UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXAS PACIFIC LAND TRUST and, solely in their respective capacities as trustees for Texas Pacific Land Trust, DAVID E. BARRY and JOHN R. NORRIS III, *Plaintiffs* v. ERIC L. OLIVER, *Defendant* and ERIC L. OLIVER, SOFTVEST, L.P., HORIZON KINETICS LLC, and ART-FGT FAMILY PARTNERS LIMITED, *Counter-Plaintiffs* v. DAVID E. BARRY and JOHN A. NORRIS III, in their individual capacities and in their capacities as trustees for the Texas Pacific Land Trust *Counter-Defendants*	CASE NO. 3:19-CV-01224-B

DEFENDANT ERIC L. OLIVER'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND COUNTERCLAIMS OF ERIC L. OLIVER, SOFTVEST, L.P., HORIZON KINETICS LLC, AND ART-FGT FAMILY PARTNERS LIMITED AGAINST DAVID E. BARRY AND JOHN R. NORRIS III

Defendant Eric L. Oliver hereby files this Answer to Plaintiffs Texas Pacific Land Trust ("TPL"), David E. Barry, and John R. Norris III (collectively, "Plaintiffs") First Amended Complaint and Counterclaims of Eric L. Oliver, SoftVest, L.P., Horizon Kinetics LLC, and ART-FGT Family Partners Limited Against David E. Barry and John R. Norris III.

Any allegation not expressly admitted is denied.

I. NATURE OF THE ACTION

1. This is an action for declaratory, injunctive, and other relief against Defendant for disclosure abuses relating to a proxy contest, including violations of Section 13(d) and Section 14(a)

of the Securities Exchange Act of 1934 (the "Exchange Act").

RESPONSE: Mr. Oliver admits that Plaintiffs have brought an action for declaratory, injunctive, and other relief against Mr. Oliver, denies that Plaintiffs are entitled to any relief, and denies any other allegations in Paragraph 1.

2. **[1]** The Trust was created in 1888 and is among the largest private landowners in Texas, holding approximately 900,000 acres of land. **[2]** The Trust has been a model of stability and value creation for its shareholders and has outperformed 99% of its fellow S&P 500 members for the last five years. **[3]** The Trust is managed by three Trustees who serve until death, resignation, or disqualification, pursuant to the Declaration of Trust, the Trust's governing document (the "Declaration of Trust"). **[4]** This action concerns an election to fill a vacancy on the Trust's Board of Trustees due to a death.

RESPONSE: Mr. Oliver denies that the Trust has been a model of stability and value creation for its shareholders. Mr. Oliver admits the remaining allegations in Paragraph 2.

3. **[1]** Two parties—the Trust and a group of dissident shareholders—are vying to fill this trustee vacancy. **[2]** Shareholders will ultimately have the opportunity to vote for their preferred candidate. **[3]** The Trust is compelled to bring this action because one of those candidates—Defendant—has made misstatements and omitted from his public disclosures material information, which, if not corrected, would deprive shareholders of the opportunity to vote for a trustee on a fully informed basis.

RESPONSE: Mr. Oliver admits that TPL's shareholders have the power to fill the trustee vacancy. Mr. Oliver denies the remaining allegations in Paragraph 3.

4. **[1]** Indeed, Defendant has provided virtually no meaningful information to the Trust or its shareholders despite repeated requests that he do so. **[2]** Defendant ***has refused to answer even a single question*** in the Trust's form of trustee questionnaire—a questionnaire that seeks to obtain information regarding the candidate's background, business interests, and potential or actual conflicts, which two other trustee candidates filled out completely.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 4.

5. **[1]** It is a fundamental principle that shareholders of public companies should receive accurate and complete information from, and regarding, candidates so that shareholders can make a fully informed vote. **[2]** But Defendant has left critical, material questions unanswered, many of which address his integrity and capacity to act as a trustee and fiduciary, and all of which are detailed herein. **[3]** By this action, the Trust seeks complete and accurate answers to these questions and to enjoin Defendant's candidacy until he provides answers to the satisfaction of the Trust in accordance with the Trustees' own fiduciary duties to the Trust and its shareholders. **[4]** The other candidate has completed the Trust's form trustee questionnaire.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 5. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 5. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 4 of Paragraph 5.

6. **[1]** Defendant and his group of dissident shareholders have also distorted the election process by issuing innumerable solicitation materials in the form of proxy statements, press releases, presentations, blog articles, videos and letters that are replete with actionable misstatements and omissions that violate Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder. **[2]** These statements are material to shareholders and concern, among other things, the election process, the Trust's interactions with Defendant and his group, and the structure and activities of the Trust itself.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 6.

7. **[1]** Defendant and his group of dissident shareholders have also violated Section 13(d) of the Exchange Act by failing to disclose the formation of a "group" with each of Santa Monica Partners, L.P. ("Santa Monica") and Universal Guaranty Life Insurance Company ("UGLIC"), each of whom has longstanding relationships with Defendant and dissident shareholder Horizon Kinetics LLC, respectively. **[2]** Both Santa Monica and UGLIC are operating as hidden participants in the Dissident Group's (as defined below) proxy solicitation.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 7.

8. The Trust seeks, among other things, to enjoin Defendant's candidacy until he issues corrective disclosures with respect to his and the Dissident Group's collective misstatements and omissions.

RESPONSE: Mr. Oliver admits that Plaintiffs seek the relief described in Paragraph 8 but denies that Plaintiffs are entitled to that relief.

9. **[1]** Shareholders are entitled to a fully informed vote with respect to the future stewardship of the Trust. **[2]** This action, and the relief sought herein, seeks to provide shareholders that opportunity.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 9. Mr. Oliver denies the allegations in sentence 2 of Paragraph 9.

II. THE PARTIES

10. **[1]** The Trust. Plaintiff Texas Pacific Land Trust is a publicly traded entity established in 1888 with its principal place of business in Dallas, Texas. **[2]** The Trust is governed by the Declaration of Trust, pursuant to which three trustees are elected until death, resignation, or disqualification. **[3]** The Trust has been listed on the New York Stock Exchange since 1927 under the ticker symbol "TPL."

RESPONSE: Mr. Oliver admits the allegations in Paragraph 10.

11. **[1]** Trustee Barry. Plaintiff David E. Barry brings this suit solely in his capacity as a Trustee of the Trust. **[2]** Mr. Barry is a New York citizen, who resides in New York, New York.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 11.

12. **[1]** Trustee Norris. Plaintiff John R. Norris III brings this suit solely in his capacity as a Trustee of the Trust. **[2]** Mr. Norris is a Texas citizen, who resides in Dallas, Texas.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 12.

13. **[1]** Defendant. Mr. Oliver is the Founder and President of SoftVest, L.P., a hedge fund specializing in the ownership of oil and gas minerals and royalties with its principal place of business in Abilene, Texas. **[2]** Defendant is a Texas citizen who, upon information and belief, resides at 1452 Tanglewood Road, Abilene, TX 79605. SoftVest, L.P.'s address is 400 Pine Street, #1010,

Abilene, TX 79601.

RESPONSE: Mr. Oliver denies that he is the President of SoftVest, L.P., and admits the remaining allegations in Paragraph 13.

III. JURISDICTION AND VENUE

14. Subject Matter Jurisdiction. This Court has jurisdiction over this matter pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa; Section 13(d) of the Exchange Act, 15 U.S.C. § 78m(d); Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a) (and the rules promulgated thereunder); and 28 U.S.C. § 1331.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 14.

15. Personal Jurisdiction. The Court has jurisdiction over Defendant, a Texas resident. He has been served in compliance with the Federal Rules of Civil Procedure.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 15.

16. **[1]** Venue. Venue is proper in this District for the Plaintiffs pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b) because it is the district in which the business at issue—the Trust—resides and is subject to personal jurisdiction. **[2]** The Trust's principal place of business and primary administrative offices are located in Dallas, Texas. **[3]** Its mailing address, as listed by the Texas Comptroller of Public Accounts, is located in Dallas, Texas. **[4]** In addition, Mr. Norris, resides and works in Dallas, Texas. **[5]** Moreover, venue is proper in this District for the Defendant pursuant to 28 U.S.C. § 1391(b)(2) as the actions "may be brought" in the District because "a substantial part of the events or omissions giving rise to the claim occurred" in the Northern District of Texas. **[6]** Here, Defendant is seeking to become a trustee over the Trust, which operates out of Dallas, Texas. **[7]** His March 28, 2019 letter in response to the Trust's questionnaire was delivered to the Trust's offices in Dallas, Texas. **[8]** Additionally, the Trust's special meeting of holders of sub-share certificates[1] (the "Special Meeting") is to be held in Dallas, Texas. **[9]** Finally, most of the

[1] While the Declaration of Trust (*see* Paragraph 18) refers to certificate holders, the certificates were divided into sub-shares years ago. The holders of sub-share certificates are herein referred to as shareholders.

RESPONSE: Mr. Oliver admits the allegations in footnote 1.

witnesses and evidence are located in Dallas, Texas, which makes it a convenient and just venue for all the parties involved.

RESPONSE: Mr. Oliver admits that venue is proper in this District and admits the allegations in sentences 1 through 7 of Paragraph 16. Mr. Oliver admits that he was elected as a trustee at a duly authorized, properly noticed special shareholder meeting that was held on May 22, 2019, in Dallas, Texas, but denies any remaining allegations in sentence 8 of Paragraph 16. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 9 of Paragraph 16.

IV. FACTUAL BACKGROUND

The Trust

17. **[1]** The Trust was born out of the bankruptcy of Texas Pacific Railway Co. **[2]** In 1871, Texas Pacific Railway Co. was granted 3.5 million acres of land in Texas under federal charter. **[3]** After the bankruptcy of the railway enterprise, the bondholders who had financed the failed venture were awarded the land and created the Trust to receive and exploit the land to their benefit.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 17.

18. **[1]** The Trust is governed by the Declaration of Trust dated February 1, 1888, and signed by its three original trustees. **[2]** A copy is attached hereto as Exhibit A and is incorporated herein by reference. **[3]** Under the Declaration of Trust, three trustees are elected "by a majority in the amount of the certificate holders present in person or by proxy at [a special] meeting [of certificate holders] whose names shall have been registered in the books of the trustees at least fifteen days before such meeting." (Decl. of Trust at THIRD.) Upon election, trustees serve until "death, resignation or disqualification." (*Id.*) The trustees "hold [the lands, premises and property conveyed under the Declaration of Trust] . . . and any and all income and proceeds thereof or of any part thereof, in trust . . . for the benefit of the . . . owners and holders of the . . . certificates of proprietary interest" and, in doing so, have "all the powers in respect of said property of an absolute owner." (*Id.* at FIRST)

RESPONSE: Mr. Oliver admits the allegations in Paragraph 18.

19. **[1]** The Trust currently is managed by two trustees: Mr. Barry and Mr. Norris. **[2]** A

third trustee, Maurice Meyer III, resigned on February 25, 2019, and passed away on March 24, 2019, creating a trustee vacancy as the Declaration of Trust requires three Trustees. **[3]** This has resulted in an election.

RESPONSE: Mr. Oliver denies the allegations in sentence 1 of Paragraph 19. Mr. Oliver admits the allegations in sentences 2 and 3 of Paragraph 19.

20. **[1]** To this date, the Trust remains one of the largest landowners in Texas with approximately 900,000 acres of land. **[2]** Much of the Trust's land is located in the Permian Basin, which is currently at the center of the country's oil and gas exploration and production. **[3]** In addition to the administration and exploitation of the land held, the Trust has recently invested in the business of providing full-service water offerings to oil and gas exploiting companies.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 20.

21. **[1]** For much of its 131-year history, the Trust has outperformed its peers in earnings and regularly returns massive profits to shareholders in the form of annual dividends and share repurchases. **[2]** For example, the Trust has returned about $200 million to shareholders through dividends and share repurchases since 2016. **[3]** Over the 5- and 10-year periods preceding the Dissident Group's campaign, the Trust generated total shareholder returns of 475% and 3,856%, respectively, far outperforming the overall stock market and its peers.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 1 of Paragraph 21. Mr. Oliver admits the allegations in sentences 2 and 3 of Paragraph 21.

The Trustees' Obligation To Evaluate Nominees

22. **[1]** The Trustees have a fiduciary duty to ensure that trustee candidates have the experience, integrity and capabilities necessary to serve as trustee. **[2]** The Trustees also have a fiduciary duty to ensure that shareholders are provided with the information necessary to enable them to vote on trustee nominees on a fully informed basis.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 22.

23. **[1]** Pursuant to the Declaration of Trust, trustees are subject to "disqualification" if

they are not qualified to serve as trustee. **[2]** It is therefore the duty of the Trustees to ensure that trustee nominees are not disqualified.

RESPONSE: Mr. Oliver admits that the Declaration of Trust provides that a successor trustee shall be elected at a special meeting of TPL's shareholders in the event of the death, resignation, or disqualification of any of the trustees. Mr. Oliver denies the remaining allegations in Paragraph 23.

24. **[1]** Indeed, long before the events giving rise to this action, the Trust established the Nominating, Compensation and Governance Committee "to assist the Trustees in discharging and performing the duties and responsibilities of the Trustees with respect to" the nomination of trustee candidates and various aspects of corporate governance, including the assessment of whether trustee nominees are qualified, or disqualified, to serve as trustee. **[2]** The charter for the Nominating, Compensation and Governance Committee, provides that the Trustees' "duties and responsibilities" include "[t]he identification and recommendation . . . of individuals qualified to become or continue as Trustees . . ." **[3]** A copy is attached hereto as Exhibit B (amended as of February 26, 2013) and is incorporated herein by reference. **[4]** In performing this function, the Trustees have "the authority to conduct any and all investigations [they] deem[] necessary or appropriate . . . ." *Id.*

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 1 and 3 of paragraph 24. Mr. Oliver admits that the language quoted in sentence 2 of paragraph 24 appears in the document attached as Exhibit B to the amended complaint. Mr. Oliver denies the allegations in sentence 4 of paragraph 24.

The Contested Trustee Election

25. **[1]** On February 25, 2019, Mr. Meyer resigned as Trustee for medical reasons. **[2]** He subsequently passed away on March 24, 2019. **[3]** Following Mr. Meyer's resignation, Allan Tessler, a member of Defendant's Dissident Group, suggested to Mr. Barry, one of the current Trustees, that Defendant be considered as a nominee to replace Mr. Meyer.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 25.

26. **[1]** In accordance with their obligations under the charter for the Nominating, Compensation and Governance Committee, the Trustees reviewed Defendant's résumé, credentials and past interactions with the Trust in good faith. **[2]** Based on their review, the Trustees determined that it would not be in the best interests of the Trust or its shareholders to nominate Defendant, and instead chose to nominate another candidate for Trustee, Preston Young. **[3]** The Trust announced this in a Form 8-K filed on March 4, 2019.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 2 of Paragraph 26. Mr. Oliver admits that the trustees announced their nomination of Preston Young for election as trustee in a Form 8-K filed on March 4, 2019, but denies any remaining allegations in sentence 3 of paragraph 26.

27. **[1]** On March 15, 2019, a group of shareholders consisting of SoftVest, L.P., ART-FGT Family Partners Limited, Mr. Tessler, the Tessler Family Limited Partnership, and Horizon Kinetics LLC (together, the "Dissident Group") filed a Schedule 13D with the Securities and Exchange Commission (the "SEC"), disclosing that SoftVest intended to nominate Defendant for election as Trustee. **[2]** The Trustees were not given advanced notice of this filing or the Dissident Group's stated intention to nominate Defendant for election as Trustee. **[3]** On March 19, 2019, SoftVest delivered to the Trust a formal notice to nominate Defendant.

RESPONSE: Mr. Oliver denies that the group of shareholders that nominated him for election as trustee is a dissident group and incorporates this denial into his response to every other allegation in the complaint that uses the defined term "Dissident Group." Subject to that global denial, Mr. Oliver admits that each of the shareholders listed in sentence 1 of Paragraph 27 were members of the Group that filed a Sechedule 13D on March 15, 2019, and further admits that SoftVest Advisors, LLC was also a member of that Group. Mr. Oliver admits the allegations in sentences 2 and 3 of Paragraph 27.

