

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,*

– against –

ERIC L. OLIVER,

*Defendant,*

and

ERIC L. OLIVER, SOFTVEST, L.P., HORIZON  
KINETICS LLC, and ART-FGT FAMILY  
PARTNERS LIMITED,

*Counter-Plaintiffs,*

– against –

DAVID E. BARRY and JOHN R. 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

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF EXPEDITED MOTION  
FOR LIMITED DISCOVERY RELATED TO COUNTER-PLAINTIFFS’  
DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION MOTION**

**TABLE OF CONTENTS**

	<u>Page</u>
I. PRELIMINARY STATEMENT .....	1
II. RELEVANT FACTS.....	3
A. TPL’s Trustees Seek to Ensure Trustee Candidates Are Not Disqualified .....	3
B. Plaintiffs File This Action Seeking Declaratory Judgment .....	4
C. Plaintiffs Serve Initial Discovery Requests on Counter-Plaintiffs, but PSLRA Stay Triggered by Improperly Filed Rule 12(c) Motion.....	5
D. Counter-Plaintiffs File Declaratory Judgment/PI Motion Seeking Relief On the Merits During PSLRA Stay .....	5
E. The Parties Meet-and-Confer and Both Sides Exchange Discovery Requests.....	8
III. ARGUMENT AND AUTHORITIES.....	8
A. Plaintiffs Have a Need for Particularized, Limited Discovery .....	9
B. Plaintiffs Will Be Unduly Prejudiced Without Limited Relief From The Stay.....	14
C. Defendant Will Face Minimal Prejudice, If Any.....	18
IV. CONCLUSION AND REQUESTED RELIEF .....	19

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b><u>Cases</u></b>	
<i>In re Equifax Inc. Sec. Litig.</i> , No. 1:17-cv-3463-TWT, 2018 WL 3023278 (N.D. Ga. June 18, 2018) .....	18
<i>Global Intellicom, Inc. v. Thomson Kernaghan &amp; Co.</i> , No. 99 CIV 342 (DLC), 1999 WL 223158 (S.D.N.Y. Apr. 16, 1999).....	11, 16
<i>In re LaBranche Sec. Litig.</i> , 333 F. Supp. 2d 178 (S.D.N.Y. 2004).....	9, 18
<i>Malon v. Franklin Fin. Corp.</i> , No. 3:14CV671, 2014 WL 5795730 (E.D. Va. Nov. 6, 2014) .....	16, 17
<i>MDI, Inc. v. McCann</i> , No. SA-08-CA00773, 2008 WL 11334002 (W.D. Tex. Nov. 20, 2008).....	17
<i>ODS Tech., L.P. v. Marshall</i> , 832 A.2d 1254 (Del. Ch. 2003).....	17
<i>In re Pure Res., Inc. S’holders Litig.</i> , 808 A.2d 421 (Del. Ch. 2002).....	17
<i>In re Royal Ahold N.V. Sec. &amp; ERISA Litig.</i> , 220 F.R.D. 246 (D. Md. 2004).....	10, 17, 18
<i>Ryan v. Walton</i> , No. 10-145, 2010 WL 3785660 (D.D.C. Mar. 9, 2010) .....	10, 17
<i>Standard Inv. Chartered, Inc. v. Nat’l Ass’n of Sec. Dealers, Inc.</i> , No. 07 Civ. 2014 (SWK), 2007 WL 1121734 (S.D.N.Y. Apr. 11, 2007) .....	17
<i>Vacold LLC v. Cerami</i> , No. 00 CIV 4024 (AGS), 2001 WL 167704 (S.D.N.Y. Feb. 16, 2001) .....	9, 16
<i>Woodward &amp; Lothrop, Inc. v. Schanbel</i> , 593 F. Supp. 1385 (D.D.C. 1984).....	17
<i>In re WorldCom, Inc. Sec. Litig.</i> , 234 F. Supp. 2d 301 (S.D.N.Y. 2002).....	15, 18

**Statutes/Rules**

15 U.S.C. § 78u-4(b)(3)(B).....5, 9, 10  
Fed. R. Civ. P. 12..... *passim*  
Fed. R. Civ. P. 26.....5  
Fed. R. Civ. P. 33.....5  
Fed. R. Civ. P. 34.....5

Plaintiffs Texas Pacific Land Trust (“TPL”) and, solely in their respective capacities as trustees for TPL, David E. Barry and John R. Norris (collectively, the “Trustees” and with TPL, “Plaintiffs”), respectfully request that the Court grant them additional discovery beyond that agreed to by the Parties for the discrete purpose of seeking discovery related to Eric L. Oliver (“Defendant”); SoftVest, L.P. (“SoftVest”); Horizon Kinetics LLC (“Horizon”); and ART-FGT Family Partners Limited’s (“ART-FGT,” and collectively with Defendant, SoftVest, and Horizon, “Counter-Plaintiffs”) Motion for a Declaratory Judgment and Preliminary Injunction [Dkt. 36–38] (the “Declaratory Judgment/PI Motion”).<sup>1</sup> In light of the accelerated timetable of the Parties’ agreed briefing schedule, Plaintiffs respectfully request expedited consideration of these matters, and show as follows:

#### I. PRELIMINARY STATEMENT

On June 25, 2019, the Court entered an order to stay discovery in this action pursuant to the PSLRA, after Defendant filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (the “Rules”). [Dkt. 42.] On that same day, Defendant and Counter-Plaintiffs filed the Declaratory Judgment/PI Motion, seeking a preliminary injunction and declaratory relief. Given Counter-Plaintiffs’ request for a judgment on the merits of the instant dispute, the Parties agree that discovery is necessary to allow for the proper resolution of the Declaratory Judgment/PI Motion presently before the Court. To that end, Plaintiffs have agreed, subject to standard discovery objections and privilege, to respond to all discovery that Counter-Plaintiffs have sought regarding the Declaratory Judgment/PI Motion, including the requests

---

<sup>1</sup> To the extent the Court determines that the discovery stay pursuant to the Private Securities Litigation Reform Act (“PSLRA”) remains in effect pursuant to the Parties’ agreement that discovery is necessary relating to the Declaratory Judgment/PI Motion (*See* July 15, 2019 Scheduling Order [Dkt. 53]), Plaintiffs request limited relief from the PSLRA discovery stay to seek this additional discovery.

contained in the agreed discovery entered by this Court [Dkt. 53], and additional requests propounded as recently as July 15, 2019.

