dated March 2, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,846.15 acres in Webb County, Texas.

**NO. 7:** Oil and Gas Lease dated May 1, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 18,303.34 acres in Webb County, Texas.

**NO. 8:** Oil and Gas Lease dated May 31, 2010 between Briscoe Ranch, Inc. and St. Mary Land & Exploration Company covering 2,846.15 acres in Webb County, Texas.

**Pat Sheehan**

---

**From:** Jed Williams  
**Sent:** Monday, September 08, 2014 8:43 AM  
**To:** Pat Sheehan  
**Cc:** Susie Reeves  
**Subject:** Fwd: STS - Amended Pleadings Deadline--with gollinger

David Jed Williams  
Hornberger Sheehan Fuller & Garza Incorporated  
7373 Broadway Suite 300  
San Antonio, Texas. 78209  
Tel. (210) 271-1731  
[www.hsfblaw.com](http://www.hsfblaw.com)

----- Original message -----

**From:** Jed Williams  
**Date:** 08/26/2014 5:48 AM (GMT-08:00)  
**To:** Matt Gollinger  
**Subject:** RE: STS - Amended Pleadings Deadline

We agree.

David Jed Williams  
Hornberger Sheehan Fuller & Garza Incorporated  
7373 Broadway Suite 300  
San Antonio, Texas. 78209  
Tel. (210) 271-1731  
[www.hsfblaw.com](http://www.hsfblaw.com)

----- Original message -----

**From:** Matt Gollinger  
**Date:** 08/25/2014 5:44 PM (GMT-06:00)  
**To:** Jed Williams  
**Subject:** STS - Amended Pleadings Deadline

Jed,

The Parties' Rule 11 agreement re scheduling contemplates an amended pleading deadline for plaintiffs of August 26. While I'm not sure that deadline would be appropriately applied to the U.S. Bank and Wells Fargo intervenors, I am



writing to request that we stipulate that Wells Fargo and U.S. Bank be permitted until Thursday 8/28 to file amended pleas in intervention.

I think that the logistical difficulties of attempting to prepare and file amended pleas in intervention on the same day that an Amended Petition is filed are apparent. I don't believe that agreeing to this brief extension would cause JPMC any prejudice as the Pleas in Intervention would not add any new substantive allegations, but instead simply would simply incorporate and adopt the updated plaintiffs' petition.

Please let me know if you would be agreeable to extending the time in which the Bank Intervenors would be permitted to file amended pleas in intervention to Thursday August 28.

Thanks,

Matt

 **ZELLE  
HOFMANN**  
ZELLE HOFMANN VOELBEL & MASON LLP  
500 Washington Avenue South, Suite 4000  
Minneapolis, MN 55415

Matthew J. Gollinger  
Attorney at Law

website | bio | vCard | map | 

D (812) 338-9124  
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Boston ■ Dallas ■ Minneapolis ■ San Francisco ■ Washington, DC ■ London ■ Beijing\*

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