28. **[1]** On March 18 and March 20, 2019, the Trust spoke to Murray Stahl, the CEO and Chairman of Horizon Kinetics, the largest shareholder of the Dissident Group. **[2]** During the conversations, Mr. Stahl indicated that he was very pleased with the Trust's performance but wanted

the Trust to review its corporate governance policies.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28.

29. **[1]** The Trust subsequently engaged Spencer Stuart, Inc., one of the world's leading global executive and board director search firms, and began a process in which the Trust considered more than 15 candidates whom Spencer Stuart identified. **[2]** In addition, the Trustees asked the Trust's financial and legal advisors for recommendations, with a particular focus on candidates with extensive corporate governance experience.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29.

30. On March 25, 2019, the Dissident Group submitted a preliminary proxy statement to the SEC with respect to Defendant's candidacy and that Defendant seeks to be appointed a lifetime trustee.

RESPONSE: Mr. Oliver admits that on March 25, 2019, the Investor Group led by SoftVest filed a preliminary proxy statement with the SEC. Mr. Oliver denies any remaining allegations in Paragraph 30.

31. **[1]** In two conversations on March 27, 2019 and April 5, 2019, in light of concerns raised about Defendant's qualifications, the Trustees discussed with Mr. Stahl the selection of a mutually agreeable, compromise candidate. **[2]** Mr. Stahl stated that he was open to considering an alternative to Defendant and would give a compromise candidate prompt consideration.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31.

32. On April 6, 2019, the Trustees received an email from the General Counsel of Horizon Kinetics stating that the Dissident Group would refuse to consider other candidates or to vote for anyone other than Defendant.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 32.

33. **[1]** On April 7, 2019, following a thorough review of potential candidates, based in

part on concerns expressed by the Dissident Group and other shareholders about Mr. Young, the Trustees chose to replace Mr. Young as a candidate with General Donald G. Cook, a retired four-star General of the United States Air Force. **[2]** The Trustees did not know and had no prior relationship with General Cook; one of the Trust's advisors introduced General Cook to the Trustees.

RESPONSE: Mr. Oliver admits that on April 8, 2019, the trustees filed a definitive proxy statement for the election of Donald Cook as trustee. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 33.

34. **[1]** General Cook's board experience is extensive. **[2]** He currently serves on the board of Crane Corporation, where he chairs the nominating and governance committee and is also a member of the compensation and the executive committees. **[3]** He also serves on the board of Cybernance, Inc. **[4]**General Cook previously served on the boards of USAA Federal Savings Bank (from 2007 to 2018); U.S. Security Associates Inc., a Goldman Sachs portfolio company (from 2011 to 2018); and Beechcraft LLC, formerly known as Hawker Beechcraft Inc. (from 2007 to 2014). **[5]** Moreover, General Cook served on the board of Burlington Northern Santa Fe Railroad for almost five years until it was sold to Berkshire Hathaway in 2010 in a transaction valued at $44 billion. **[6]** In addition to his extensive corporate governance experience, General Cook has been the Chairman of the San Antonio chapter of the National Association of Corporate Directors (NACD), a group recognized as the authority on best practices in corporate governance.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34.

35. **[1]** To aid the Trustees' assessment of his qualifications, General Cook provided substantial disclosures and responses to the same trustee questionnaire provided to Defendant (also completed by the prior candidate, Mr. Young). **[2]** The Trustees, upon the recommendation of the Nominating, Compensation and Governance Committee, determined that General Cook meets the standards for trustee qualifications.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief

about the truth of the allegations in Paragraph 35.

36. **[1]** All three of the independent proxy advisory firms—ISS, Glass Lewis, and Egan-Jones—have recommended that the Trust's shareholders vote for General Cook over Defendant. **[2]** To help sort through the many claims and counterclaims of a contested election like this one, institutional investors (such as mutual, pension and retirement funds) rely on the recommendations from these proxy advisory firms because they provide the perspective of a neutral, independent expert. **[3]** Egan-Jones has noted, "the current Board and management are the best in class in terms of qualifications, experience, expertise and independence, ***contrary to Defendant who lacks public company experience***." **[4]** A copy of the Egan-Jones Opinion is attached hereto as Exhibit C and is incorporated herein by reference. **[5]** Egan-Jones advised that "General Cook brings to [the Trust] exemplary leadership and corporate governance skills and the Trust will benefit greatly from his extensive experience." *Id.* **[6]** ISS advised that "[General Cook has] a public track record that seems to reflect direct efforts to improve the governance of the companies on whose boards he has served." **[7]** A copy of the ISS Opinion is attached hereto as Exhibit D and is incorporated herein by reference. **[8]** Glass Lewis advised that "General Cook is capable and willing to act as an agent of change on the [Trust] board, including in response to any concerns and demands expressed across [the Trust's] shareholder base—including most of those vocalized by the Dissidents during this campaign." **[9]** A copy of the Glass Lewis Opinion is attached hereto as Exhibit E and is incorporated herein by reference.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 36. Mr. Oliver denies the allegations in sentence 2 of Paragraph 36. Mr. Oliver admits that the entities named in sentences 3, 5, 6, and 8 made the statements quoted in those sentences but denies any remaining allegations in sentences 3, 5, 6, and 8 of Paragraph 36. Mr. Oliver admits the allegations in sentences 4, 7, and 9 of Paragraph 36.

37. **[1]** The Special Meeting of the shareholders to vote to fill the trustee vacancy was originally scheduled for May 8, 2019. **[2]** Upon receiving notice of Defendant's nomination and the commencement of an unannounced campaign by the Dissident Group, however, the Trust postponed

the date of the Special Meeting until May 22, 2019, in order to be able to meet the newly expected, longer time period for preparing and mailing proxy materials in a contested situation. **[3]** The Dissident Group did not object to that postponement at the time.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 37. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 37.

38. **[1]** On April 30, 2019, General Cook announced his willingness to resign as Trustee, if elected, after no more than three years following his election. **[2]** He subsequently delivered a formal letter of resignation to that effect. **[3]** General Cook made this commitment to address concerns by shareholders regarding the life tenure of trustees. **[4]** Defendant has not made the same commitment.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 4 of Paragraph 38. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 38.

39. **[1]** The staff of the SEC subsequently advised the Trust that General Cook's commitment may constitute a "fundamental change" in the meaning of Note 1 to Rule 14a-6(a) of the Rules promulgated under Section 14 of the Exchange Act, which would require the filing and mailing of a supplement to the Trust's proxy statement. **[2]** The staff of the SEC asked the Trust's counsel for an analysis of this legal issue. **[3]** After analyzing this issue, the Trust's counsel was unable to come to a conclusive answer. **[4]** Therefore, the Trust determined it would be prudent and in the best interests of shareholders to prepare, file, and mail a proxy supplement to all shareholders.

RESPONSE: Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentences 1, 2 and 3 of Paragraph 39. Mr. Oliver denies the allegations in sentence 4 of Paragraph 39.

40. **[1]** To provide the shareholders with sufficient time to receive by mail and review the proxy supplement in order to be able to cast their votes on a fully informed basis, the Trust publicly announced that it would convene and then adjourn, without conducting any business, the Special Meeting to be reconvened on June 6, 2019. **[2]** The right to adjourn the meeting is clearly within the Trustees' powers under the Declaration of Trust, and the Trustees' decision to adjourn the meeting is

consistent with their fiduciary duties to the Trust and its shareholders.

RESPONSE: Mr. Oliver admits that the Trust publicly announced that it intended to convene the Special meeting on May 22, 2019, adjourn the Special Meeting without conducting any business, and reconvene the Special meeting on June 6, 2019. Mr. Oliver denies the remaining allegations in Paragraph 40.

Defendant Has Refused To Provide Meaningful Disclosure
About His Background, Business Dealings And Potential or Actual Conflicts Of Interest

41. **[1]** In striking contrast to General Cook, Defendant has provided virtually no meaningful disclosure to the Trust or its shareholders. **[2]** On March 28, 2019, the Trustees provided Defendant with the same questionnaire provided to, and completed by, General Cook and Mr. Young. **[3]** A copy is attached hereto as Exhibit F and is incorporated herein by reference. **[4]** Given the potential for trustees to serve life terms and to carry with them liabilities that could expose the Trust and its shareholders to significant harm, the questionnaire sought to explore Defendant's background, business interests, and potential or actual conflicts, including questions such as: (i) "Do you hold a position with any other entity (including companies, partnerships, trusts, charitable organizations, etc.), besides the Trust in which you are a director, trustee, partner, or officer, regardless of ownership in that entity?"; (ii) "Is there any undisclosed fact about you, your past conduct or your background that, if it became public, would be embarrassing or otherwise negatively reflect upon you or any institution on whose board you are sitting?"; and (iii) "Have you ever been, formally or informally, the subject of any allegations of sexual harassment, sexual misconduct or any other unethical conduct?" **[5]** That same day, Defendant *explicitly refused to respond to even a single question within the questionnaire*.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 5 of Paragraph 41. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 2 of Paragraph 41. Mr. Oliver admits that a copy of the questionnaire the trustees provided him is attached to the Complaint as Exhibit F and lacks knowledge or information sufficient to form a belief about the truth of any remaining allegations in sentence

3 of Paragraph 41. Mr. Oliver admits that the quoted language in sentence 4 appears in the questionnaire provided to Mr. Oliver by Defendants but denies the remaining allegations in sentence 4 of Paragraph 41.

42. **[1]** The only information that Defendant provided to the Trustees was a résumé. **[2]** This minimal disclosure left the Trustees (and shareholders) with more questions than answers, especially in light of information previously received concerning conflicts of interest and other issues regarding Defendant's background and business dealings. **[3]** Indeed, Egan-Jones, in recommending that the Trust's shareholders vote for General Cook rather than Defendant, noted its concern that *Defendant's* "*election to the Board poses potential conflict of interests, [and] non-independent judgment due to Mr. Oliver's undisclosed affiliations, which are detrimental to the best interests of the Company and its shareholders*."

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 2 of Paragraph 42. Mr. Oliver admits that the quoted language in sentence 3 of Paragraph 41 appears in the Egan-Jones opinion but denies any remaining allegations in sentence 3 of Paragraph 42.

43. **[1]** Notwithstanding Defendant's prior refusals to respond to the Trustee's questionnaire, on May 16, 2019, in an effort to discharge their duties as Trustees and to secure a fully informed shareholder vote, the Trustees sent a letter to Defendant stating that they wanted to "give [him] every opportunity to provide the requested disclosure" (the "May 16 Letter"). **[2]** A copy of the May 16 Letter is attached hereto as Exhibit G and is incorporated herein by reference. **[3]** The May 16 Letter again requested that Defendant "[p]lease respond to the questionnaire and certify the accuracy of [his] responses." **[4]** The May 16 Letter asked Defendant to ensure that he addresses several concerns relating to his qualifications that were omitted from the Dissident Group's solicitation materials so that the Trustees could ensure that Defendant was not disqualified from serving as trustee. **[5]** The Trustees' concerns include, among other things, Defendant's background and experience and potential improper dealings relating to his business interests. **[6]** The May 16 Letter told Defendant that, "[b]y providing truthful and fulsome responses to the questionnaire, [he has] the opportunity to put those concerns to rest and to provide shareholders with the information

necessary for an informed vote." **[7]** Specifically, in addition to a renewed request that Defendant answer the questionnaire truthfully and completely, the May 16 Letter asked Defendant to address the following concerns:

RESPONSE: Mr. Oliver admits that the Trustees and their counsel sent Mr. Oliver a letter on May 16, 2019, admits that the quoted language in sentences 1, 3, and 6 of Paragraph 43 appears in the May 16 letter, and denies any remaining allegations in sentences 1, 3, and 6 of Paragraph 43. Mr. Oliver admits the allegations in sentence 2 of Paragraph 43. Mr. Oliver denies the allegations in sentence 5 of Paragraph 43. Mr. Oliver admits the allegations in the portion of sentence 7 that appears in Paragraph 43.

a. **[1]** For several years, in the quarterly and annual reports of AMEN Properties, Inc. ("AMEN"), a company for which Defendant serves as Chairman, Defendant was described as serving on the board of the "First National Bank of Midland." **[2]** Defendant has likewise touted this purported corporate governance experience to Trust shareholders. **[3]** As explained in the May 16 Letter, the Trustees had been "unable to confirm that any such bank exists," a concern that also had previously been raised by an AMEN shareholder in a letter from 2012, which was shared with the Trust a few days earlier. **[4]** The May 16 Letter asked Defendant to provide "an explanation of this apparent discrepancy." **[5]** Defendant has sought to justify this misstatement by reference to a "clerical error."

RESPONSE: Mr. Oliver admits allegations in sentences 1, 4, and 5 of Paragraph 43(a). Mr. Oliver denies the allegations in sentence 2 of Paragraph 43(a). Mr. Oliver admits that the language quoted in sentence 3 of Paragraph 43(a) appears in the May 16 letter, admits that he received the December 26, 2012 letter that was attached to the May 6 letter, and denies any remaining allegations in sentence 3 of Paragraph 43(a).

b. **[1]** In a campaign video released on April 16, 2019, Defendant claimed that the Trust's former General Agent and Chief Executive Officer Roy Thomas entrusted Defendant over ten years ago with confidential surface maps of the Trust. **[2]** The Trust considered these surface maps material nonpublic information at the time it provided this information

to Defendant. **[3]** Defendant was asked to address whether he had used these confidential surface maps "to acquire any assets, trade any securities (or options), or pursue any commercial or financial ventures, whether personally or through any entity under [his] direction." (Exhibit G.) **[4]** Defendant has asserted that such information is publicly available, but while that may be true now, it was not true for many years after Defendant obtained such information.

RESPONSE: Mr. Oliver denies the allegations in sentence 1 of Paragraph 43(b). Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 2 of Paragraph 43(b). Mr. Oliver admits that the quoted language in sentence 3 appears in a letter sent from Plaintiffs to Mr. Oliver and denies any remaining allegations in sentence 3 of Paragraph 43(b). Mr. Oliver admits that he has asserted that the surface maps are publically available and denies the remaining allegations in sentence 4 of Paragraph 43(b).

c. **[1]** AMEN, of which Defendant serves as Chairman, committed in its governing documents to donate ten percent of its earnings to Christian charitable organizations. **[2]** The May 16 Letter expressed concern that, as early as 2015, AMEN had stopped making these donations and instead began paying a "tithing" dividend to its shareholders with no obligation to make a donation, without any shareholder vote to change the governing documents of AMEN. (Exhibit G.) **[3]** This change is particularly concerning because Defendant and his family are among AMEN's largest shareholders. (*Id.*) **[4]** The May 16 Letter asked Defendant for "an explanation of the apparent discrepancy with respect to the AMEN governing documents as well as an explanation of this apparent conflict of interest." (*Id.*) **[5]** Defendant has not satisfactorily responded to this inquiry.

RESPONSE: Mr. Oliver denies that the allegations in sentence 1 of Paragraph 43(c) are a complete and accurate summary of the AMEN bylaws. Mr. Oliver admits the allegations in sentences 2 and 4 of Paragraph 43(c). Mr. Oliver denies the allegations in sentences 3 and 5 of Paragraph 43(c).

d. **[1]** Santa Monica filed a Schedule 13D in enthusiastic support of Defendant's candidacy on April 8, 2019. **[2]** Schedule 13D filings are permitted only by shareholders owning 5% or more of an issuer's shares, so Santa Monica's filing generated the false impression that a major shareholder, unrelated to the Dissident Group, was supporting Defendant. **[3]** In fact, Santa Monica owned only 0.2% of the shares and acquired shares shortly after the Dissident Group launched its proxy contest. **[4]** Moreover, Santa Monica has a longstanding relationship with Horizon Kinetics and its co-founder Murray Stahl. **[5]** The May 16 Letter expressed concern that Santa Monica is an undisclosed member of the Dissident Group and a hidden participant in the Dissident Group's proxy solicitation, in violation of Regulation 13D and Regulation 14A promulgated under the Exchange Act. **[6]** The May 16 Letter requested that Defendant explain these relationships and why they were not disclosed. **[7]** Defendant has not satisfactorily responded to this inquiry.