While Defendant has agreed to allow Plaintiffs access to limited discovery, Defendant continues to oppose certain requests for critical information. In particular, Defendant disputes Plaintiffs' need for discovery related to communications between Defendant and TPL's shareholders and for information related to Defendant's background. These requests, however, bear directly on the issues implicated by the Declaratory Judgment/PI Motion which attacks Plaintiffs' fiduciary responsibility to review the qualifications of candidates for trustee and seeks a declaration that the invalid meeting held by Defendant and a small minority of shareholders on May 22, 2019 was proper because Plaintiffs lacked the authority to postpone the meeting to correct Defendant's false and misleading communications with shareholders.

The limited discovery that Plaintiffs require to adequately address these issues and defend against Defendant's Declaratory Judgment/PI Motion is as follows:

1. communications between or among the dissident group and shareholders, persons attending the May 22, 2019 meeting, and others;
2. discovery relating to Defendant's candidacy and conflicts of interest; and
3. limited third-party discovery requests for both Plaintiffs and Counter-Plaintiffs.<sup>2</sup>

Moreover, in light of the Parties' agreement that discovery is necessary for the resolution of that motion, Plaintiffs respectfully request that the court lift the PSLRA discovery stay to prevent undue prejudice to Plaintiffs' ability to contest the merits of Defendant's claims.

---

<sup>2</sup> These categories are set out in detail with particularized requests in the attached Exhibit 1.

## II. RELEVANT FACTS

### A. TPL's Trustees Seek to Ensure Trustee Candidates Are Not Disqualified

This dispute centers on Defendant's misinformation campaign, supported by Counter-Plaintiffs, to be elected as a lifetime TPL trustee. On February 25, 2019, one of TPL's three trustees resigned for health reasons, creating a vacancy. *See* Compl. ¶ 19 [Dkt. 15].<sup>3</sup> Defendant was submitted for consideration as a nominee to fill the vacant position. *Id.* ¶ 27. In accordance with TPL's governing documents and their fiduciary duties, the Trustees reviewed Defendant's résumé, credentials, and past interactions with the Trust in good faith. *Id.* ¶ 26. 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 the Trustees nominated a different candidate. *Id.* Defendant was formally nominated on March 15, 2019 by Counter-Plaintiffs. *Id.* ¶ 27. In the spirit of compromise, the Trustees were willing to consider a compromise candidate or to reconsider their position on Defendant if he would answer a questionnaire regarding his business record and any actual or potential conflicts of interest or instances of potential self-dealing. *Id.* ¶ 41. Although other nominees completed the questionnaire, Defendant refused. *Id.*

Rather than provide the requested critical information, Counter-Plaintiffs instead engaged in a concerted misinformation campaign intended to manipulate the trustee election process by (a) publicly issuing innumerable solicitation materials containing false and misleading statements, including, and (b) repeatedly failing to disclose to other shareholders their coordination in these solicitation efforts. *See id.* ¶¶ 56, 91.

Nevertheless, the trustees endeavored to secure a fully-informed shareholder vote in advance of the special shareholder meeting scheduled for May 22, 2019, making repeated requests

---

<sup>3</sup> "Compl." as used herein references the Amended Complaint filed May 22, 2019 [Dkt. 15].

to obtain Defendant's background and disclosures. *Id.* ¶ 43. When it became apparent that crucial information would not be provided in time, the TPL notified shareholders on May 8, 2019 that a vote would not take place at the special meeting on May 22, 2019, and that instead the meeting would be convened and immediately adjourned without any business conducted and reconvened on June 6, 2019. *See id.* ¶ 40.

**B. Plaintiffs File This Action Seeking Declaratory Judgment**

On May 21, 2019, in light of Defendant's misinformation campaign, TPL and the Trustees filed this action. *Id.* ¶ 45. The same day, TPL notified shareholders that the special meeting scheduled for May 22, 2019 would be postponed until further notice. *Id.* Also on the same day, Defendant and Counter-Plaintiffs announced via press release that they would "proceed to attend the special meeting scheduled," which had been noticed to take place at the office of Sidley Austin LLP in Dallas, Texas. *Id.* ¶ 47. However, Defendant and the dissident shareholders did not attend the special meeting that had already been postponed. *Id.* ¶¶ 45–46. Instead, Defendant purported to convene a "meeting" on a different floor of the same office building without providing any formal notice to shareholders. *Id.* ¶ 48. At this invalid meeting, Defendant held a sham vote to be elected a purported lifetime trustee, even though the invalid meeting failed to meet the quorum requirement, at least one shareholder asked for an adjournment, and another was denied the ability to ask questions before the vote. *Id.* ¶¶ 51–52. In a press release following the meeting, Counter-Plaintiffs publicly announced the sham voting tallies from the invalid meeting and declared Defendant a newly-elected trustee. *See id.* ¶ 54.

That day, May 22, 2019, Plaintiffs filed an Amended Complaint, providing allegations on the purported meeting and election. *See generally id.* Specifically, Plaintiffs request in their Amended Complaint that the Court declare, *inter alia*, that Defendant was not duly elected as trustee and must make corrective disclosures before he is eligible to stand for election as trustee.



*See id.* ¶ 117.

On May 28, 2019, Defendant filed his Answer, which included counterclaims by third parties, SoftVest, Horizon, and ART-FGT, against Mr. Barry and Mr. Norris in both their individual capacity and as trustees. [Dkt. 17.]

**C. Plaintiffs Serve Initial Discovery Requests on Counter-Plaintiffs, but PSLRA Stay Triggered by Improperly Filed Rule 12(c) Motion**

On June 5, 2019, the Parties conferred regarding discovery as required by Rule 26(f). Later that day, Plaintiffs served their First Request for Production of Documents to each of Counter-Plaintiffs. On June 17, 2019, Plaintiffs served Interrogatories to each of Counter-Plaintiffs. These discovery requests sought information critical to the claims and counterclaims asserted in this action and to the Trustees' inquiry (mandated by their fiduciary duties to TPL and its shareholders) into whether Defendant is qualified to serve as trustee. Counter-Plaintiffs did not respond to these requests. Instead, Counter-Plaintiffs filed a premature motion for judgment on the pleadings pursuant to Rule 12(c) on June 17, 2019 [Dkt. 19–20], even though pleadings are not closed as required by Rule 12(c). Counter-Plaintiffs thereafter asserted that the PSLRA mandated a stay of all discovery in the action.

On June 25, 2019, this Court entered an Order Staying All Discovery [Dkt. 42] pursuant to the PSLRA's stay provision. 15 U.S.C. § 78u-4(b)(3)(B). Under normal discovery deadlines, responses to Plaintiffs' First Set of Requests for Production would have been due on July 5, 2019 and to Plaintiffs' First Set of Interrogatories on July 17, 2019. *See* Fed. R. Civ. P. 33, 34. Given the PSLRA stay, however, Counter-Plaintiffs have not yet responded to this discovery.

**D. Counter-Plaintiffs File Declaratory Judgment/PI Motion Seeking Relief On the Merits During PSLRA Stay**

On June 25, 2019, Counter-Plaintiffs filed the Declaratory Judgment/PI Motion, seeking declaratory and injunctive relief which would be determinative of the ultimate legal issues in the

action and *which depend on disputed issues of fact that require discovery*. Mot. Decl. J. at 1–3 [Dkt. 36]. The chart below juxtaposes the declaration sought by Counter-Plaintiffs in their Declaratory Judgment/PI Motion against the corresponding relief sought by Plaintiffs, illustrating how these issues are determinative of the ultimate legal conclusions in this action:

<b>Relief Sought by Counter-Plaintiffs</b>	<b>Relief Sought Plaintiffs</b>
Declaration that the Trustees lacked authority to postpone the special meeting. Mot. Decl. J. at 2.	Declaration that the invalid meeting conducted by Defendant and the dissident group on May 22, 2019 was not a lawful meeting of TPL’s shareholders. Compl. ¶ 117.
Declaration that Plaintiffs lack authority to disqualify Oliver from election as a trustee of TPL. Mot. Decl. J. at 2.	Declaration that Defendant is ineligible to be considered for election as a trustee until 60 days after he provides full and accurate disclosures, and issues and mails corrective disclosures to all shareholders. Compl. ¶ 117.
Declaration that the vote at the invalid meeting conducted by Defendant and the dissident group on May 22, 2019 was valid, and Mr. Oliver has been duly elected as a TPL trustee. Mot. Decl. J. at 2.	<p>Declaration that the notice provided by Defendant and his dissident group regarding the May 22, 2019 invalid meeting was invalid and ineffective. Compl. ¶ 117.</p> <p>Declaration that any votes cast at the invalid meeting conducted by Defendant and his dissident group are invalid, null, and void. Compl. ¶ 117.</p>
Preliminary injunction prohibiting Plaintiffs from acting on behalf of TPL without Defendant’s participation. Mot. Decl. J. at 2.	<p>Declaration that Defendant is ineligible to be considered for election as a trustee until 60 days after he provides full and accurate disclosures, and issues and mails corrective disclosures to all shareholders. Compl. ¶ 117.</p> <p>Declaration that any votes cast at the invalid meeting conducted by Defendant and his dissident group are invalid, null, and void. Compl. ¶ 117.</p>

Numerous disputed factual issues are relevant to Counter-Plaintiffs’ requests in the Declaratory Judgment/PI Motion. Counter-Plaintiffs’ attachment of three substantive declarations

in a 463-page appendix to the Declaratory Judgment/PI Motion and Counter-Plaintiffs' own discovery requests illustrate that the issues involved are not purely legal—rather, the Declaratory Judgment/PI Motion involves questions of fact. For example, there are factual disputes relating to whether the Trustees were justified in postponing the special meeting because Oliver is disqualified from serving as Trustee and whether corrective disclosures must be issued relating to any misrepresentations made by Counter-Plaintiffs' dissident group.

Counter-Plaintiffs also seek a declaration based on the improperly-filed amended counterclaims to which the Trustees' deadline to answer or respond has not yet expired. Specifically, Counter-Plaintiffs seek a declaration that one of the Trustees, Mr. Barry, was not properly elected as Trustee at a January 12, 2017 special meeting of TPL shareholders and thus cannot act on TPL's behalf. Mot. Decl. J. at 2–3. Counter-Plaintiffs base this injunctive relief on an allegation that the election of Barry was improperly classified by the New York Stock Exchange (“NYSE”) as “routine” and thus shareholders who held their shares through brokers did not have the opportunity to voice their opinion as to how their shares should be voted. Mem. Decl. J. at 3–4. As will become evident when Trustees answer, move, or otherwise respond to the Amended Counterclaims (which is not due until July 26, 2019), Trustees dispute the facts and circumstances surrounding this allegation.

Finally, Counter-Plaintiffs seek a preliminary injunction that requires that the special meeting of TPL's shareholders reconvene within five days “to allow any additional votes to be cast and the official results to be confirmed and announced by TPL via press release or securities filing.” Mot. Decl. J. at 2. The occurrence of a fully informed shareholder vote is the ultimate concern of the Trustees, is why Plaintiffs brought this action in the first instance, and is the ultimate object of much of the discovery sought in this action. But that cannot happen until Defendant

provides full and accurate disclosures to the trustees and issues and mails corrective disclosures to all shareholders, which is the declaratory relief sought by Plaintiffs. Compl. ¶ 117. Moreover, discovery is required to determine what corrective disclosures should be made by Defendant and to ensure a fully informed shareholder vote.

**E. The Parties Meet-and-Confer and Both Sides Exchange Discovery Requests**

Since the filing of the Declaratory Judgment/PI Motion, the Parties have met and conferred in an attempt to agree on discovery related to the Declaratory Judgment/PI Motion. Making clear that there are factual disputes relevant to the Declaratory Judgment/PI Motion, *both* Plaintiffs and Counter-Plaintiffs each submitted discovery requests to one another despite the pendency of the PSLRA stay. *See* Jul. 15, 2019 Scheduling Order at Ex. A. Over the course of discussions, Plaintiffs have agreed to all discovery sought by Counter-Plaintiffs, including interrogatories submitted to Plaintiffs as recently as July 15, 2019.