RESPONSE: Mr. Oliver admits the allegations in sentences 1, 4, 5, and 6 of Paragraph 43(d). Mr. Oliver denies the allegations in sentences 2 and 7 of Paragraph 43(d). Mr. Oliver admits that Santa Monica has owned shares of TPL since 2005, admits that Santa Monica owns more than 17,000 shares of TPL, admits that Santa Monica acquired 112 of those shares after the Investor Group led by SoftVest filed its proxy statement, and denies any remaining allegations in sentence 3 of Paragraph 43(d).

e. **[1]** UGLIC, a holder of 39,000 shares of the Trust, issued a press release in "enthusiastic support" of Defendant on April 16, 2019. **[2]** The press release tried to create the impression that a neutral shareholder is supporting Defendant. **[3]** In fact, UGLIC has a longstanding relationship with Defendant. **[4]** The May 16 Letter expressed concern that UGLIC is an undisclosed member of the Dissident Group and a hidden participant in the Dissident Group's proxy solicitation, in violation of Regulation 13D and Regulation 14A promulgated under the Exchange Act. (Exhibit G.) **[5]** The May 16 Letter requested that Defendant explain these relationships and why they were not disclosed. (*Id.*) **[6]** Defendant has not satisfactorily responded to this inquiry, and instead has avoided the

question.

RESPONSE: Mr. Oliver admits the allegations in sentences 1, 3, 4, and 5 of Paragraph 43(e). Mr. Oliver denies the allegations in sentences 2 and 6 of of Paragraph 43(e).

f. **[1]** During Defendant's tenure as AMEN's Chairman and CEO, SoftVest provided AMEN with a preferred promissory note that financed a royalty acquisition. **[2]** The May 16 Letter requested that Defendant explain the efforts that were taken to ensure that this related party transaction was negotiated on an arms-length basis such that it did not constitute unlawful self-dealing. **[3]** Defendant has not satisfactorily responded to this inquiry, vaguely stating that he "recalls" recusing himself from consideration of this transaction and providing no other details.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 2 of Paragraph 43(f). Mr. Oliver denies the allegations in sentence 3 of Paragraph 43(f).

g. **[1]** There is reason to believe that the Dissident Group has engaged in undisclosed proxy solicitation using various online sources, including forums, paid investment discussion websites and blogs. **[2]** The May 16 Letter asked Defendant to explain whether the Dissident Group, or others at the Dissident Group's direction or in consultation with it, have engaged in such undisclosed proxy solicitation in connection with his candidacy. **[3]** Defendant has not satisfactorily responded to this inquiry, and instead has avoided the question.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 3 of Paragraph 43(g). Mr. Oliver admits the allegations in sentence 2 of Paragraph 43(g).

h. **[1]** There is reason to believe that Defendant, directly or indirectly, owns a significant number of oil and gas interests, at least some of which are located in the Permian Basin through various entities, including AMEN, SoftVest and affiliated entities, and that Defendant's family members, including his brother and sons, own similar interests. **[2]** The May 16 Letter asked Defendant to describe those interests and explain whether they do business with or compete with the Trust, or are in a position to profit from the activities

of the Trust. **[3]** Defendant has neither satisfactorily responded to this inquiry, nor provided any other information concerning his potential or actual conflicts of interest.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 2 of Paragraph 43(h). Mr. Oliver denies the allegations in sentence 3 of Paragraph 43(h).

44. **[1]** On May 20, 2019, Defendant provided purported responses to the questions posed in the May 16 Letter but, upon information and belief, the answers were inaccurate. **[2]** They were also incomplete. **[3]** He also continues to refuse to complete and certify the Trust's standard questionnaire.[2]

RESPONSE: Mr. Oliver denies the allegations in Paragraph 44.

The Trust's Postponement Of The Special Meeting

45. **[1]** On May 21, 2019, in light of Defendant's refusal to provide the information necessary for the Trustees and shareholders to ensure Defendant is not disqualified from serving as a trustee and, in light of the Dissident Group's numerous material misstatements and omissions in its solicitation materials (detailed below), the Trust and Trustees filed the Original Complaint in this action. **[2]** That same day, the Trust notified shareholders that the Special Meeting would be postponed until further notice.

RESPONSE: Mr. Oliver admits that on May 21, 2019, Plaintiffs filed their Original Complaint in this action. Mr. Oliver denies the remaining allegations in sentence 1 of Paragraph 45. Mr. Oliver admits that the Trustees purported to postpone the scheduled Special Meeting on May 21, 2019. Mr. Oliver denies the remaining allegations in sentence 2

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[2] Notably, Defendant is represented by Gibson, Dunn & Crutcher LLP, who appeared at the Invalid Meeting and attempted to run the Invalid Meeting. The Trust's counsel provided by email a copy of the May 16 Letter to Eduardo Gallardo of Gibson, Dunn & Crutcher LLP, the same day that it was transmitted to Defendant, and asked if Mr. Gallardo could "speak in the morning." Mr. Gallardo never responded to that email. This email is attached hereto as Exhibit H and is incorporated herein by reference. He also did not respond to two other emails from the Trust's counsel.

RESPONSE: Mr. Oliver admits that he is represented by Gibson, Dunn & Crutcher LLP, admits that certain Gibson Dunn attorneys appeared at the duly authorized, properly notice May 22, 2019 Special Meeting at which he was elected as trustee, admits that Mr. Gallardo received the May 16 e-mail that is attached to the Complaint as Exhibit H, and denies the remaining allegations in footnote 2.

of Paragraph 45.

46. **[1]** As was the case with the prior adjournment of the Special Meeting – in light of the Trust's need to submit a supplemental proxy statement – the Trustees' authority to postpone the meeting derives from the Declaration of Trust and the decision to postpone the meeting is consistent with the Trustees' fiduciary duties to the Trust and its shareholders. **[2]** Under Article SIXTH of the Declaration of Trust, meetings may only be called by the Trustees, whether on their own accord or upon request of shareholders, and the ability to call a meeting include the ability to set time and place, as well as to postpone. (Decl. of Trust at SIXTH.)

RESPONSE: Mr. Oliver denies the allegations in Paragraph 46.

The Dissident Group Holds An Unnoticed and Invalid "Meeting"

47. **[1]** At 6:19 p.m. Central on May 21, 2019, notwithstanding the Trustees' postponement of the Special Meeting and the efforts by the Trustees and the Trust's counsel to reach out to Defendant's counsel, the Dissidents announced via press release that they would "proceed to attend the special meeting scheduled tomorrow morning in Dallas." **[2]** A copy of the May 21, 2019 press release is attached hereto as Exhibit I and is incorporated herein by reference.

RESPONSE: Mr. Oliver admits that on May 21, 2019, the Investor Group led by SoftVest announced via press release that they would proceed to attend the duly authorized, properly noticed Special Meeting scheduled for May 22, 2019 in Dallas. Mr. Oliver denies the remaining allegations in sentence 1 of Paragraph 47. Mr. Oliver admits the allegations in sentence 2 of Paragraph 47.

48. **[1]** The Trust had noticed the Special Meeting, pursuant to the Declaration of Trust, to take place at the offices of Sidley Austin LLP in Dallas, Texas. **[2]** The Dissident Group did not attend the Special Meeting on May 22, 2019, however, because that meeting had been postponed. **[3]** Instead, the Dissident Group and a few dozen shareholders gathered on a different floor of the office building in which Sidley Austin LLP's offices are located (the "Invalid Meeting"). **[4]** The Dissident Group did not provide any formal notice that it would be holding the Invalid Meeting at that location. **[5]** Even though the Trust's counsel corresponded with Defendant, his counsel, and his proxy solicitor

approximately 90 minutes prior to the Invalid Meeting, the Dissident Group did not inform the Trustees or the Trust's counsel about their plan to hold the Invalid Meeting. **[6]** Prominently displayed in the lobby of the building in which the Invalid Meeting occurred was a sign informing shareholders that the actual Special Meeting had been postponed. **[7]** Attorneys for Defendant were re-directing shareholders to attend the Invalid Meeting on another floor of the office building.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 6 of Paragraph 48. Mr. Oliver admits that a duly authorized, properly notice Special Meeting was held on May 22, 2019 in the building where Sidley Austin LLP's Dallas office is located, admits that counsel from Sidley Austin attended the meeting on behalf of TPL, and denies the remaining allegations in Paragraph 48.

49. **[1]** The Declaration of Trust requires that notice of shareholder meetings "shall be given by publication in at least two daily newspapers published in the City of New York once in each week for four weeks." (Decl. of Trust at SIXTH). **[2]** The Dissident Group did not provide valid notice of Invalid Meeting, whether in its May 21, 2019 press release or otherwise. **[3]** Nor would they have the authority to notice a meeting.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 49. Mr. Oliver denies the allegations in sentence 2 and 3 of Paragraph 49.

50. **[1]** The Declaration of Trust provides that "[t]he chairman of the trustees shall, if present, preside at all meetings of the certificate holders." (Decl. of Trust at SIXTH.) **[2]** The Co-Chairmen of the Trustees were not present at the Invalid Meeting because it was not duly called and noticed. **[3]** In fact, the Co-Chairmen of the Trustees did not learn about the Invalid Meeting until after it was concluded.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 50. Mr. Oliver admits that the Co-Chairmen of the Trustees were not present at the duly authorized, properly noticed May 22, 2019 Special Meeting and denies the remaining allegations in sentence 2 of Paragraph 50. Mr. Oliver denies the allegations in sentence 3 of Paragraph 49.

51. **[1]** Defendant conducted the Invalid Meeting as the purported "Chairman" and held

a sham vote to be elected a purported lifetime trustee, even though at least one shareholder asked for an adjournment and another to ask questions before the vote.

RESPONSE: Mr. Oliver admits that he conducted a duly noticed, properly authorized shareholder meeting on May 22, 2019, and denies the remaining allegations in Paragraph 51.

52. **[1]** The Invalid Meeting failed to meet the quorum requirement. (See Definitive Proxy Statement filed April 8, 2019 ("For purposes of the Special Meeting, there will be a quorum if the Holders of a majority of the outstanding Sub-share Certificates are present in person or by proxy.").) **[2]** In fact, Defendant and his agents represented at the Invalid Meeting that approximately 3.7 million shares were present at the meeting, which constitutes less than half of the Trust's outstanding shares.

RESPONSE: Mr. Oliver denies the allegations in sentence 1 of Paragraph 52. Mr. Oliver admits the allegations in sentence 2 of Paragraph 52.

53. **[1]** At the Invalid Meeting, a number of shareholders sought to pose questions to Defendant, but they were told by Defendant's counsel that they could not ask any questions until after a "vote" was taken by those present at the Invalid Meeting and a chair elected. **[2]** One attending shareholder even asked that the Invalid Meeting be adjourned. **[3]** Another asked why Defendant had not filled out the form trustee questionnaire.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 3 of Paragraph 53. Mr. Oliver admits that a motion to adjourn the duly authorized, properly noticed May 22, 2019 meeting was made by an attendee and, after being put to a vote, was rejected by the overwhelming majority of shares present in person or by proxy at the meeting.

54. **[1]** Over the course of an approximately ten-minute period, certain individuals present at the Invalid Meeting then purported to undertake a vote for the election of Defendant as trustee. **[2]** Defendant then declared himself to be a trustee and subsequently publicly announced in a press release the sham voting tallies from the Invalid Meeting. **[3]** As discussed further below, this was conduct in violation of Rule 14a-9.

RESPONSE: Mr. Oliver admits that a vote was taken at the duly authorized, properly noticed May 22, 2019 Special Meeting, admits that he was duly elected to be a trustee of the

Trust at that meeting, and denies the remaining allegations in Paragraph 54.

55. Based on this unlawful and improper conduct, Plaintiffs seek a declaration that (i) the "notice" provided by Defendant and his Dissident Group was invalid and ineffective; (ii) the Invalid Meeting led by Defendant and the Dissident Group on May 22, 2019 was not a lawful Special Meeting of the Texas Pacific Land Trust; (iii) and any votes cast at the Invalid Meeting conducted by Defendant and the Dissident Group on May 22, 2019 are invalid, null, and void.

RESPONSE: Mr. Oliver denies that he has engaged in any unlawful or improper conduct. Mr. Oliver admits that Plaintiffs seek the declaration described in Paragraph 55 but denies that they are entitled to that declaration.

The Dissident Group's Material Misstatements And Omissions In Violation Of Rule 14a-9

56. **[1]** Beyond the potential conflicts of interest and business dealings that were the subject of the May 16 Letter, the Dissident Group (of which Defendant is a member) has made repeated material misstatements and omissions in its proxy materials in support of Defendant's candidacy. **[2]** The Dissident Group's misstatements and omissions include its definitive proxy statement (the "proxy"), as well as numerous press releases, videos, presentations, and letters, all of which have been publicly filed as proxy solicitation materials. **[3]** These material misstatements and omissions violate Exchange Act Rule 14a-9 and must be corrected to ensure that all of the Trust's shareholders have the opportunity vote for a trustee at the Special Meeting on a fully informed basis.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 56.

Misstatements And/Or Omissions Concerning
The Trust's Interactions With The Dissident Group

57. The Dissident Group's solicitation materials include material misstatements and omissions relating to the Trust's interactions with Defendant and his Dissident Group.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 57.

58. **[1]** First, the Dissident Group omits material facts regarding discussions between Horizon Kinetics' Chairman and Chief Investment Officer, Murray Stahl, and the Trust with respect to proposals made by Mr. Stahl, which were thoroughly considered by the Trust. **[2]** For instance,

the Dissident Group's proxy materials portray the Trust as having not engaged in good faith with Mr. Stahl and other members of the Dissident Group, or having not fully and fairly assessed the advantages and disadvantages of the Dissident Group's proposed measures. **[3]** The Dissident Group's proxy materials omitted, however, the following material information: (i) on March 6, 2019, Mr. Stahl spoke with a representative of the Trust and suggested the formation of an advisory board of shareholders that would, among other things, propose governance, organizational and operational improvements and that the Trust signaled its willingness to consider such proposal; (ii) on March 20, 2019, Mr. Stahl spoke with a representative of the Trust again and indicated that he wanted the Trust to review certain of its corporate governance policies, which the Trustees ensured Mr. Stahl would be made a part of the Trust's continuous review of its policies and procedures; and (iii) on March 27, 2019 and then again on April 5, 2019, Mr. Stahl spoke with representatives of the Trust yet again, in which conversation the Trust and Mr. Stahl, on behalf of the Dissident Group, engaged in preliminary settlement discussions in order to avoid a contested election at the Special Meeting.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 58.

59. **[1]** Second, the Dissident Group states that it repeatedly proposed that the Trust should convert into a master limited partnership ("MLP"), but the Dissident Group omitted material information concerning its reasons for abandoning this proposal. **[2]** The Dissident Group falsely and misleadingly states that its position regarding a conversion into an MLP structure changed due to changes in U.S. tax laws, but in fact, the Trust considered the Dissident Group's proposals thoroughly and commissioned expert advice from both its financial advisor and two law firms (the second one at the additional request of the Dissident Group) on the advantages and disadvantages of the suggested conversion. **[3]** The advisors unanimously recommended against the conversion, citing, among other things, the significant negative tax implications of conversion and the significant debt that the Trust would have to incur to pay the tax liabilities as a result of such conversion. **[4]** The Trust informed the Dissident Group of these findings, but the Dissident Group fails to disclose that it abandoned its proposals upon learning about the adverse tax consequences identified by the Trust's advisors and falsely implies that it came to the conclusion on its own.

RESPONSE: Mr. Oliver denies the allegations in sentences 1, 2 and 4 of Paragraph 59. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 3 of Paragraph 59.

60. **[1]** Third, the Dissident Group's April 15, 2019 press release falsely accuses the Trust of being "unwilling to provide" a list of the non-objecting beneficial owners of shares of the Trust (the "NOBO List"), and instead "stonewall[ing]" Defendant in the face of his request. **[2]** This is a material mischaracterization of the facts. **[3]** In fact, the Trust explicitly stated that it was "willing to provide such materials, provided that the Trust has the legal authority to share such information," and requested Defendant to provide a legal basis for his demand. **[4]** Sharing the NOBO List without any legal basis to do so would have breached the privacy rights of thousands of shareholders, and to characterize this reasonable request as "stonewall[ing]" is misleading and violates Rule 14a-9. **[5]** The Dissident Group's later comments, in its April 22 and 23, 2019 press releases—that "[w]e trust that you already know that there is no legal impediment in providing to Mr. Oliver a NOBO list," that the "tone and content" of the Trust's communication makes "clear to us that at this time you do not intend to provide Mr. Oliver with a NOBO list," that "the Trust refuses to give us their NOBO list"—violate Rule 14a-9 for the same reason. **[6]** The Dissident Group even asserted in its April 22, 2019 press release that "[y]our argument boils down to saying that [the Trust] will not provide the NOBO list unless it is legally mandated to do so," which is materially misleading because the Trust's request to Defendant pertained to understanding whether it was legally *permitted* to reveal the NOBO, not whether it was legally *mandated* to do so.[3] **[7]** In response to the misrepresentations made by the Dissident Group, the Trust, in a letter to the Dissident Group dated April 23, 2019, reiterated and explained its position for a second time. **[8]** Still, in a subsequent letter sent by SoftVest LP to shareholders on April 23, 2019, as well as in a press release made available by SoftVest LP on May 13, 2019, the Dissident Group kept falsely claiming that the Trust is unwilling to share the NOBO list.

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[3] Similar material misstatements are contained in the Dissident Group's publicly-filed April 23, 2019 letter. See Sched. 14A filed by Dissident Group on April 24, 2019 at https://www.sec.gov/Archives/edgar/data/97517/000114036119007508/s001762x16_dfan14a.htm.

RESPONSE: Mr. Oliver denies the allegations in footnote 3.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 60.

61. **[1]** Fourth, the Dissident Group's April 23, 2019 press release asserts that the Trust has exhibited a "total disregard for investors' views and rights, as evidenced by the conduct of incumbent trustees during this proxy campaign." **[2]** This misleading statement omits that the Trust promptly changed its nominee—from Mr. Young to General Cook—in direct response to the input of shareholders, and that it also protected shareholders' personal information by not providing the NOBO list to the Dissident Group in the absence of clear legal authority to do so. **[3]** Moreover, certain shareholders, including the Dissident Group, have shared their views that the Trust lacks robust modern corporate governance policies. **[4]** As a result of this feedback, the Trust nominated an expert on corporate governance, a fact that the Dissident Group wrongfully omits.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 3 of Paragraph 61. Mr. Oliver denies the allegations in sentences 2 and 4 of Paragraph 61.

62. **[1]** Fifth, the Trustees reached out to the Dissident Group on May 8, 2019 in a confidential email labeled "Subject to Settlement Privilege/Confidential." **[2]** In response, the Dissident Group issued a press release on the same day, in which it purported to have "reprinted" the email. **[3]** The purported "reprint" is materially misleading because it omits the very first sentence of the email, which expressly states that "[t]his email is confidential and subject to settlement privilege." **[4]** By omitting this sentence, the Dissident Group sought to minimize the nature and extent of its violation of ethical rules and norms governing settlement discussions. **[5]** This purported "reprint" plainly violates Rule 14a-9.

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 2 of Paragraph 62. Mr. Oliver denies the allegations in sentences 3, 4, and 5 of Paragraph 62.

Misstatements And/Or Omissions Concerning The Trust's Activities

63. The Dissident Group's solicitation materials include material misstatements and omissions relating to the Trust's business and activities.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 63.

64. **[1]** First, the Dissident Group's April 9, 2019 press release asserts that "wells drilled

between 2014-2018 . . . have increased the Trust's oil production over 600% and its gas production close to 1,000%." **[2]** This is grossly misleading, given that the Trust does not engage in any oil and gas production whatsoever. **[3]** If uncorrected, this statement could lead shareholders to misunderstand the Trust's business model, management needs and strategic decisions and actions.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 64. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 64.

65. **[1]** Second, the Dissident Group's proxy sets forth misleading purported risk factors concerning the operations of the Trust's wholly-owned subsidiary, Texas Pacific Water Resources LLC ("TPWR"). **[2]** The Dissident Group has argued that the Trust should consider a sale of TPWR, so it has drummed up highly speculative risk factors (including "risks related to workers compensation, leaks or rupturing of pipelines (including surface damage) and injection well casings (including potential acquifier [sic] contamination")) intended to paint an overly-precarious picture of TPWR.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 65.

66. **[1]** Third, the Dissident Group's April 23, 2019 press release asserts that a presentation by the Trust highlighted several wells "in the wrong location, some by more than 20 miles, with one well listed in the wrong county." **[2]** This is a materially false statement and is presented without any factual foundation that the Trust's presentation included erroneously-marked wells. **[3]** This misleading statement is intended to question the competency of the Trust's current leadership, and it must be corrected.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 66. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 66.

Misstatements And/Or Omissions Concerning The Proxy Vote

67. **[1]** As expressly set out under item (d) under the "notes" paragraph of Rule 14a-9, "[c]laims made prior to a meeting regarding the results of a solicitation" are considered to be examples of "misleading" information. **[2]** The Dissident Group has thrice violated this aspect of Rule 14a-9.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 67.

68. **[1]** First, Defendant plainly and egregiously violated this prohibition in a May 21, 2019

interview with Bloomberg, in which he asserted that the Dissident Group "has sufficient votes to win the trustee seat, based on preliminary tallies." **[2]** A copy of the Bloomberg interview is attached hereto as Exhibit J and is incorporated herein by reference. **[3]** This interview took place only one day before the Dissident Group's Invalid Meeting in which they purported to elect Defendant as a trustee. **[4]** As federal courts have stressed, claims regarding a vote outcome are strictly prohibited because such disclosures can poison the electorate through a "bandwagon effect." **[5]** This "bandwagon effect" is precisely what the Dissident Group tries to generate here in order to distract shareholders from carefully considering the merits of the nominees' arguments on the basis that the result of the election is a foregone conclusion.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 5 of Paragraph 68. Mr. Oliver admits that he talked to a Bloomberg reporter one day before he was elected as a trustee at the duly authorized, properly noticed May 22, 2019 Special Meeting and denies the remaining allegations in sentences 2 and 3 of Paragraph 68. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentence 4 of Paragraph 68.

69. **[1]** Second, the very next day – following the sham election held at the invalid and unnoticed Invalid Meeting conducted by the Dissident Group – the Dissident Group "announced" in a press release the precise "results" of the sham "vote," which in fact only served to prematurely make a claim as to the results of the Dissident Group's solicitation. **[2]** A copy of the Dissident Group's May 22, 2019 press release is attached hereto as Exhibit K and is incorporated herein by reference. **[3]** Because the actual Special Meeting has been postponed, these comments plainly were made "prior to a meeting" as prohibited by Rule 14a-9. **[4]** Specifically, the Dissident Group "announced" that: "Out of the 7,756,156 shares outstanding on the record date, a total of 3,660,812 shares voted for the election of Eric Oliver" and "a total of 1,994,267 shares were voted in favor of the election of General Donald Cook." **[5]** The Dissident Group misleadingly omitted that the Invalid Meeting was not properly noticed to all shareholders, there was no quorum, the proxies solicited by the Trust were not present, holders of millions of shares have not submitted any proxies yet, and no

valid vote was conducted. **[6]** This was a bold attempt by the Dissident Group to disenfranchise the shareholders who disagree with them and to improperly influence the results of the forthcoming and valid election.

RESPONSE: Mr. Oliver denies the allegations in sentences 1, 3, 5, and 6 of Paragraph 69. Mr. Oliver admits the allegations in sentences 2 and 4 of Paragraph 69.

70. **[1]** Third, even before this week's events, the Dissident Group had violated the prohibition on "[c]laims made prior to a meeting regarding the results of a solicitation" in a May 8, 2019 press release that annotated the following sentence contained in a confidential email provided to the Dissident Group by the Trustees: "While we are pleased to receive the recommendation from ISS yesterday, we understand that this will remain a close election."[4] **[2]** The Dissident Group added a footnote to that sentence and stated: "SoftVest, L.P., Horizon Kinetics LLC and ART-FGT Family Partners disagree with this statement." **[3]** By adding the text in this footnote, the Dissident Group was making a claim as to the voting result of the solicitation—that the voting result will not be a close election and, by inference, the solicitation outcome will result in the Dissident Group's favor.

RESPONSE: Mr. Oliver denies the allegations in sentences 1 and 3 of Paragraph 70. Mr. Oliver admits the allegations in sentence 2 of Paragraph 70.

71. **[1]** The Dissident Group also has separately violated Rule 14a-9 by arranging for emails to shareholders with proxy voting instructions with email headings that falsely imply that brokerage firms are soliciting votes on behalf of the Dissident Group and encouraging shareholders to vote on the Dissident Group's white proxy card. **[2]** These misrepresentations are materially misleading because a substantial majority of shareholders are retail investors, who are generally more easily misled than sophisticated institutional investors and may thus be unduly influenced by purported endorsements of brokerage firms.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 71.

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[4] Notably, the Trust itself has not violated the cited prohibition because its email communication was intended to remain confidential and did not constitute a "solicitation" under the Proxy Rules.

RESPONSE: Mr. Oliver denies the allegations in footnote 4.

Misstatements And/Or Omissions Concerning The Trust's Structure

72. The Dissident Group's solicitation materials include material misstatements and omissions relating to the structure of the Trust itself, including the plain language of the Declaration of Trust.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 72.

73. **[1]** First, the Dissident Group asserts in its proxy statement that "Meetings of holders of Shares only occur when a new trustee needs to be elected to fill a vacancy of one of the three trustee positions." **[2]** This is a materially false statement regarding the Declaration of Trust. **[3]** In fact, the Declaration of Trust provides that "Meetings of the certificate holders may be called by the trustees whenever said trustees shall deem it necessary, and also whenever they shall have been requested thereunto by instrument in writing specifying the object of the proposed meeting . . . ." (Decl. of Trust at SIXTH).

RESPONSE: Mr. Oliver admits the allegations in sentences 1 and 3 of Paragraph 73. Mr. Oliver denies the allegations in sentence 2 of Paragraph 73.

74. **[1]** Second, the Dissident Group's April 9, 2019 press release asserts that the Trust "has only held four shareholder meetings in thirty years," and that "[t]he upcoming special meeting therefore is a unique opportunity for the [Trust] investors to participate in the future direction of [the Trust]." **[2]** The Dissident Group omits that, pursuant to the Declaration of Trust, *shareholders themselves* have had the power to request shareholder meetings since 1888 – and in those 131 years, no shareholder ever requested a shareholder meeting.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 74. Mr. Oliver denies the allegations in sentence 2 of Paragraph 74.

75. **[1]** Third, the Dissident Group's April 23, 2019 press release asserts that "there is no precedent whatsoever for a company engaged in these active business activities [in reference to activities of the Trust] to be structured as a business trust . . . ." **[2]** The Dissident Group provides no basis for this assertion, which may mislead shareholders to believe falsely that the Trust is the only entity ever to have functioned as a trust while carrying out business.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 75. Mr. Oliver denies the allegations in sentence 2 of Paragraph 75.

76. **[1]** Fourth, the Dissident Group's April 23, 2019 press release asserts that "[t]he sole intended purpose of the formation of [the Trust] as a trust was to provide an orderly liquidation of the land that secured defaulted bonds at the T&P Railway" and, "[s]ince then, [the Trust] deviated from this long held mandate with the creation of a water operating company, followed by complex land and royalty 'trading' transactions." **[2]** This is demonstrably false through a simple review of the Declaration of Trust, which states that the Trustees "shall have all the powers in respect of said property of an absolute owner, as to selling, granting, *leasing, alienating, improving, encumbering, or otherwise disposing* of the same or any part or parcel thereof, and they may, whenever they shall deem it necessary or advisable for the protection or benefit of the property, *purchase other lands and premises* . . . ." (Decl. of Trust at FIRST (emphasis added)). **[3]** It could not be more plain that the Trust did not have a "sole intended purpose" of "liquidat[ion]." This material misstatement must be corrected.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 76. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 76.

77. **[1]** Fifth, the Dissident Group's April 23, 2019 press release asserts that the Trust's "inside ownership level is [in] a dramatic decline and the lowest level over the past 30 years." **[2]** This statement is made for the purpose of touting Defendant as a significant shareholder who would increase the Trust's inside ownership if he were elected Trustee. **[3]** It is a misleading statement, however, because it omits that there are only two incumbent Trustees at this time. **[4]** Comparing the total ownership of two Trustees to the same owned by three trustees is not a fair comparison. **[5]** The press release also omits that one of the Trustees has only served as such for two years and that he previously represented the Trust as its attorney and had a policy of not purchasing shares of his clients.[5]

[5] The Dissident Group's publicly-filed May 1, 2019 presentation contains a similar misstatement. It also misleadingly compares the shares held by SoftVest and Horizon Kinetics to those of the Trustees, which is mixing apples and oranges since the capital at an investment fund's disposal is far superior to that of these individuals.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 77. Mr. Oliver denies the allegations in sentences 2, 3, 4, and 5 of Paragraph 77.

Misstatements And/Or Omissions Concerning The Selection Of General Cook

78. **[1]** The Dissident Group's solicitation materials include material misstatements and omissions relating to the selection of General Cook as a nominee. **[2]** Specifically, the Dissident Group's May 7, 2019 press release asserts that General Cook "was hand-picked by the two incumbent trustees at the suggestion of their outside legal advisor . . . as seems to indicate that the incumbent trustees have decided to outsource to outside counsel . . . the role of the nominating committee." **[3]** This statement is materially false and misleading because it does not accurately describe the nomination process that the Trustees undertook to identify and nominate General Cook. **[4]** The use of the word "hand-picked" misleadingly implies that the Trustees selected General Cook without undergoing an unbiased formal search process. **[5]** The Trustees retained Spencer Stuart, a specialist director search firm, to provide more than 15 highly-qualified candidates and additionally requested its financial and legal advisors to provide recommendations. **[6]** Even though the Trustees ultimately chose General Cook, a candidate suggested by a legal advisor, the selection was only after a thorough search and review process. **[7]** Moreover, the Dissident Group omits that the charter for the Nominating, Compensation and Governance Committee expressly provides that the Trustees' "duties and responsibilities" include "[t]he identification and recommendation . . . of individuals qualified to become or continue as Trustees." (Exhibit B at 1.)

RESPONSE: Mr. Oliver denies the allegations in sentences 1, 3, 4, and 7 of Paragraph 78. Mr. Oliver admits the allegations in sentence 2 of Paragraph 78. Mr. Oliver lacks knowledge or information sufficient to form a belief about the truth of the allegations in sentences 5 and 6 of Paragraph 78.

Misstatements That Improperly Impugn The Character, Integrity And Personal Reputation Of The Trustees And Trust Management

79. **[1]** Rule 14a-9 requires that solicitation materials avoid statements that directly or

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RESPONSE: Mr. Oliver denies the allegations in footnote 5.

indirectly impugn the character, integrity or personal reputation, or that make charges of illegal, improper or immoral conduct without factual foundation. **[2]** The Dissident Group's solicitation materials violate this rule numerous times.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 79.

80. **[1]** First, the Dissident Group's proxy asserts that (i) "[y]our advisors appear to be confused or misinformed," without any basis to suggest that the Trust is not well-advised by its advisory team; (ii) that the Trust is trying "to re-write history" merely by sending Defendant the standard trustee questionnaire filled out by other trustee candidates; (iii) the Dissident Group "hope[s] that you make all proper disclosures regarding Mr. Young," which suggests that the Trustees and the Trust have a motive to provide less than full disclosures; (iv) the Dissident Group "question[s] the wisdom" of the Trustees in hiring a standard group of advisors for issuers facing contested elections; (v) the Trustees have "mount[ed] an attack" on the Dissident Group, when in fact they have merely retained advisors to assist in fulfilling their fiduciary duties; and (vi) the Trustees are "trying to construct a narrative" to "portray . . . members of the Dissident Group as 'activists' looking for a 'short-term profit,'" when the Trustees have done no such thing. **[2]** These statements have no factual basis and needlessly and falsely impugn the integrity of the Trustees.

RESPONSE: Mr. Oliver admits that the language quoted in Paragraph 80 appears in the proxy filed by the Investor Group led by SoftVest and denies the remaining allegations in Paragraph 80.