However, Counter-Plaintiffs have not agreed to all discovery sought by Plaintiffs. Through discussions, Plaintiffs have made significant concessions from the original discovery requests, including withdrawing requests, limiting many requests to sufficient documentation rather than all documentation, and limiting the date range for many requests. Additionally, the Parties have agreed to an extended briefing schedule in order to adequately address the Parties' discovery needs prior to the Court's hearing on the Declaratory Judgment/PI Motion. *Id.* Nevertheless, despite both Parties best efforts, the Counter-Plaintiffs are unwilling to agree to Plaintiffs' remaining discovery requests relevant to the Declaratory Judgment/PI Motion. Plaintiffs therefore bring this Motion.

**III. ARGUMENT AND AUTHORITIES**

Given the factual disputes that are central to the Declaratory Judgment/PI Motion, Plaintiffs seek narrow relief from the PSLRA stay so that they may obtain limited discovery directly relevant

to the issues presented in the Declaratory Judgment/PI Motion. As discussed below, Plaintiffs have a particularized need for the set of limited discovery requests attached hereto as Exhibit 1. These requests are narrowly tailored to the issues raised in the Declaratory Judgment/PI Motion: (1) the unsanctioned meeting that occurred on May 22, 2019, (2) the alleged vote occurring at that meeting, and (3) allegations that Mr. Barry was not duly elected as trustee in 2017. Although full discovery still will be necessary upon a final lifting of the PSLRA stay, Plaintiffs respectfully request the Court to grant limited relief from the PSLRA stay and for that discovery to be answered in accordance with the expedited briefing schedule already entered by the Court. [Dkt. 53.]

Courts may lift a PSLRA stay if “particularized discovery is necessary to preserve evidence or to prevent undue prejudice.” 15 U.S.C. § 78u-4(b)(3)(B). Courts define “undue prejudice” as mere “improper or unfair treatment”—*i.e.*, “something *less* than irreparable harm.” *Vacold LLC v. Cerami*, No. 00 CIV 4024 (AGS), 2001 WL 167704, at \*6 (S.D.N.Y. Feb. 16, 2001) (emphasis added)); *see also In re LaBranche Sec. Litig.*, 333 F. Supp. 2d 178, 182 (S.D.N.Y. 2004) (noting that “[d]istrict courts here and elsewhere have construed ‘undue prejudice’ [as the term is used in the PSLRA] to mean improper or unfair treatment amounting to something less than irreparable harm”) (quotation omitted).

**A. Plaintiffs Have a Need for Particularized, Limited Discovery**

Plaintiffs need discovery in order to respond to Counter-Plaintiffs’ strategic choice to engage in merits litigation during the pendency of the discovery stay.<sup>4</sup> This is not the prototypical

---

<sup>4</sup> The relief sought herein is in no way intended to limit the discovery already negotiated and agreed to as memorialized in Exhibit A to this Court’s July 15, 2019 Scheduling Order. [Dkt. 53.]

scenario in which a plaintiff seeks to lift a PSLRA stay in order to file an affirmative motion—a lift is sought specifically to *respond to Counter-Plaintiffs’* arguments.

Plaintiffs have gone to great efforts to limit and otherwise restrict the discovery requests initially served on Counter-Plaintiffs. Plaintiffs have narrowed the discovery requests it presents to this Court to only those items most relevant to the Declaratory Judgment/PI Motion and which fall outside the scope of agreed discovery pursuant to the Parties’ meet-and-confer. The limited Requests and Interrogatories<sup>5</sup> are found in Exhibit 1. To further limit the burden presented by these requests, Plaintiffs have narrowed the requests using significant limitations, also reflected in Exhibit 1.

The limited discovery sought by Plaintiffs is sufficiently “particularized” under the PSLRA. *See* 15 U.S.C. § 78u-4(b)(3)(B). “In order for a discovery request to be ‘particularized,’ ‘the party seeking discovery under the exception must adequately specify the target of the requested discovery and the types of information needed to relieve that burden.’” *Ryan v. Walton*, No. 10-145, 2010 WL 3785660, at \* 2 (D.D.C. Mar. 9, 2010) (citation omitted). “The meaning of the phrase [‘particularized’] in any particular case must take into account the nature of the underlying litigation,” and the word “does [not] necessarily mean ‘small.’” *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 220 F.R.D. 246, 250 (D. Md. 2004). Indeed, even voluminous requests, far more onerous than the narrow information sought by Plaintiffs here, can be sufficiently “particularized” where complex issues or large companies are involved. *See id.* (involving production estimated at “one million pages” of documents). Discovery requests have also been

---

<sup>5</sup> “Requests” as used herein refer to the First Sets of Requests for Production served on each of Counter-Plaintiffs on June 5, 2019. “Interrogatories” as used herein refer to the First Sets of Interrogatories served on each of Counter-Plaintiffs on June 17, 2019. Note that requests for the various parties are largely duplicative and Plaintiffs do not request or need multiple copies of the same materials. Such requests are simply intended to encompass all entities that may have responsive information.

found to be sufficiently particularized when focused on information relevant to issues touching on “detriment” to a party or where issues could “moot [a party’s] ability to seek redress for . . . wrongs in th[e] suit.” *Global Intellicom, Inc. v. Thomson Kernaghan & Co.*, No. 99 CIV 342 (DLC), 1999 WL 223158, at \*2 (S.D.N.Y. Apr. 16, 1999).

As set forth below, Plaintiffs have narrowed their requests for discovery to that which is necessary to respond to the Declaratory Judgment/PI Motion.<sup>6</sup> The needed discovery falls within the following three categories:<sup>7</sup>

**1. Discovery requests related to communications with shareholders, persons attending the May 22, 2019 meeting, and others.**<sup>8</sup>

Counter-Plaintiffs have agreed to produce certain communications between themselves and certain specified entities<sup>9</sup> relating to the election of a TPL successor trustee and solicitation activities. *See* Jul. 15, 2019 Scheduling Order at Ex. A 1–2. Counter-plaintiffs have refused, however, to produce *any* communications with TPL shareholders and other relevant persons, including those who attended the invalid meeting that is the subject of the Declaratory Judgment/PI Motion. This discovery is critical. The Court’s determination as to whether the invalid meeting is binding will turn, at least in part, on whether Counter-plaintiffs engaged in illegal or misleading activity in connection with the solicitation of

---

<sup>6</sup> Although it is Plaintiffs’ position that all of the discovery served is relevant and necessary for this suit, Plaintiffs acknowledge that a balance must be struck, as is the case with all discovery. Plaintiffs reserve all rights to seek the discovery contained in the discovery previously served as well as to serve additional discovery requests in this matter at an appropriate time.