81. Second, the Dissident Group's April 23, 2019 press release contains additional examples of statements that improperly impugn the integrity and character of the Trustees, including assertions that the Trust has "poor governance and lack of accountability," which has resulted in "questionable business decisions," and that "[m]anagement's lack of disclosure prevents us from determining the actual returns . . . increase in salaries . . . [and] expenses related to the formation of the company." These assertions imply improper conduct without any factual basis.

RESPONSE: Mr. Oliver admits that the language quoted in paragraph 81 appears in the April 23, 2019 press release issued by the Investor Group led by SoftVest and denies the

remaining allegations in Paragraph 81.

82. **[1]** Third, the Dissident Group's April 23, 2019 press release asserts that "[t]he General Agents [of the Trust] are incentivized to continue to earn their annual large cash salaries and bonuses (which are tied to short-term profits); unlike shareholders, they have little to gain by way to long-term stock price appreciation." **[2]** The press release further asserts that the "Trustees recently increased their own pay 52x." **[3]** These statements are materially false and misleading on numerous fronts. **[4]** The Dissident Group neglects to disclose that the Trust has seen unprecedented value maximization for five straight years under the General Agents' leadership but that the compensation of the General Agents was first substantially increased only in 2017. **[5]** The use of "52x" is likely to mislead shareholders because it omits that the increase is solely an inflation adjustment from the Trust's long-standing compensation, which had been set at $2,000 *since 1888*. **[6]** Furthermore, the compensation paid to the Trustees is still below the average retainer for S&P 500 directors.[6] **[7]** Moreover, there is no basis whatsoever for the assertion that the General Agents are incentivized to earn large compensation packages without pursuing long-term value for the Trust.

RESPONSE: Mr. Oliver admits the allegations sentences 1, 2, and 6 of Paragraph 82. Mr. Oliver denies the allegations in sentences 3, 4, 5 and 7 of Paragraph 82.

83. **[1]** Fourth, the Dissident Group's April 23, 2019 press release states that "[w]e believe poor governance record and lack of accountability has resulted in rampant conflicts of interest." **[2]** This statement is false and misleading because no factual basis is presented for the opinion. **[3]** The Dissident Group does not provide any examples where the Trust engaged in conflicted transactions or demonstrated poor governance, and such sweeping and inflammatory accusations may improperly influence shareholders.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 83. Mr. Oliver denies the allegations in sentences 2 and 3 of Paragraph 83.

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[6] *See* 2018 U.S. Spencer Stuart Board Index at 28, available at https://www.spencerstuart.com/-/media/2018/october/ssbi-2018-final.pdf (last accessed May 21, 2019) (reporting $124,306 as the average annual retainer for S&P 500 directors).

RESPONSE: Footnote 6 contains no allegations that require a response.

Misstatements And/Or Omissions Concerning
The Dissident Group's Background, Conduct And Future Plans

84. The Dissident Group's solicitation materials include material misstatements and omissions relating to the Dissident Group's background, actions, and plans for the Trust.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 84.

85. **[1]** First, the Dissident Group's April 16, 2019 publicly-released video states that the Dissident Group is "spending our own money in this election and [is] trying to be frugal." **[2]** This is false and misleading because it misleads investors into believing that the Dissident Group intends to fund all of its expenditures with money belonging solely to the Dissident Group when, in fact, the Dissident Group previously stated that it intends to seek reimbursement from the Trust for the costs of its solicitation if the election of Defendant is successful. **[3]** The Dissident Group's April 11, 2019 press release is similarly misleading in that it criticizes Trust management for not "paying out of their own pocket," but then buries in a footnote the statement that "We note that part of your campaign highlights that we have reserved our right to seek reimbursement of our expenses if Mr. Oliver is elected by shareholders." **[4]** This is intended to create an illusion that the Trust's management is wrongfully advantaged by utilizing the Trust's funds—as the Trustees and officers are required to do in the course of their duties to the Trust and all shareholders—when the Dissident Group seeks to do the same.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 85. Mr. Oliver denies that the language quoted sentence 3 of Paragraph 85 appears in an April 11, 2019 press release issued by the Investor Group led by SoftVest and denies the remaining allegations in sentence 3 of Paragraph 85. Mr. Oliver denies the allegations in sentences 2 and 4 of Paragraph 85.

86. **[1]** Second, the Dissident Group's April 16, 2019 publicly-released video states that Defendant is "not a dissident." **[2]** This is false and misleading because it implies that the Dissident Group is not in opposition to the Trust with respect to the nomination of trustees. **[3]** The use of the term "dissident" is used in the context of contested board elections to describe a shareholder of

an issuer who has nominated a nominee to the board that is not supported by the issuer. **[4]** The Dissident Group has taken a course of action that fits exactly within the understanding of the term "dissident" (i.e., "a person who opposes"), and it is false and misleading to assert otherwise.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 86. Mr. Oliver denies the allegations in sentences 2, 3, and 4 of Paragraph 86.

87. **[1]** Third, the Dissident Group's publicly-filed May 2, 2019 presentation contains a slide that implies that it is fully committed to keeping the Trust's water business a part of its operations for the long-term future. **[2]** It creates this impression by stating, among other examples, that "the water services business has the potential to be even larger than [the Trust's] existing oil royalty and land segments," and that it would "assess various types of water ventures to limit risk and maximize long term growth." **[3]** The Dissident Group omits that it had previously disclosed in its proxy that Defendant would encourage the Trust to evaluate the existing water business and, with the assistance of outside consultants, determine whether it is advisable to grow operations internally, partner with a strategic partner, or *sell the water rights to a third party*. **[4]** The Dissident Group omits that, in its March 15, 2019 Schedule 13D/A, it disclosed that its plans for the Trust include *a potential separation or sale of the water business to a third party with a retained royalty*. **[5]** If the Dissident Group has changed its views in this regard, it has not accurately presented that information to shareholders.

RESPONSE: Mr. Oliver denies the allegations Paragraph 87.

88. **[1]** Schedule 14A provides a list of items that are required to be disclosed by participants in a proxy statement pursuant to Section 14(a) of the Exchange Act. **[2]** The Dissident Group's proxy contains material misstatements and omissions with respect to items required by Schedule 14A.

RESPONSE: Mr. Oliver admits the allegations in sentence 1 of Paragraph 88. Mr. Oliver denies the allegations in sentence 2 of Paragraph 88.

89. First, with regard to all Dissident Group members except for Defendant, the Dissident Preliminary Proxy Statement violates Item 5(b)(iii) under Exchange Act Rule 14a-101 by omitting to state, for every participant, whether or not, during the past ten years, the participant has been

convicted in any criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 89.

90. **[1]** Second, Item 4(b)(2) of Schedule 14A requires a discussion of whether "regular employees of any other participant in a solicitation have been or are to be employed to solicit security holders" and a description of "the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose." **[2]** The Dissident Group proxy omits this required discussion.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 90.

Schedule 13D Omissions

91. **[1]** Schedule 13D requires the disclosure of any person acquiring beneficial ownership of more than 5% of the registered securities of a corporation. **[2]** Section 13(d)(3) includes within the definition of "person" a "group" formed to acquire, hold, or dispose of securities. **[3]** The Dissident Group filed its Schedule 13D on March 15, 2019, and identified only SoftVest LP, SoftVest Advisors LLC, Defendant, ART-FGT Family Partners Limited, the Tessler Family Limited Partnership, and Allan Tessler as members of the "group" for purposes of Section 13(d). **[4]** However, it failed to disclose that Santa Monica and UGLIC had formed a "group" under Section 13(d) and were operating as hidden participants in the proxy solicitation.

RESPONSE: Mr. Oliver admits the allegations in sentences 1, 2, and 3 of Paragraph 91. Mr. Oliver denies the allegations in sentence 4 of Paragraph 91.

92. **[1]** First, Santa Monica bought shares immediately after the Dissident Group launched the proxy contest on March 15, 2019 and issued a Schedule 13D in support of Defendant's candidacy, discussed more below. **[2]** Santa Monica also has a longstanding relationship with Horizon Kinetics and Murray Stahl. **[3]** For example, Santa Monica's principal, Lawrence J. Goldstein, is a member of the Board of Directors of FRMO Corp., a company that trades on the OTC Market under the ticker symbol "FRMO". **[4]** Horizon Kinetics' co-founders, Murray Stahl and Steve Bregman, founded

FRMO and Mr. Stahl serves as its CEO and Chairman, while Mr. Bregman is President, CFO, and Director of FRMO.

RESPONSE: Mr. Oliver admits that Santa Monica has owned shares of TPL since 2005, admits that Santa Monica owns more than 17,000 shares of TPL, admits that Santa Monica acquired 112 of those shares after the Investor Group led by SoftVest filed its proxy statement, admits that Santa Monica issued a Schedule 13D in support of Mr. Oliver's election as trustee, and denies any remaining allegations in sentence 1 of Paragraph 92. Mr. Oliver admits the allegations in sentences 2, 3, and 4 of Paragraph 92.

93. **[1]** Second, UGLIC, which holds 39,000 shares of the Trust, issued a press release on April 16, 2019 in "enthusiastic support" of Defendant and the Dissident Group. **[2]** Defendant was an 8.2% shareholder of UGLIC as recently as 2016.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 93.

94. **[1]** UGLIC also has a longstanding relationship with Defendant. **[2]** Jesse Correll has been the Chairman and CEO of UGLIC since 2000. **[3]** Correll was a member of the Board of Directors of AMEN from December 2008 until at least September 2010 (the specific date is publicly unknown). **[4]** Correll is also connected to SFF Royalty, LLC through his involvement with UGLIC, which was a member of SFF Royalty, LLC from 2010 through at least 2014. **[5]** SFF Royalty, LLC is an entity through which AMEN owns oil and gas interests.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 94.

95. **[1]** Consequently, UGLIC is an undisclosed member and hidden participant in the Dissident Group's proxy solicitation. **[2]** Therefore, the Dissident Group should be compelled to make corrective disclosures to its Schedule 13D filing.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 95.

V. COUNT I – VIOLATION OF SECTION 14(a) OF THE EXCHANGE ACT

96. Plaintiffs repeat and incorporate the allegations in Paragraphs 1 through 95 as if fully set forth herein.

RESPONSE: Mr. Oliver repeats and incorporates every response to Paragraphs 1

through 95 as if fully set forth herein.

97. **[1]** Section 14(a) of the Exchange Act provides, "It shall be unlawful for any person in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy ... ." 15 U.S.C. § 78n(a). **[2]** Rule 14a-9, promulgated thereunder, provides that no solicitation shall be made that is "false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading."

RESPONSE: Mr. Oliver admits the allegations in Paragraph 97.

98. Defendant issued, and caused to be issued, and participated in the issuance of materially false and misleading statements to Trust shareholders.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 98.

99. Defendant had a duty in his solicitation of Trust shareholders to provide truthful disclosures.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 99.

100. Defendant knew, or in the exercise of reasonable care should have known, that the statements contained in the solicitation materials were materially false and misleading.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 100.

101. If left uncorrected, the materially misleading statements and omissions in the solicitation materials will deprive the Trust's shareholders of the opportunity to make decisions on the future of the Trust based on the full and accurate information to which they are entitled, and both the Trust and its shareholders will be irreparably harmed.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 101.

102. The Trust was damaged, and continues to be damaged, as a result of the material misrepresentations and omissions in Defendant's solicitation materials.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 102.

VI. COUNT II – VIOLATION OF SECTION 13(d) OF THE EXCHANGE ACT

103. Plaintiffs repeat and incorporate the allegations in Paragraphs 1 through 102 as if fully set forth herein.

RESPONSE: Mr. Oliver repeats and incorporates every response to Paragraphs 1 through 102 as if fully set forth herein.

104. Section 13(d) of the Exchange Act provides, "When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for the purposes of" the "beneficial owner" inquiry. 15 U.S.C. § 78m(d)(3).

RESPONSE: Mr. Oliver admits the allegations in Paragraph 104.

105. Defendant and the Dissident Group failed to disclose in their Schedule 13D filing that Santa Monica and UGLIC are acting as a "group" for purposes of Section 13(d) of the Exchange Act and that they are hidden participants in the Dissident Group's proxy solicitation in violation of Rule 14a-101 (Schedule 14A), Item 4.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 105.

106. Defendant had a duty in his solicitation of Trust shareholders to provide truthful disclosures.

RESPONSE: Mr. Oliver admits the allegations in Paragraph 106.

107. Defendant knew, or in the exercise of reasonable care should have known, that the omissions in the solicitation materials would mislead Trust shareholders.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 107.

108. If left uncorrected, the materially misleading omissions in the solicitation materials will deprive Trust shareholders of the opportunity to make decisions on the future of their investment based on the full and accurate information to which they are entitled, and both the Trust and its shareholders will be irreparably harmed.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 108.

109. The Trust was damaged, and continues to be damaged, as a result of the material

omissions in Defendant's solicitation materials.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 109.

VII. COUNT III – DECLARATORY JUDGMENT

110. Plaintiffs repeat and incorporate the allegations in Paragraphs 1 through 109 as if fully set forth herein.

RESPONSE: Mr. Oliver repeats and incorporates every response to Paragraphs 1 through 109 as if fully set forth herein.

111. Pursuant to 28 U.S.C. § 2201, this Court "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

RESPONSE: Mr. Oliver admits the allegations in Paragraph 111.

112. As set forth above, the Dissident Group's proxy solicitation violated the SEC's proxy rules.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 112.

113. In addition to the misstatements and omissions contained within Defendant's solicitation materials, Defendant has refused to provide sufficient information for the Trustees to determine whether Defendant is qualified or disqualified, to serve as a trustee.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 113.

114. The Trustees have fiduciary duties, and duties pursuant to the Trust's governing documents, to ensure that trustee nominees are not disqualified, both with respect to capabilities and personal character and integrity.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 114.

115. Defendant's refusal to provide the requested disclosures prevents the Trustees, and the shareholders, from being able to determine whether Defendant is qualified, or disqualified, to serve as a trustee of the Trust.

RESPONSE: Mr. Oliver denies the allegations in Paragraph 115.

116. **[1]** In addition, Defendant is now purporting to have been elected as a trustee of the

Trust at the Invalid Meeting based upon the sham "vote" that occurred on May 22, 2019. **[2]** The Invalid Meeting at which that "vote" occurred was not properly noticed, did not have a quorum, and was otherwise invalid.

RESPONSE: Mr. Oliver admits that he was elected as a trustee at the duly authorized, properly noticed May 22, 2019 Special Meeting and denies the remaining allegations in Paragraph 116.

117. Plaintiffs therefore seek a declaration that (i) Defendant is ineligible to be considered for election as a trustee until 60 days after he provides full and accurate disclosures requested by the Trustees, and is thereafter found by the Trustees to be qualified to serve as a trustee, and issues and mails corrective disclosures to all shareholders with respect to the misstatements and omissions contained within his solicitation materials; and (ii) the Dissident Group's proxies solicited to date by the Dissident Group are invalid, null, and void; (iii) the notice provided by Defendant and his Dissident Group with respect to the May 22, 2019 Invalid Meeting was invalid and ineffective; (iv) the Invalid Meeting conducted by Defendant and the Dissident Group on May 22, 2019 was not a lawful Special Meeting; and (v) any votes cast at the Invalid Meeting conducted by Defendant and the Dissident Group on May 22, 2019 are invalid, null, and void.

RESPONSE: Mr. Oliver admits that Plaintiffs seek the relief described in Paragraph 117 but denies that they are entitled to that relief.

VIII. REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request entry of a judgment in their favor and against Defendant as follows:

a. Ordering Defendant to issue corrective disclosures with respect to the misstatements and omissions contained within his solicitation materials;

b. Declaring that Defendant is ineligible to be considered for election as a trustee until 60 days after he provides full and accurate disclosures requested by the Trustees and is thereafter found by the Trustees not to be disqualified to serve as a trustee;

c. Declaring that the proxies solicited to date by the Dissident Group are invalid, null, and void;

d. Declaring that (i) the notice provided by Defendant and his Dissident Group with respect to the May 22, 2019 Invalid Meeting was invalid and ineffective; (ii) the Invalid Meeting conducted by Defendant as a purported "chairman" and the Dissident Group on May 22, 2019 was not a lawful Special Meeting of the Texas Pacific Land Trust; and (iii) any votes cast at the Invalid Meeting conducted by Defendant and the Dissident Group on May 22, 2019 are invalid, null, and void;

e. Enjoining Defendant from running for election as a trustee until 60 days after he provides full and accurate disclosures requested by the Trustees and is thereafter found by the Trustees not to be disqualified to serve as a trustee, and Defendant issues and mails corrective disclosures to all shareholders with respect to the misstatements and omissions contained within his proxy materials;

f. Attorneys' fees, expenses, and costs of suit; and

g. Such other and further relief as may be proper.