<sup>7</sup> As a matter of course, Plaintiffs also request responses to interrogatories requesting identification of the person or persons answering the interrogatories, as such information is directly relevant to the admissibility and reliability of such evidence. *See* Interrogatory to Oliver no. 18, Interrogatory to Horizon no. 11, Interrogatory to SoftVest no. 13, Interrogatory to ART-FGT no. 10.

<sup>8</sup> This encompasses the following discovery: Requests to Oliver nos. 1–3, 7, 17, 21, 22, 63; Requests to Horizon 1, 2, 3, 7, 16, 20, 21, 29; Requests to SoftVest 1, 2, 3, 7, 16, 20, 21, and Requests to ART-FGT 1, 2, 3, 7, 16, 20, 21.

<sup>9</sup> These entities include the SEC, the members of the dissident group, D.F. King (the proxy solicitor engaged by the dissident group), Broadridge Financial Solutions (the proxy management firm retained by the Trust to handle logistics of the proxy vote), Universal Guaranty Life Insurance Company (a potential undisclosed member of the dissident group), and Santa Monica Partners (another potential undisclosed member of the dissident group).

proxies for that meeting. *Compare* Mem. Decl. J. at 14–15, with Compl. ¶¶ 43, 59, 60, 66. That information—who was told what, by whom, and when—can be learned only through discovery relating to Counter-Plaintiffs’ communications with TPL shareholders. Such information is also relevant to defenses that Counter-Plaintiffs will likely pursue relating to the Declaratory Judgment/PI Motion, including that misleading statements to investors necessitated the postponement of the meeting, that certain relationships and/or conflicts of interest have not been disclosed by the dissident group, and that corrective disclosures are needed.

**2. Discovery requests relating to Defendant’s candidacy and conflicts of interest.<sup>10</sup>**

Counter-Plaintiffs also refuse to provide any discovery regarding Defendant’s qualifications to serve as a trustee, including his potential conflicts of interest. These potential conflicts, and other potentially disqualifying conduct, are at the heart of this case, and his refusal to provide this information is in part what required the Special Meeting to be postponed in the first place. *E.g.*, Compl. ¶¶ 43, 113–17. Because Counter-Plaintiffs seek a declaration to insert Defendant as a trustee, it is plainly apparent that adjudication of the issue involves determining whether Defendant is disqualified from so serving. *See* Mot. Decl. J. at 2. In addition, because Counter-Plaintiffs seek to force a vote within *five days* of the Court’s ruling on the Declaratory Judgment/PI Motion, it is necessary to obtain discovery in order to make any needed corrective disclosures in advance of such a vote. And, importantly, if there are no issues, many of these requests will impose no burden at all on Defendant. For example, if Defendant has never been enjoined or prohibited from

---

<sup>10</sup> This encompasses Requests to Oliver nos. 24–26, 30–32, 35–39, 43, 47–51, 55–56, 58–62, 64–65; Interrogatories to Oliver nos. 13–16; Request to Horizon no. 24; Request to SoftVest no. 24; Request to ART-FGT no. 24; Interrogatory to Horizon no. 9; Interrogatories to SoftVest 9–11; Interrogatories to ART-FGT no. 8.



serving as a director or trustee of another entity, production of relevant documents related to Request for Production number 26 will be easy as Defendant need only disclose that information (and not produce any voluminous documents). However, if Defendant *has* been enjoined or prohibited from serving as a director or trustee of another entity (something Defendant has thus far refused to answer), it is critically important for Plaintiffs and the Court to have that information available in determining, at a minimum, whether shareholders should know about it before voting takes place. In other words, these Requests would impose burden on Defendant only in the event that they result in the production of highly relevant information.

**3. Limited third-party discovery requests for both Plaintiffs and Counter-Plaintiffs.**

The Parties agree that certain third-party depositions will be necessary to litigate the Declaratory Judgment/PI Motion. *See* Jul. 15, 2019 Scheduling Order at Ex. A 4. Plaintiffs respectfully request that the Court lift the discovery stay with respect to certain third parties solely to allow Plaintiffs to take depositions of (1) Victoria Paper (the New York Stock Exchange Senior Analyst who communicated with Counter-Plaintiffs by email regarding NYSE Rule 452, as referenced in Counter-Plaintiffs' Motion); and (2) a corporate representative of the NYSE. *See* Mem. Decl. J. at 24; Jul. 15, 2019 Scheduling Order at Ex. A 4–5. Counter-Plaintiffs' Motion relies on an email from Ms. Paper – stating that the 2017 election should have been designated as “non-routine” – to support their allegation that Mr. Barry's 2017 election as trustee was invalid. Mem. Decl. J. at 17; App'x to Mot. for Decl. J. at 11 [Dkt. 38]. As such, Plaintiffs have a particularized need to question Ms. Paper regarding her role with the NYSE and her purported basis for asserting that the 2017 election was improperly designated. Mem. Decl. J. at 17. Similarly, because it is the NYSE—not

Plaintiffs—that is directly charged with interpreting and enforcing NYSE Rule 452, Plaintiffs have a particularized need in connection with the Declaratory Judgment/PI Motion to understand the NYSE’s interpretation of that rule at the time of the 2017 election, and to whom and how it communicated that interpretation. Notably, Plaintiffs are not the only parties seeking discovery from third parties in connection with the Declaratory Judgment/PI Motion. Counter-Plaintiffs have requested from discovery from Broadridge Financial Solutions and MacKenzie Partners, to which Plaintiffs do not object. Jul. 15, 2019 Scheduling Order at Ex. A .

For each of these categories, Plaintiffs have a particularized need for discovery in order to respond to *Counter-plaintiffs’* claims and *Counter-plaintiffs’* request for expedited relief. Plaintiffs should not be prejudiced from being able to assert a defense to Counter-Plaintiffs’ affirmative claims due to the automatic stay resulting from Defendant’s procedurally improper Rule 12(c) motion.

**B. Plaintiffs Will Be Unduly Prejudiced Without Limited Relief From The Stay**

Plaintiffs will be unduly prejudiced without limited relief from the PSLRA stay to conduct discovery narrowly tailored to the issues raised by the Declaratory Judgment/PI Motion for two reasons: (1) Counter-Plaintiffs seek to use the PSLRA as a sword to preclude Plaintiffs from adequately responding to the Declaratory Judgment/PI Motion; and (2) the PSLRA stay places Plaintiffs at a significant disadvantage in formulating their litigation strategy, exposing uninformed shareholders to a risk of irreparable harm.

1. *Counter-Plaintiffs’ Use of PSLRA Stay as a Sword Is Unduly Prejudicial and Beyond the Statute’s Intended Application*

Not content with Defendant’s Rule 12(c) challenge to the validity of the pleadings, Counter-Plaintiffs have moved for a declaratory judgment on the merits, which is the mirror image

of the relief sought by Plaintiffs. In this unique procedural posture, Counter-Plaintiffs attempt to use the PSLRA as both a shield, protecting themselves from Plaintiffs' attempts to access information related to Defendant's false and misleading statements during the proxy campaign, and as a sword, marshalling evidence in their sole possession to seek a declaratory judgment on the merits of Plaintiffs' claims.<sup>11</sup> The absurdity of this tactic is revealed by the fact that Counter-Plaintiffs themselves seek discovery from Plaintiffs relating to the Declaratory Judgment/PI Motion and have, in turn, allowed Plaintiffs limited access to discovery as well. But, seeking to use the PSLRA stay to preclude Plaintiffs from responding to Counter-Plaintiffs' attempt to resolve the merits of this lawsuit is far beyond the PSLRA's intended ambit. *See In re WorldCom, Inc. Sec. Litig.*, 234 F. Supp. 2d 301, 305 (S.D.N.Y. 2002) ("Congress enacted the discovery stay in order to minimize the incentives for plaintiffs to file frivolous securities class actions" and to reduce the chance "that the plaintiff will find during discovery some sustainable claim not alleged in the complaint"). The action presently before the Court is not the sort of frivolous, lawyer-driven litigation Congress designed the PSLRA to prevent. Counter-Plaintiffs' strategic choices have created a *de facto* imbalance to these proceedings, and effectively rendered the PSLRA stay inapplicable. Notably, Defendant effectively conceded that Plaintiffs' request for declarations regarding the May 22, 2019 meeting's invalidity and regarding the Trustees' fiduciary responsibilities to vet candidates were adequately pled by not challenging these requests in the Rule 12(c) motion. The need for discovery at this stage of the proceedings is now coextensive with the Declaratory Judgment/PI Motion.

---

<sup>11</sup> As was fully briefed in Plaintiffs' Opposition to Defendant's Rule 12(c) Motion for Judgment on the Pleadings, Plaintiffs further note that Defendant prematurely filed his Rule 12(c) motion prior to the close of the pleadings in order to obtain an early PSLRA stay. [Dkt. 51 at 11–12.] Counter-Plaintiffs then filed "Amended Counterclaims" as a standalone document—a filing that has no basis in the federal rules—in order to avoid drawing the Court's attention to the fact that the pleadings were still open pursuant to Rule 12, such that a PSLRA stay based on the premature 12(c) Motion was likewise premature.

In far less egregious circumstances, federal courts have “lifted the [PSLRA] discovery stay on the grounds of ‘undue prejudice’ where defendants might be shielded from liability in the absence of the requested discovery.” *Vacold LLC*, 2001 WL 167704, at \*6; *see also Global Intellicom*, 1999 WL 223158, at \*2 (finding undue prejudice based on “the possibility that . . . [the plaintiff will be prevented] from seeking redress in this Court”). Indeed, lifting a PSLRA stay can be appropriate even where the plaintiff—the party the PSLRA typically inconveniences—anticipates filing its own preliminary injunction. *E.g., Malon v. Franklin Fin. Corp.*, No. 3:14CV671 HEH-RCY, 2014 WL 5795730, at \*3 (E.D. Va. Nov. 6, 2014) (“Given the imminent shareholder vote on the Proposed Transaction and Plaintiff’s anticipated motion for a preliminary injunction, the Court finds that Plaintiff will suffer not only undue prejudice, but irreparable harm if the PSLRA stay is not lifted.”). Here, rather than the prototypical scenario involving a plaintiff seeking a preliminary injunction, it is the *Counter-Plaintiffs/Defendant* who not only anticipate filing, but have actually filed, such a motion. Given the critical stage of the proceedings, Plaintiffs’ inability to acquire limited discovery, narrowly tailored to respond to the Declaratory Judgment/PI Motion, far surpasses the showing of undue prejudice necessary to allow limited relief from the PSLRA.

Moreover, because Counter-Plaintiffs ask the Court to order Plaintiffs to conduct a shareholder vote within *five days* of the Court’s ruling on the Declaratory Judgment/PI Motion, discovery relevant to the Declaratory Judgment/PI Motion is imperative. Plaintiffs initiated this action for the single purpose of enabling shareholders to cast a fully informed vote with respect to determining TPL’s future leadership by requiring Defendant to correct myriad false and misleading statements contained in proxy solicitation materials filed on his behalf. Courts have widely held that an uninformed shareholder vote can constitute irreparable harm, far exceeding the

undue prejudice needed for a lift of the PSLRA stay.<sup>12</sup> Further, disclosures through discovery are an appropriate means by which to effectuate an informed shareholder vote. *See Ryan*, 2010 WL 3785660, at \*2 (lifting PSLRA stay where “[w]ithout the information [sought], shareholders cannot make a fully informed decision”).