RESPONSE: Mr. Oliver admits that Plaintiffs seek the relief described in the "Requested Relief" paragraph but denies that they are entitled to that relief.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof he would not otherwise bear, Mr. Oliver asserts the following affirmative defenses, while reserving the right to amend this Answer to add additional affirmative defenses as this case and discovery proceed:

1) Plaintiffs have failed to state a claim upon which relief can be granted.

2) Plaintiffs' claims are barred by the doctrine of unclean hands.

3) Plaintiffs' claims are barred by the doctrines of waiver and/or estoppel.

4) Plaintiffs' claims alleging misrepresentations and omissions are barred on account of Mr. Oliver's subsequent curing disclosures.

PRAYER

Defendant Eric L. Oliver requests that the Court dismiss all of the claims against him with prejudice.

COUNTERCLAIMS OF ERIC L. OLIVER, SOFTVEST, L.P., HORIZON KINETICS LLC, AND ART-FGT FAMILY PARTNERS LIMITED AGAINST DAVID E. BARRY AND JOHN R. NORRIS III

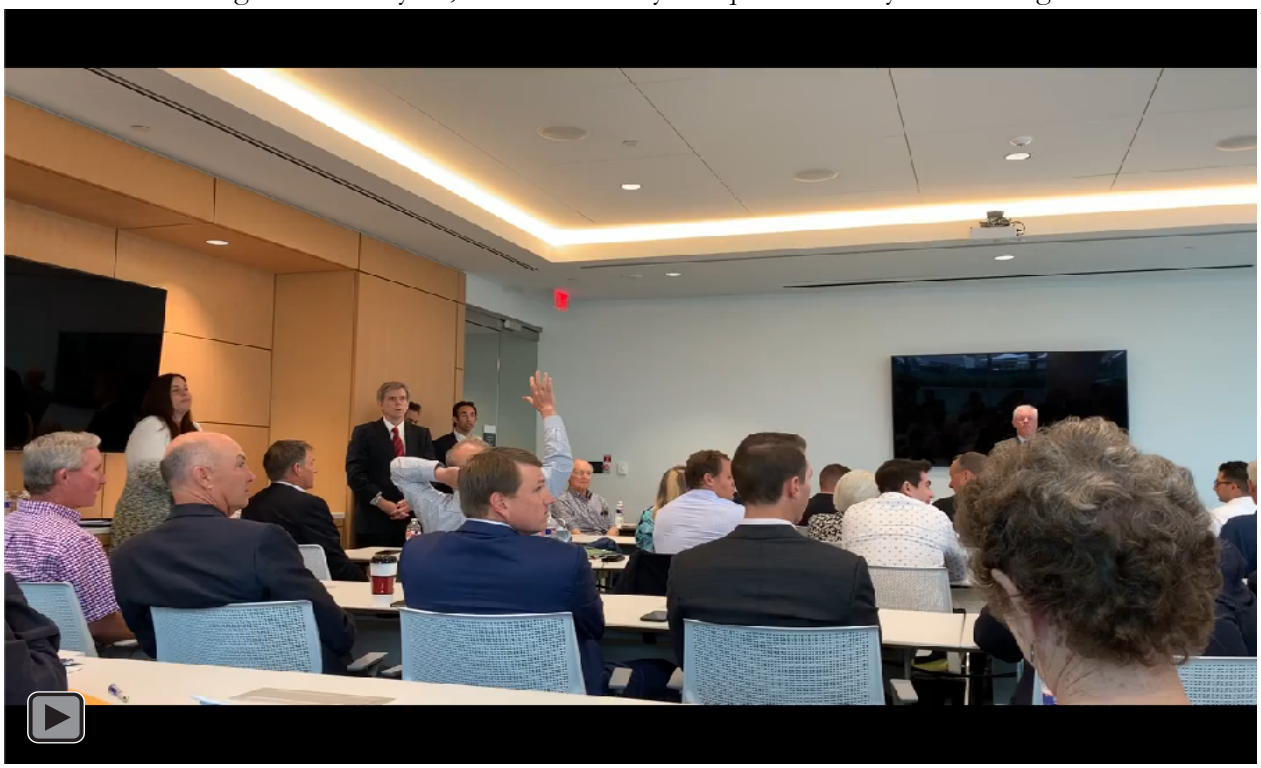
1. This case comes before this Court out of desperation—the desperation of David Barry and John Norris to prevent the shareholders of the Texas Pacific Land Trust ("TPL") from duly electing Eric Oliver as a trustee. TPL is a trust with a market capitalization of over $6 billion that publicly trades on the New York Stock Exchange and has thousands of shareholders. Barry and Norris are TPL's two incumbent trustees. TPL's trustees manage on behalf of TPL's shareholders almost a million acres of land in West Texas. TPL's 1888 Declaration of Trust—its Constitution—provides for three trustees to manage TPL's properties. Earlier this year, TPL's third trustee announced that he was resigning his position due to health reasons. On his resignation, the Declaration of Trust expressly required that the incumbent trustees call and notice a shareholder meeting at which an election would be held so TPL's shareholders could elect a new trustee.

2. There is no room in a trust for an abuse of trust. There are few higher duties in the law—few standards of conduct more exacting—than the fiduciary duties that trustees owe to the beneficiaries of a trust. But from the moment that Horizon Kinetics LLC, TPL's largest shareholder, and other shareholders announced that they intended to nominate Mr. Oliver to be TPL's third trustee, the incumbent trustees have fought tooth-and-nail and engaged in a no-holds-barred campaign to defeat Mr. Oliver's nomination. They have squandered enormous amounts of TPL's money on pricey consultants and private investigators, misled investors, misrepresented the words and actions of federal regulators, attacked Mr. Oliver personally and professionally, and—once it became clear that TPL's shareholders overwhelmingly supported Mr. Oliver's candidacy—engaged in a course of unlawful conduct intended to prevent TPL's shareholders from casting their votes in favor of Mr. Oliver. Indeed, the incumbent trustees went so far as to manufacture excuses in an attempt to cancel a shareholder meeting that they themselves had initially scheduled, because they knew that if the

meeting went forward, Eric Oliver was certain to be elected as a trustee. These actions are not only in breach of the incumbent trustees' fiduciary duties, but also in clear violation of the express scope of their powers and authority under TPL's Declaration of Trust, making them individually liable for the losses incurred by the trust in this process.

3. Why? Why are the incumbent trustees doing this? Why are they so desperate to keep Mr. Oliver off of TPL's Board, when his overriding objective as a trustee would be to increase transparency and accountability? Why did the incumbent trustees—less than 24 hours after receiving the latest tabulation summary showing that Mr. Oliver held an insurmountable lead in the voting—file a lawsuit against Mr. Oliver while simultaneously attempting to derail the meeting at which TPL's shareholders would elect Mr. Oliver as TPL's third trustee? Why did the incumbent trustees wait to file their lawsuit at the eleventh hour, when they had known for months all of the issues implicated by their lawsuit? What are the incumbent trustees afraid of? What are they hiding?

4. When TPL's shareholders finally had a chance to make their voices heard at the shareholder meeting held on May 22, these are exactly the questions they were asking:



5. Ultimately, the incumbent trustees' efforts to thwart Mr. Oliver's election as a trustee failed. The shareholder meeting proceeded on May 22 as noticed, and at that meeting Mr. Oliver was duly and properly elected as TPL's third trustee. By this counterclaim, Mr. Oliver and three principal shareholders that supported his candidacy seek a declaratory judgment enforcing the results of the May 22 shareholder election. They also seek an injunction prohibiting the incumbent trustees from attempting to conduct any official TPL business without the participation of Mr. Oliver. And they seek money damages from the trustees individually, both for themselves (to compensate them for the expenses they have incurred as a result of the incumbent trustees' misconduct) and for TPL's shareholders (to restore to them the funds the incumbent trustees have wasted and spent without authority or justification).

THE PARTIES

6. Counter-Plaintiff Eric Oliver is the Founder and President of SoftVest Advisors, LLC, a registered investment adviser that acts as an investment manager for clients with investments in oil and gas minerals and royalties. Mr. Oliver is a resident and citizen of Texas.

7. Counter-Plaintiff SoftVest, L.P. ("SoftVest") is a hedge fund that invests in oil and gas minerals and royalties and publicly traded securities and derivatives. SoftVest is a client of SoftVest Advisors, LLC. SoftVest is a Delaware limited partnership whose principal place of business is in Abilene, Texas. For purposes of federal diversity jurisdiction, the citizenship of a limited partnership is based on the citizenship of each of its partners. SoftVest's partners are citizens of, among other states, Texas, Tennessee, Wyoming, Florida, Ohio, Delaware, and Nevada. SoftVest has been a shareholder of TPL since 2004.

8. Counter-Plaintiff Horizon Kinetics LLC, through its wholly owned registered investment adviser Horizon Kinetics Asset Management LLC ("Horizon"), is an independent, employee-owned registered investment advisor that has been investing alongside and serving its clients

since 1994. Horizon is a Delaware limited liability company whose principal place of business is in New York, New York. For purposes of federal diversity jurisdiction, the citizenship of a limited liability company is based on the citizenship of each of its members. Horizon's members are citizens of, among other states, New York. Horizon has been a shareholder of TPL since 1994.

9. Counter-Plaintiff ART-FGT Family Partners Limited ("ART-FGT LP") is engaged in the business of investing in private and public securities. ART-FGT LP is a Wyoming limited partnership with its principal place of business in Wilson, Wyoming. For purposes of federal diversity jurisdiction, the citizenship of a limited partnership is based on the citizenship of each of its partners. ART-FGT LP's partners are citizens of Wyoming and New York. ART-FGT LP has been a shareholder of TPL since 2015.

10. This counterclaim will refer to Mr. Oliver, SoftVest, Horizon, and ART-FGT LP collectively as the "SoftVest Plaintiffs."

11. Counter-Defendant John R. Norris III is one of TPL's incumbent trustees. Mr. Norris is a resident and citizen of Texas.

12. Counter-Defendant David E. Barry is one of TPL's incumbent trustees. Mr. Barry is resident and citizen of New York.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the counterclaims under 28 U.S.C. § 1367 because the Court has original jurisdiction of the action and all of the claims asserted in the action are so related to one another that they form part of the same case or controversy under Article III of the United States Constitution.

14. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to the counterclaims occurred in this judicial district.

15. The Court has personal jurisdiction over Barry and Norris because they consented to

the Court's exercise of jurisdiction over them when they filed their complaint and because the counterclaims arise out of and relate to contacts each of them has with Texas.

STATEMENT OF FACTS

A. The Incumbent Trustees' Mismanagement of TPL

16. Texas Pacific Land Trust ("TPL") is a trust that is publicly traded under the ticker symbol TPL. TPL is based in Dallas and holds title to extensive tracts of land in the State of Texas. As the owner of more than 900,000 acres of land in West Texas, TPL is one of the State's largest private landowners. TPL manages this land and derives its income primarily from oil and gas royalties, revenues from easements and sundry income, grazing leases, land sales, water sales and royalties, and interest. Its current market capitalization is over $6 billion.

17. TPL's history dates back to 1888, when it was created as part of the reorganization that followed the bankruptcy of the Texas & Pacific Railway. TPL was organized under a Declaration of Trust that was executed and delivered in New York on February 1, 1888 ("Declaration of Trust"). TPL is the second oldest trading security on the New York Stock Exchange.

18. The sole intended purpose of the formation of TPL was to provide an orderly liquidation of the land that secured defaulted bonds of the Texas & Pacific Railway. At the time, there was no oil and gas activity on the lands, and the trustees simply oversaw the liquidation of trust assets and the distribution of proceeds.

19. Under the current administration, TPL has deviated from its authorized mandate. It now engages in myriad activities not contemplated at the time the Declaration of Trust was executed. For example, without shareholder or court approval, the incumbent trustees have created a water operating company and multiple other subsidiaries, one of which recently purchased a fixed wing multi-engine aircraft, engaged in complex land and royalty trading transactions, reinvested nearly $100 million of shareholder capital annually, and given themselves a raise of more than 5000%. These and

other activities clearly make TPL an operating business, not a liquidating trust.

20. Despite the fact that TPL no longer operates as a liquidating trust in contravention of its Declaration of Trust, TPL's assets continue to operate under a governance structure put in place in the year 1888.

21. For example, instead of a modern board of directors, control of TPL's assets is vested in only three trustees.[7] Once elected, the trustees serve until their resignation, disqualification, or death. In practice, the trustees are effectively appointed for life. Under the Declaration of Trust, TPL is not required to hold an annual meeting of its shareholders—it holds shareholder meetings only to elect new trustees. Before the meeting on May 22, 2019, TPL had held a grand total of four shareholder meetings in the previous 30 years.[8]

22. This archaic and obsolete governance structure, when combined with the incumbent trustees' deviation from their operating authority under the Declaration of Trust, has given rise to a dismal governance track record, including a lack of accountability to investors, grossly negligent business decisions, poorly incentivized management, rampant undisclosed conflicts of interest enabled by a near-total lack of transparency, and—of particular relevance here—willful obstruction and complete disregard of shareholders' rights and views during the recently concluded proxy contest. Shareholders have benefitted from positive TPL returns, in spite of this poor governance, simply as a

[7] "In the event of the death, resignation or disqualification of any of the trustees a successor shall be elected at a special meeting of the certificate holders by a majority in the amount of the certificate holders present in person or by proxy at such meeting whose names shall have been registered in the books of the trustees at least fifteen days before such meeting, and the remaining trustees and the trustee so resigning, or the executor or executors of any deceased trustee, shall make, execute and deliver to the successor so elected such proper deeds or instruments of conveyance as shall be necessary in order to vest in him the same title which his predecessor had in and to the lands and premises aforesaid." (Art. 3, Declaration of Trust, dated February 1, 1888).

[8] Because of TPL's unusual structure as a trust, holders in the trust are technically holders of so-called Sub-Share Certificates of Proprietary Interest. For ease of reference, this counterclaim will refer to the holders as "shareholders." The shareholders' ownership interests, which are publicly traded and listed on the New York Stock Exchange, will be referred to as "Certificates."

result of the high-quality assets held by the trust. Of course, being dealt a Royal Flush hardly makes one an adept poker player.

Lack of Accountability to Investors

23. TPL's lack of accountability to investors is evident from the fact that neither of the incumbent trustees possesses relevant experience in the oil and gas business. TPL's general agents (the CEO, who is 34 years old, and CFO) have no oil and gas experience outside of their current roles. The incumbent trustees also acknowledge that neither of them would meet the definition of an "audit committee financial expert" under Sarbanes Oxley.[9] This is not the kind of management a $6 billion entity requires, but because the trustees serve life terms, they do not have to answer to the shareholders. It is completely out of step with contemporary practices in corporate governance for investors of a publicly traded entity to effectively have no ability to replace a trustee and instead be forced to think of the trustees' tenure in terms of their life expectancy.[10]

Grossly Negligent Business Decisions

24. This lack of any meaningful accountability to TPL's shareholders has allowed the incumbent trustees to cause TPL to make capital-allocation decisions and enter into transactions that betray the incumbent trustees' inexperience and poor judgment:

- In 2011—without prior disclosure to shareholders—TPL swapped 15,746 surface acres and 13,211 gross 1/16 non-participating royalty interest ("NPRI") along the state line in Culberson County for Mineral Classified acreage in central Culberson. Chevron is

[9] Congress passed Sarbanes Oxley following the Enron debacle in an effort to improve internal financial controls and financial reporting procedures at public companies. One way it did so was by requiring at least one member of the company's audit committee to be a financial expert—someone who through education, training, and experience (such as past service as a CFO, controller, or auditor) is able to, among other things, understand and work with audited financial statements, financial controls, and generally accepted accounting principles. The fact that neither of the incumbent trustees qualifies as an "audit committee financial expert" means that the Board currently overseeing TPL's operation is not able to ensure that TPL's financial results are properly reported.

[10] In an email communication on May 8, 2019, the incumbent trustees threatened to hold the SoftVest Plaintiffs hostage "until another vacancy opens up (and it may be another decade until that happens)."

developing the property the Trustees gave away, while no activity has taken place on the Mineral Classified property.

- In 2018, without an articulated rationale, TPL sold to WPX Energy 14,000 Surface Acres in Loving/Reeves County in an area that TPL has described as a "Core Surface Position".
    - Clay Gaspar, President and CEO of WPX Energy, publicly relished the business coup he had pulled on the TPL Trustees at the expense of TPL shareholders:

      "Think about the announcement from last quarter, TPLT, the surface acreage. That opens up a whole new arena of value creation for us. ***On the call I tried to convey how important and value-creating this $100mm investment is going to be to the company. As we stand today, we clearly see, time and time again, opportunities coming our way because of that position that we hold. Multiple-times-over potential value creation of what we have invested in it. …***

      "We invested $100mm last quarter to buy 14,000 acres over the heart of our state line field. How that's materializing in value, I can tell you, dealing with other surface owners, making sure that all this value creation Rick was just talking about around the water business and the recycling, it's imperative that you have a strong land position because otherwise the surface owners can essentially hold you hostage to a lot of the decisions you'd like to make."

      (emphasis added).

- In 2018, TPL purchased surface acreage in Hudspeth, Concho, and Mitchell Counties, even though there is little to no drilling activity in these counties; management has offered no explanation for why purchasing this land was more attractive than buying back shares.
- In 2018–19, TPL sold Midland County NPRI in the heart of the Midland Basin to Chevron without any disclosure or rationale then bought an undivided 30% interest in a portfolio of tiny interests from Tumbleweed Royalties scattered all over the Midland Basin.
- TPL management has spent over $62 million on an active water business that requires large capital expenditures and extensive employee management, with limited disclosures and without shareholder or court approval.

Each of these actions by the incumbent trustees was *per se* in violation of the Declaration of Trust, which grants the trustees only specific and narrow powers under Section First of the Declaration, as well as the incumbent trustees' fiduciary duties as trustees under common law. And these breaches have caused real harm to TPL and its shareholders: 2018 had the lowest percentage of revenue allocated to the retiring of shares of any year in TPL's history, despite a 50 percent-plus drop in stock price during the fourth quarter and a significant cash position. While the trust sat on its hands and failed to buy back shares, defendant Barry did take advantage of the opportunity to buy 100 shares on December 27, 2018 for $467.0595 (and later bragged to the SoftVest Plaintiffs about his financial

savviness in making the transaction from a gondola in Vail and apologizing for the trust dropping the ball).

Misaligned Management Interests

25. TPL's management and trustees have virtually no alignment of interests with shareholders. The incumbent trustees own minimal equity in TPL. Total inside ownership in the stock is less than 0.03 percent of the outstanding shares: just 1,600 shares out of more than 7,700,000 shares outstanding (1,300 shares by the two incumbent trustees and 300 by the two general agents). The current inside-ownership level is a dramatic decline and the lowest level over the past 30 years. At recent prices, total combined stock ownership by the two incumbent trustees and the two general agents is less than either of the bonuses paid to the two general agents. Thus, the general agents are incentivized to focus on their large cash salaries and bonuses (which are tied to short-term profits) instead of focusing on the long-term stock-price appreciation that drives value for shareholders.

Rampant Undisclosed Conflicts of Interest

26. The incumbent trustees have also engaged in improper related-party transactions and tried to conceal those transactions through a lack of transparency and inadequate disclosures. For instance, the incumbent trustees recently approved a 5,200 percent increase to their own pay and a more than 1,000 percent increase to management's pay without disclosure to, or the approval of, the shareholders. The Declaration of Trust fixes the incumbent trustees' annual salary at a set number—to properly increase their salary, the incumbent trustees should have sought to amend the Declaration of Trust to permit the salary increase or sought court approval.[11] Because they failed to do so, they are personally liable to reimburse the trust for the excessive salaries they have drawn.

[11] "The said trustees shall receive as compensation for their services, the sum of four thousand dollars per annum to be paid to the chairman and two thousand dollars per annum to be paid to each of the other two trustees." (Art. 1, Declaration of Trust, dated February 1, 1888).

27. In addition, under the trustees' watch, TPL's previous CEO assigned large surface acreage rights to a private operator shortly before he left TPL to go work for the same operator that was on the other side of that transaction. This private operator is also the same entity that in 2011—without disclosure to shareholders—TPL swapped 15,746 surface acres and 13,211 gross 1/16 NPRI.

28. On top of that, TPL has retained the law firm Kelley Drye & Warren LLP ("Kelley Drye") to perform legal services on its behalf, including in connection with the recently concluded proxy contest. On information and belief, TPL has paid substantial legal fees to Kelley Drye, and the incumbent trustees approved and authorized the payment of those fees. Kelley Drye's website lists David Barry as a partner of Kelley Drye, and TPL's proxy statement inconsistently lists Mr. Barry as a retired partner of Kelley Drye. There is an obvious potential conflict of interest in TPL's hiring of a law firm at which one of its two incumbent trustees either is or recently was a partner. Because of that conflict of interest, TPL should have disclosed to its shareholders the fees it has paid to Kelley Drye. It has failed to make that disclosure.

29. Finally, one of the current trustees also serves as President of Tarka Resources, which recently merged with Manti to form Manti Tarka Permian, L.P. Manti Tarka has drilled on TPL's NPRI in Pecos County. It is also unclear how Manti Tarka conducted this drilling under TPL's NPRI, unless it had a farm out from Chevron (which owns the minerals). By reputation, obtaining a farm out from Chevron is extraordinarily difficult, unless Chevron receives something valuable in return (such as perhaps the sale of NPRI). The trustees have utterly failed to provide shareholders with adequate information regarding these transactions. The SoftVest Plaintiffs estimate that each square mile in the Delaware basin could produce approximately $1 billion of oil and gas. Additionally, TPL owns surface acreage around the wells being drilled by Manti Tarka, so it is unclear if Manti Tarka has engaged in any transactions relating to surface use rights and, if so, whether anyone at TPL other than the conflicted trustee knew of and approved these transactions.

B. The Incumbent Trustees' Misconduct in the Recently Concluded Proxy Contest and Eric Oliver's Election as Trustee

30. The incumbent trustees have also attempted to obstruct shareholder democracy and engaged in waste, negligence, and abdication of duty during the recently concluded proxy contest. On February 26, 2019, TPL announced that Maurice Meyer III, Chairman of TPL's Board of Trustees, had submitted his resignation as trustee effective February 25, 2019. On Mr. Meyer's resignation, under the express terms of the Declaration of Trust, the incumbent trustees were required to call and notice a shareholder meeting at which an election would be held and TPL shareholders would elect a new trustee. That is where the incumbent trustees' power and authority with respect to the special meeting ended under the Declaration of Trust.

31. Together, Horizon, SoftVest, and ART-FGT LP own more than 25 percent of all outstanding TPL shares. All three are long-term shareholders in TPL: Horizon has beneficially owned shares in TPL since 1994, SoftVest has beneficially owned shares since 2004, and ART-FGT LP has beneficially owned shares since 2015. From time to time over the years, the SoftVest Plaintiffs and other investors have tried to engage with the incumbent trustees to discuss various opportunities to maximize TPL's value for the benefit of its shareholders. In 2016, SoftVest and ART-FGT engaged tax counsel to evaluate a master limited partnership structure and later suggested that the trust actively consider converting some or all of its operations into a master limited partnership. While these transactions would have saved the trust hundreds of millions because of the high corporate tax rate at the time and the elimination of double-taxation, in light of various changes to US tax laws since 2016, including lower corporate tax rates, SoftVest has publicly stated it no longer recommends a conversion into a master limited partnership. More recent discussions have included (1) the conversion of the trust into a Delaware corporation subject to modern governance principles (such as annually elected directors), (2) focusing on the establishment of an experienced team around the trust's new water business, with clearly defined goals and objectives, or otherwise considering the separation or sale of

such business to a third party with a retained royalty, and (3) the addition of Eric Oliver as a trustee of the trust. Mr. Oliver is an experienced oil and gas investor with over 22 years of experience buying and selling properties and over 35 years of experience managing investments with an emphasis in the energy market.

32. The incumbent trustees have not been receptive to these discussions and have rejected the idea that TPL's corporate governance structure should be modernized so that TPL and its shareholders can benefit from the disclosures, controls, and governance that are required of modern operating corporations. As a result, when TPL announced that Mr. Meyer was resigning as a trustee on February 26, 2019, Allan Tessler privately suggested to the incumbent trustees that Mr. Oliver be nominated to fill the newly created vacancy on TPL's board. The trustees only requested a short bio from Mr. Oliver, which he promptly delivered on February 28, 2019. The trustees never mentioned or delivered a questionnaire to Mr. Oliver at that time.

33. On March 4, 2019, the incumbent trustees formally rejected the request that Mr. Oliver be nominated as trustee. The trustees also publicly announced that a shareholder meeting would be held here in Dallas on May 8, 2019.

34. Also on March 4, TPL publicly announced that the incumbent trustees had nominated Preston Young for election as a trustee to fill the vacancy created by the resignation of Maurice Meyer III. Mr. Young is a Regional Managing Partner for Stream Realty Partners in Houston, Texas. This nomination was yet another act of improper self-dealing. In nominating Mr. Young, the incumbent trustees failed to disclose that Stream Realty manages three buildings (two in Houston and one in Austin) that are owned by one of the incumbent trustee's firms. Incumbent trustee David Barry is even quoted on the Stream Realty Website[12]:

[12] Incumbent trustee David Barry is also currently listed as a partner on the website for one of the two law firms representing TPL.

> Stream has done a superb job of rationalizing expenses, supervising several major construction projects and improving the relationships with our tenants. They have consistently demonstrated their expertise and professionalism in all aspects of their services.
> – Dave Barry – President, Donerail Corporation

35. When asked in March about the process to nominate Mr. Young, defendant Barry refused to provide an answer. After Mr. Young's conflict of interest started to come to light through sources other than TPL, the incumbent trustees were forced to withdraw Mr. Young's nomination. On April 8, 2019, the incumbent trustees announced that they were replacing Mr. Young with their current candidate, Mr. Donald Cook.

36. On March 15, 2019, SoftVest delivered to TPL written notice of its nomination of Mr. Oliver for election as a trustee at the May 8, 2019 shareholder meeting. SoftVest, Horizon, and ART-FGT LP supported Mr. Oliver's nomination. After his nomination, Mr. Oliver prepared with counsel a preliminary proxy statement filing that included dozens of pages of extensive disclosures about Mr. Oliver's ownership of stock, potential conflicts, related parties, stock transactions, and his professional background. The filing fully satisfied the disclosure requirements of federal securities laws. In order to assist with the preparation of this filing, Mr. Oliver completed a standard 42-page questionnaire prepared by his counsel to make sure the proxy statement filed with regulators and later distributed to shareholders was complete and accurate in all respects and fully disclosed in accordance with law all material information relevant to shareholders' decision of whether to vote for Mr. Oliver. The preliminary proxy statement was filed with the SEC on March 25, 2019, and was subject to review and comment by regulators for a period of two weeks before it was filed in definitive form and mailed to shareholders on April 8.

37. But the incumbent trustees, for reasons known only to them, were determined to prevent Mr. Oliver's election as trustee—at virtually any cost. Shortly after SoftVest announced its nomination of Mr. Oliver, the incumbent trustees launched an intensive and expensive proxy

campaign against Mr. Oliver. The incumbent trustees' newly-retained outside counsel went so far as to issue a press release announcing they had been hired to conduct a "proxy contest" against the plaintiffs.[13] In conducting this "proxy contest," the incumbent trustees have gone beyond their power and authority under the Declaration of Trust, and committed a variety of unlawful and tortious acts that have caused irreparable harm to the SoftVest Plaintiffs.

38. The incumbent trustees poured enormous amounts of money into their proxy campaign to prevent Mr. Oliver's election. They hired two law firms, a public relations firm, an investment bank, a website design firm, and a proxy solicitor, paid for expensive ad placements online and in social media, and prepared and distributed multiple rounds of proxy materials to TPL's shareholders. On information and belief, the trustees also paid for private investigators to seek information that could be used to intimidate Mr. Oliver publicly or in private discussions.

39. On information and belief, the incumbent trustees have caused TPL to spend upwards of $5 million of shareholder capital on this proxy contest to date. But nowhere in the Declaration of Trust are trustees vested with the authority to wage proxy contests against shareholders, or in any way utilize trust property to impose on shareholders the nominee of the incumbent trustees. The trustees do not enjoy the same broad set of powers and wide field of discretion as the directors of a modern corporation. Nothing gives the incumbent trustees the power to take actions outside of managing the trust's property as strictly outlined in the trust documents. Because the incumbent trustees have exceeded their authority under the Declaration of Trust, they are personally liable to the trust for all the expenses they have incurred without proper authority.

40. After SoftVest announced its intention to nominate Mr. Oliver for election as a trustee at the May 8, 2019 shareholder meeting, the incumbent trustees took a series of improper,

[13] Counsel for the incumbent trustees has provided a number of direct quotes to the media throughout the "proxy contest."

unauthorized actions to delay that shareholder meeting or prevent it from taking place. The first occurred on March 25, 2019, when the incumbent trustees announced they had decided to postpone the date of the shareholder meeting from May 8, 2019, to May 22, 2019. Two weeks later, on April 8, 2019, the trust formally noticed and called a special shareholder meeting to be held in Dallas at 10:00 a.m. on May 22, 2019, to elect Mr. Meyer's successor. In neither of the announcements did the incumbent trustees raise any disclosure concerns with Mr. Oliver. That same day, SoftVest filed a definitive proxy statement with the Securities and Exchange Commission and immediately began to publicly solicit votes from TPL's shareholders for the election of Mr. Oliver as trustee at the May 22 shareholder meeting.

41. As proxy votes were submitted to, collected, and tabulated by Broadridge Financial Solutions, Inc.—the proxy management firm that was retained to process votes from most shareholders—it quickly became clear that TPL's shareholders overwhelmingly preferred Mr. Oliver to the incumbent trustees' candidate, Mr. Cook. But the incumbent trustees were determined to stop at nothing to prevent the shareholders from being allowed to exercise their right to elect Mr. Oliver as TPL's third trustee. So on May 8, 2019, they made a transparent and unlawful attempt to manipulate the outcome of the shareholder vote and advance the position of their preferred candidate by announcing that while the May 22 shareholder meeting would be convened as scheduled, the incumbent trustees would immediately adjourn the meeting until June 6, 2019. In the May 8 announcement, the incumbent trustees' claimed reason for this adjournment was that the United States Securities and Exchange Commissions had "required" them to supplement their proxy statement; two days later they filed disclosures making it clear that this statement was untrue.[14] The real reason for this "convene and adjourn" gambit was obvious: the incumbent trustees were trying

[14] Once again, no mention of disclosure issues or concerns relating to Mr. Oliver was referenced in the May 8 announcement adjourning the meeting date from May 22, 2019 to June 6, 2019.

to postpone the inevitable. Delaying a shareholder vote is a tactic companies may try to employ when they are losing a proxy fight. But under the Declaration of trust, neither TPL nor the incumbent trustees are empowered to adjourn, postpone, or otherwise delay a shareholder vote once the vote has been scheduled; only the shareholders have that power. The incumbent trustees' action was an improper, *ultra vires* attempt to circumvent the restrictions imposed by the Declaration of Trust.

42. On May 8, 2019—the same day that TPL announced its intention to try to delay the shareholder vote scheduled for May 22—the SoftVest Plaintiffs announced that they reserved the right to move forward with a vote on the election of a new trustee on May 22, 2019, as scheduled. On May 10, the SoftVest Plaintiffs issued another announcement confirming their intention to attend the shareholder meeting on May 22 and take any procedural steps required to bring to a vote the election of TPL's third trustee. Also on May 10, the SoftVest Plaintiffs filed a supplement to their proxy statement noting that by returning a proxy card to the SoftVest Plaintiffs that was signed and dated and in favor of the election of Eric Oliver, a vote would also be cast opposing any adjournment or delay in the special meeting.