2. *Plaintiffs Are Disadvantaged in Formulating a Strategic Defense given the PSLRA Stay and that Counter-Plaintiffs Hold All Relevant Evidence*

Counter-Plaintiffs’ Declaratory Judgment/PI Motion relies on evidence beyond the scope of the pleadings—evidence that is within the sole possession of Counter-Plaintiffs. In support of their Declaratory Judgment/PI Motion, Counter-Plaintiffs have submitted three declarations in a 463-page appendix for the Court’s consideration. This evidence relates to the proxy campaign and contested election at the heart of this litigation, and the limited discovery Plaintiffs seek is specifically tailored to enable Plaintiffs to challenge Counter-Plaintiffs’ factual assertions as the adversarial process requires. The inability to pursue even this limited discovery would place the Plaintiffs at a “severe disadvantage in formulating their litigation and settlement strategy.” *In re*

---

<sup>12</sup> *See, e.g., ODS Tech., L.P. v. Marshall*, 832 A.2d 1254, 1262 (Del. Ch. 2003) (“[t]he threat of an uni[n]formed stockholder vote constitutes irreparable harm”); *In re Pure Res., Inc. S’holders Litig.*, 808 A.2d 421, 452 (Del. Ch. 2002) (“[I]rreparable injury is threatened when a stockholder might make a tender or voting decision on the basis of materially misleading or inadequate information.”); *Woodward & Lothrop, Inc. v. Schanbel*, 593 F. Supp. 1385, 1394 (D.D.C. 1984) (finding, in the context of a proxy fight conducted on the basis of incomplete information that “[g]iven the current state of information now before the shareholders . . . [voting would cause] an irreparable injury to the shareholders who would be compelled to make a vital investment decision based on incomplete and potentially materially misleading information”); *Malon.*, 2014 WL 5795730, at \*3 (E.D. Va. Nov. 6, 2014) (lifting PSLRA stay and granting expedited discovery where allegedly false and misleading proxy would lead to irreparable harm from misinformed shareholder vote); *MDI, Inc. v. McCann*, No. SA-08-CA00773, 2008 WL 11334002, at \*2 (W.D. Tex. Nov. 20, 2008) (“MDI and [] its shareholders will suffer irreparable injury if the proxies already obtained through the use of the foregoing misrepresentations and omissions of material facts are not invalidated and if the Defendants are not enjoined from further solicitation of MDI shareholders through the use of such unlawful solicitation materials”); *Standard Inv. Chartered, Inc. v. Nat’l Ass’n of Sec. Dealers, Inc.*, No. 07 Civ. 2014 (SWK), 2007 WL 1121734, at \*1, \*5 (S.D.N.Y. Apr. 11, 2007) (affirming Magistrate Judge’s decision to allow expedited discovery based on member disenfranchisement).

*Royal Ahold*, 220 F.R.D. at 251–52 (partially lifting the PSLRA stay to enable plaintiffs to seek certain limited discovery).

In other words, the continued application of the PSLRA stay under these circumstances precludes Plaintiffs from making “informed decisions about [their] litigation strategy . . . and when they are effectively the only major interested party . . . without access to documents that currently form the core of” the proceedings before the Court and establishes undue prejudice. *In re LaBranche Sec. Litig.*, 333 F. Supp. 2d at 184 (lifting PSLRA stay because the “requested discovery [was] essential” to determine plaintiffs’ strategy). Indeed, as Counter-Plaintiffs effectively concede by agreeing to the exchange of discovery in relation to their Declaratory Judgment/PI Motion, the PSLRA’s bar on discovery is inapplicable to the facts required to resolve Counter-Plaintiffs attempt to seek a judgment on the merits. These unique circumstances militate strongly in favor of finding that the particularized discovery Plaintiffs request “must be produced in order to prevent undue prejudice to the interests” of TPL and its shareholders. *In re WorldCom*, 234 F. Supp. 2d at 305; *see also In re Equifax Inc. Sec. Litig.*, No. 1:17-cv-3463-TWT, 2018 WL 3023278, at \*6 (N.D. Ga. June 18, 2018) (modifying PSLRA stay to allow for limited discovery because “the requested modification does not contravene the purposes behind the PSLRA’s automatic discovery stay”).

**C. Defendant Will Face Minimal Prejudice, If Any**

While the information requested is critical to mitigating ongoing and substantial harm to TPL and its shareholders, Counter-Plaintiffs cannot reasonably argue that they will suffer prejudice from producing the requested information. Plaintiffs’ discovery requests are limited in scope and relate only to the core disputed fact issues relevant to the Declaratory Judgment/PI Motion. Particularly given their 463-page appendix to the Declaratory Judgment/PI Motion, Counter-Plaintiffs have no reasonable basis for concealing the information sought—indeed the reason that

the information is necessary at this stage of the litigation is due to Counter-Plaintiffs' request for declaratory judgment mirroring Plaintiffs' own request and which has the potential to effectively resolve this action on the merits. Moreover, the limited discovery sought is uniquely within the possession of the Counter-Plaintiffs. There will be no prejudice to Counter-Plaintiffs allowing such discovery at this critical stage of the proceedings.

#### **IV. CONCLUSION AND REQUESTED RELIEF**

Accordingly, Plaintiffs respectfully request that the Court grant Plaintiffs' Expedited Motion for Limited Discovery Related to Counter-Plaintiffs' Declaratory Judgment and Preliminary Injunction Motion in its entirety, with discovery to be answered in accordance with the agreed schedule for production set out in this Court's Scheduling Order dated July 15, 2019. Plaintiffs also request all other relief, general or special, to which they may be justly entitled.

Respectfully submitted on July 18, 2019 SIDLEY AUSTIN LLP

*s/ Yolanda C. Garcia*

---

Yvette Ostolaza  
Texas Bar No. 00784703  
Yvette.ostolaza@sidley.com  
Yolanda C. Garcia  
Texas Bar No. 24012457  
ygarcia@sidley.com  
Tiffanie N. Limbrick  
Texas Bar No. 24087928  
tlimbrick@sidley.com  
SIDLEY AUSTIN LLP  
2021 McKinney Avenue, Suite 2000  
Dallas, TX 75201  
Tel.: 214-981-3300  
Fax: 214-981-3400

Andrew W. Stern  
NY Bar No. 2480465 (*admitted pro hac vice*)  
astern@sidley.com  
Alex J. Kaplan  
NY Bar No. 4160370 (*admitted pro hac vice*)  
ajkaplan@sidley.com  
Jon W. Muenz  
NY Bar No. 4705968 (*admitted pro hac vice*)  
jmuenz@sidley.com  
SIDLEY AUSTIN LLP  
787 7th Avenue  
New York, NY 10019  
Tel.: 212-839-5300  
Fax: 212-839-5599

*Attorneys for Plaintiffs*



**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1(a), I hereby certify that between June 26 and July 15, 2019, Sidley Austin LLP conferred with counsel for Counter-Plaintiffs by email, telephone, and in person regarding the relief sought in this Memorandum of Law in Support of Expedited Motion for Limited Discovery Related to Counter-Plaintiffs' Declaratory Judgment and Preliminary Injunction Motion, and the Parties were unable to reach agreement as to the issues involved.