43. Not only did the incumbent trustees unlawfully attempt to postpone the shareholders' vote, they also seriously inhibited the SoftVest Plaintiffs' ability to interact directly with stockholders by consistently refusing to provide the SoftVest Plaintiffs with a copy of the list of non-objecting beneficial owners of TPL shares (the "NOBO List") that TPL had obtained from Broadridge Financial Solutions, Inc. The NOBO list includes the names of beneficial owners of TPL shares who hold through brokers and other custodians that have given permission to their financial intermediary to release their identity. While TPL was able to directly contact retail shareholders throughout the campaign to advance the election of Donald Cook, the SoftVest Plaintiffs were disadvantaged because they were unable to use the shareholder lists.

44. The SoftVest Plaintiffs publicly requested the NOBO list on April 10, 2019 and made

several additional pleas for basic fairness in shareholder communications so each side could deliver their message directly to shareholders. TPL was able to access and utilize contact information of thousands of shareholders that the SoftVest Plaintiffs could not. In response to the SoftVest Plaintiffs' repeated request for the NOBO List, counsel for the trustees, in contradiction of the Declaration of Trust, required an open-ended indemnification agreement from the SoftVest Plaintiffs under which the SoftVest Plaintiffs would indemnify the Trust and its shareholders. The Trustees knew, or should have known, that this indemnification request was not only unnecessary and impermissible, but would create open-ended legal exposure for the SoftVest Plaintiffs. In the meantime, TPL and its advisors were contacting shareholders to solicit votes in favor of Donald Cook so frequently that Mr. Oliver actually had to answer questions from shareholders about why he was not calling them.

45. Not only did the incumbent trustees impermissibly attempt to postpone the shareholders' vote and tilt the playing field in their favor, they also attempted to unlawfully interfere with the proper administration of the proxy contest. Broadridge Financial Solutions, Inc. is the proxy management firm that was retained to conduct most of the collection, tabulation, and delivery of proxy votes to TPL and the SoftVest Plaintiffs in advance of the May 22 shareholder meeting. The agreement among TPL, SoftVest, and Broadridge required Broadridge to deliver the official proxy to SoftVest before the May 22 meeting. But the incumbent trustees improperly instructed Broadridge not to release any proxies to SoftVest in advance of the May 22 meeting because of the trust's unfounded assertion that no business would be conducted at that meeting. Fortunately, after the issue was uncovered and made of public knowledge, Broadridge opted to ignore TPL's unlawful instruction and delivered the proxies before the May 22 meeting.

46. As the proxy voting results rolled in, it quickly became clear that Mr. Oliver was amassing an effectively insurmountable lead and was all but certain to win the shareholder vote and

be elected trustee. A summary of the proxy voting results that was distributed to TPL and the SoftVest Plaintiffs by Broadridge on the evening of Monday, May 20, showed that Mr. Oliver had received proxies from 47.01 percent of the outstanding Certificates entitled to vote, compared to just 25.7 percent for General Cook. Based on that vote tabulation, Mr. Oliver had enough votes to win the May 22 shareholder vote.

47. But the incumbent trustees had no intention of giving effect to the duly expressed will of TPL's shareholders and permitting Mr. Oliver to be elected as TPL's third trustee and thereafter took action to interfere with the shareholder voting franchise. On May 21, 2019—less than 24 hours after receiving the proxy results just described, and less than 24 hours before the shareholder meeting was scheduled to occur—the incumbent trustees and TPL filed a lawsuit in this Court against Mr. Oliver accusing him of inadequate disclosure and material misrepresentations in the proxy contest. Those accusations are baseless and unfounded, and as soon as Mr. Oliver became aware of the lawsuit, he publicly filed a copy of the complaint with the SEC. This public filing allowed TPL's shareholders to consider the lawsuit and the allegations it contains in the course of deciding how to vote their certificates at the May 22 shareholder meeting.

48. The incumbent trustees' decision to file the complaint on the eve of the May 22 shareholder meeting raises troubling questions about their reasons for bringing this suit. The accusations in the complaint are hardly new. The incumbent trustees publicly raised most (if not all) of these unfounded accusations almost a month ago in a presentation they publicly filed with the SEC on April 29, 2019[15]—though mentioned none of them in their various announcements adjourning the special meeting date—and they recycled many of them in later press releases and talking points. With the material allegations in the complaint having been repeatedly disclosed and used against the

[15] A copy of the incumbent Trustees' presentation is available here.

SoftVest Plaintiffs in public SEC filings, TPL's shareholders had full knowledge of those allegations and were fully capable of considering them when deciding how to vote. The incumbent trustees did not file this lawsuit to correct some alleged lack of disclosure. They filed it for one reason and one reason only: To manufacture an excuse for trying to cancel the May 22 shareholder meeting, because they knew that if the meeting went forward, Eric Oliver was certain to be elected as trustee.[16]

49. Sure enough, minutes after they filed their baseless lawsuit, the incumbent trustees announced late in the afternoon of May 21—after a number of TPL's shareholders had already left their homes to travel to Dallas for the May 22 shareholder meeting—that they were purporting to postpone the shareholder meeting indefinitely. The SoftVest Plaintiffs responded publicly that the incumbent trustees had no authority to cancel the shareholder meeting, that they intended to appear for and conduct the shareholder meeting at the place and time where it had been scheduled, and that all shareholders were invited to attend.

50. On the morning of May 22, 2019, representatives of the incumbent trustees delivered intimidating correspondence to Mr. Oliver urging him not to attend the previously scheduled meeting. However, Mr. Oliver and dozens of shareholders arrived at the meeting location, and were properly routed by building security and personnel of TPL's counsel to a conference facility on the fifth floor of the building. At 10:00 a.m., shareholders present in person or by proxy convened and conducted the meeting, and conducted a shareholder vote that resulted in Mr. Oliver being elected as TPL's third trustee.[17] The meeting was duly authorized and properly noticed, and the results of the shareholder vote taken at the meeting are binding and effective. As a result of the vote conducted during the May

[16] Upon information and belief, TPL never hired an independent inspector of elections for the special meeting, something typically done weeks in advance. This further evidences that the incumbent trustees never intended to bring the trustee matter to a vote on May 22; the complaint was just a last minute excuse designed to create cover for a decision they had long since made.

[17] Several attorneys from the law firm representing TPL were present at the meeting.

22 shareholder meeting, Mr. Oliver has been elected as TPL's third trustee.

CAUSES OF ACTION

Count I: Declaratory Judgment

51. The SoftVest Plaintiffs incorporate the allegations of paragraphs 1 through 50 by reference as though fully set forth in this Count I.

52. There exists a justiciable case or controversy between the SoftVest Plaintiffs and the incumbent trustees over whether Eric Oliver was elected by TPL's shareholders to serve as a TPL trustee by a vote conducted at a May 22 shareholder meeting.

53. This case is within the Court's subject matter jurisdiction, and the Court has jurisdiction over all the parties to this case.

54. The May 22 shareholder meeting was duly and properly noticed. Once noticed, it could only be postponed or cancelled by a vote of TPL's shareholders. TPL's shareholders never voted to postpone or cancel the May 22 shareholder meeting. The incumbent trustees had no authority under the Declaration of Trust to postpone or cancel the May 22 shareholder meeting. Their attempt to do so was unlawful, *ultra vires*, and ineffective. At the May 22 shareholder meeting, Eric Oliver was duly and properly elected as a TPL trustee by the vote of a majority of the certificates that were voted at the May 22 shareholder meeting.

55. Mr. Oliver has a right to serve as a TPL trustee, and Horizon, SoftVest, and ART-FGT LP have the rights to participate in the election of a TPL trustee and to have the votes they cast be counted and enforced. The incumbent trustees' ongoing refusal to acknowledge the validity and binding effect of the vote conducted at the May 22 shareholder meeting has caused, and if not corrected will continue to cause, irreparable injury to those rights.

56. The SoftVest Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 declaring that the vote conducted at the May 22 shareholder meeting was valid and effective and that Mr. Oliver

has been duly elected as TPL's third trustee.

Count II: Negligence

57. The SoftVest Plaintiffs incorporate the allegations of paragraphs 1 through 50 by reference as though fully set forth in this Count II.

58. The incumbent trustees owed legal duties to the SoftVest Plaintiffs, including a duty of reasonable care.

59. Even before the incumbent trustees began conducting an unauthorized proxy contest, they had breached their legal duties to the SoftVest Plaintiffs (and TPL's other shareholders) and failed to exercise reasonable care in a variety of ways, including by making grossly negligent business decisions on behalf of TPL, conducting their duties while affected by undisclosed conflicts of interest, and mismanaging TPL's incentive structure. These breaches proximately caused injury to the SoftVest Plaintiffs in their capacity as TPL shareholders. The incumbent trustees' waste, mismanagement, and gross negligence caused TPL to lose money and harmed TPL's business, all of which redounds to the ultimate detriment of TPL's shareholders.

60. The incumbent trustees also breached their legal duties to the SoftVest Plaintiffs (and TPL's other shareholders) and failed to exercise reasonable care by engaging in rampant misconduct during the recent proxy contest. These breaches proximately caused injury to the SoftVest Plaintiffs. The SoftVest Plaintiffs have incurred time and expense in, among other things: preparing materials to present to proxy advisory firms such as ISS; filing disclosure forms and statements with the SEC; paying $55,000 to a proxy management firm to distribute proxy materials and collect proxy votes; and retaining counsel to respond to the incumbent trustees' proxy campaign. In addition, Mr. Oliver has a right to serve as a TPL trustee, and Horizon, SoftVest, and ART-FGT LP have the right to participate in the election of a TPL trustee and to have the votes they cast be counted and enforced. The incumbent trustees' ongoing refusal to acknowledge the validity and binding effect of the vote

conducted at the May 22 shareholder meeting has caused, and if not corrected will continue to cause, irreparable injury to those rights.

Count III: Gross Negligence

61. The SoftVest Plaintiffs incorporate the allegations of paragraphs 1 through 50 by reference as though fully set forth in this Count III.

62. The incumbent trustees undertook acts and omissions that, when viewed objectively from the incumbent trustees' perspective at the times of those acts and omissions, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to TPL and its shareholders. The incumbent trustees had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious and reckless indifference to and a deliberate disregard of the rights and welfare of TPL's shareholders.

63. The incumbent trustees' gross negligence has proximately caused injury to the SoftVest Plaintiffs in their capacity as TPL shareholders by causing TPL to lose money and harming TPL's business, all of which redounds to the ultimate detriment of TPL's shareholders. The incumbent trustees' gross negligence has also proximately caused an injury to the SoftVest Plaintiffs by forcing them to incur time and expense in, among other things: preparing materials to present to proxy advisory firms such as ISS; filing disclosure forms and statements with the SEC; paying $55,000 to a proxy management firm to distribute proxy materials and collect proxy votes; and retaining counsel to respond to the incumbent trustees' proxy campaign. Finally, Mr. Oliver has a right to serve as a TPL trustee, and Horizon, SoftVest, and ART-FGT LP have the right to participate in the election of a TPL trustee and to have the votes they cast be counted and enforced. The incumbent trustees' grossly negligent refusal to acknowledge the validity and binding effect of the vote conducted at the May 22 shareholder meeting has caused, and if not corrected will continue to cause, irreparable injury to those rights.

Count IV: Breach of Fiduciary Duty

64. The SoftVest Plaintiffs incorporate the allegations of paragraphs 1 through 50 by reference as though fully set forth in this Count IV.

65. As trustees, the incumbent trustees are held to the highest fiduciary standards. The incumbent trustees were in a fiduciary relationship with TPL and its shareholders, including the SoftVest Plaintiffs, and owed them fiduciary duties, including duties of loyalty, good faith, competence, and care.

66. Even before the incumbent trustees began conducting an unauthorized proxy contest, they had breached their fiduciary duties to the SoftVest Plaintiffs (and TPL's other shareholders) in a variety of ways, including by making grossly negligent business decisions on behalf of TPL, conducting their duties while affected by undisclosed conflicts of interest, and mismanaging TPL's incentive structure. These breaches proximately caused injury to the SoftVest Plaintiffs in their capacity as TPL shareholders. The incumbent trustees' waste, mismanagement, and gross negligence caused TPL to lose money and harmed TPL's business, all of which redounds to the ultimate detriment of TPL's shareholders.

67. The incumbent trustees also breached their fiduciary duties to the SoftVest Plaintiffs (and TPL's other shareholders) by engaging in rampant misconduct during the recent proxy contest, and these breaches proximately caused injury to the SoftVest Plaintiffs. The SoftVest Plaintiffs have incurred time and expense in, among other things: preparing materials to present to proxy advisory firms such as ISS; filing disclosure forms and statements with the SEC; paying $55,000 to a proxy management firm to distribute proxy materials and collect proxy votes; and retaining counsel to respond to the incumbent trustees' proxy campaign. In addition, Mr. Oliver has a right to serve as a TPL trustee, and Horizon, SoftVest, and ART-FGT LP have the right to participate in the election of a TPL trustee and to have the votes they cast be counted and enforced. The incumbent trustees'

ongoing refusal to acknowledge the validity and binding effect of the vote conducted at the May 22 shareholder meeting has caused, and if not corrected will continue to cause, irreparable injury to those rights.

Count V: Waste

68. The SoftVest Plaintiffs incorporate the allegations of paragraphs 1 through 50 by reference as though fully set forth in this Count V.

69. The incumbent trustees have wasted TPL's assets by increasing their own annual salaries by 5,200 percent without disclosure to, or the approval of, the shareholders. The Declaration of Trust fixes the incumbent trustees' annual salary at a set number—to properly increase their salary, the incumbent trustees should have sought to amend the Declaration of Trust to permit the salary increase or sought court approval. A salary increase in the absence of shareholder approval, court approval, or an amendment to the Declaration of Trust cannot be attributed to any rational business purpose, and the value TPL received in exchange for these salary increases was so disproportionately small, and provided so little value to TPL and its shareholders, as to lie beyond the range in which a reasonable, disinterested trustee would be willing to deal.

70. In causing TPL to participate in the proxy contest, the incumbent trustees have caused TPL to waste the trust's assets. The incumbent trustees' decision to expend TPL's assets on the proxy contest cannot be attributed to any rational business purpose. The value TPL received in exchange for the assets the incumbent trustees spent on the proxy contest was so disproportionately small, and provided so little value to TPL and its shareholders, as to lie beyond the range in which a reasonable, disinterested trustee would be willing to deal.

71. The incumbent trustees are personally liable to reimburse TPL, for the benefit of its shareholders, all of the money they have wrongfully caused TPL to spend, including the money TPL has spent on increasing their salaries and participating in the proxy contest.

PRAYER

The SoftVest Plaintiffs respectfully ask the Court to enter judgment against the incumbent trustees and grant the SoftVest Plaintiffs the following relief:

1. a declaratory judgment declaring that the vote conducted at the May 22 shareholder meeting was valid and effective and that Mr. Oliver has been duly elected as TPL's third trustee;

2. a temporary injunction and a permanent injunction—issued after notice to the incumbent trustees and a hearing—prohibiting the incumbent trustees from: (1) taking any action to fail to recognize, dispute, or interfere with the results of the May 22 shareholder vote that resulted in the election of Eric Oliver as a TPL trustee; and (2) holding any meeting, taking any other official act, or conducting any other official business on behalf of TPL without the participation of the now duly elected third trustee, Eric Oliver;

3. actual damages resulting from the incumbent trustees' wrongful acts;

4. an order requiring the incumbent trustees to restore to TPL all sums they have caused TPL to expend wrongfully and without authority, including without limitation all sums expended in conducting the proxy contest and all sums expended on their salaries in excess of the amount authorized by the Declaration of Trust;

5. reasonable and necessary attorneys' fees;

6. costs of suit; and

7. all other relief at law or in equity to which the SoftVest Plaintiffs may be justly entitled.

DATED: May 28, 2019

Respectfully submitted,

/s/ Robert C. Walters

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2019, a true and correct copy of the foregoing document was served through the Court's CM/ECF System on all counsel of record.

/s/ Robert C. Walters
Robert C. Walters