SIDLEY AUSTIN LLP

*s/ Tiffanie N. Limbrick*

---

Tiffanie N. Limbrick  
SIDLEY AUSTIN LLP

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this day, July 18, 2019, I caused Plaintiffs' Memorandum of Law in Support of Expedited Motion for Limited Discovery Related to Counter-Plaintiffs' Declaratory Judgment and Preliminary Injunction Motion filed on behalf of Plaintiffs 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, to be electronically served via the Court's CM/ECF system on the following parties:

Robert C. Walters  
rwalters@gibsondunn.com  
Russell H. Falconer  
rfalconer@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, TX 75201

Adam H. Offenhartz (admitted *pro hac vice*)  
aoffenhartz@gibsondunn.com  
Aric H. Wu (admitted *pro hac vice*)  
awu@gibsondunn.com  
Peter M. Wade (admitted *pro hac vice*)  
pwade@gibsondunn.com  
Luke A. Dougherty (admitted *pro hac vice*)  
ldougherty@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10166

Tyler H. Amass (admitted *pro hac vice*)  
tamass@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1801 California Street, Suite 4200  
Denver, CO 80202

*Attorneys for Defendant/Counter-Plaintiff  
Eric L. Oliver and Counter-Plaintiffs  
SoftVest, L.P., Horizon Kinetics LLC, and  
ART-FGT Family Partners Limited*

*s/ Tiffanie N. Limbrick*

---

Tiffanie N. Limbrick

# EXHIBIT 1

**Category 1: Requests Relating to Communications with Shareholders**

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs <sup>1</sup>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 1:</b> All Documents or Communications Relating to any Proxy Statement.</p> <p><i>Also Horizon RFP 1, SoftVest RFP 1, and ART-FGT RFP 1</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 2:</b> All Documents or Communications Relating to the Special Meeting or any matters to be acted upon at the Special Meeting.</p> <p><i>Also Horizon RFP 2, SoftVest RFP 2, and ART-FGT RFP 2</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 3:</b> All Documents or Communications Relating to the election, nomination, selection, campaigning of, or addition of any trustee candidate for the Trust.</p> <p><i>Also Horizon RFP 3, SoftVest RFP 3, and ART-FGT RFP 3</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 7:</b> All Documents or Communications Relating to Your nomination as a trustee candidate for the Trust, Including any Communications You have had with any Shareholder or any Counter-Plaintiff Relating to Your nomination as a trustee candidate for the Trust.</p> <p><i>Also Horizon RFP 7, SoftVest RFP 7, and ART-FGT RFP 7</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 17:</b> All Documents or Communications Relating to the Unsanctioned Meeting, Including all Documents or Communications exchanged with or sent to Persons who attended or who were expected or intended to attend the Unsanctioned Meeting.</p> <p><i>Also Horizon RFP 16, SoftVest RFP 16, and ART-FGT RFP 16</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 21:</b> All Documents or Communications Relating to Counter-Plaintiffs'</p>	<p>Limited to Feb. 1, 2019 to May 22, 2019.</p>

<sup>1</sup> The limitations proposed herein this Exhibit are for purposes of the Declaratory Judgment Motion only. Plaintiffs reserve all rights to seek discovery as originally propounded for other purposes in this lawsuit.

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs <sup>1</sup>
<p>assertion that the Unsanctioned Meeting was a duly noticed meeting under the terms of the Declaration of Trust.</p> <p><i>Also Horizon RFP 20, SoftVest RFP 20, and ART-FGT RFP 20</i></p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 22:</b> All Documents Relating to all Communications You have had with Shareholders or other Persons Relating to the Unsanctioned Meeting, Including all Documents or Communications made in advance of the Unsanctioned Meeting.</p> <p><i>Also Horizon RFP 21, SoftVest RFP 21, and ART-FGT RFP 21</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019 and, for purposes of this Motion, to communications with shareholders.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 63:</b> All Documents or Communications Relating to any interest in or other relationship You have with any stockholder that has filed, is reasonably expected to file, or has contemplated filing a Schedule 13D with respect to the Trust.</p> <p><i>Also Horizon RFP 29</i></p>	<p>Limited to Feb. 1, 2019 to May 22, 2019.</p>

**Category 2: Requests Related to Oliver's Candidacy**

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 24:</b> All Documents or Communications Relating to any draft or completed answers to any questionnaire You received or considered in connection with Your nomination or candidacy as trustee for the Trust, including all draft or completed answers to the Trustee Questionnaire and all draft or completed answers to the questionnaire that You assert in Your Counterclaims that You completed in preparation for the Proxy Statement filed by the Dissident Group on March 25, 2019.</p>	<p>Limited to Feb. 1, 2019 to May 22, 2019.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 25:</b> All Documents or Communications Relating to ownership, interests, or investments in oil and gas ventures in the Permian Basin held or made by You, any of Your Family Members, the Dissident Group, or any of Your Affiliates.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 26:</b> For any period of time (and not limited to the last five years), all</p>	<p>Limited to documents sufficient to show.</p>

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
<p>Documents or Communications Relating to whether You have ever been enjoined or otherwise prohibited from serving, or asked to resign or not to stand for reelection, as a director or trustee of any company or other entity.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 30:</b> For any period of time (and not limited to the last five years), all Documents or Communications Relating to any claim or charge brought against You in any administrative proceeding involving any allegation of fraud of any kind or any securities violation, and Including any claim, charge, or conviction that may have been expunged.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 31:</b> For any period of time in the past 10 years, all Documents or Communications Relating to any order, judgment, or decree barring, suspending, or otherwise limiting for more than 60 days Your right to participate in the purchase or sale of securities or to be associated with Persons engaged in any such activity, including any such order, judgment, or decree that may have been subsequently reversed, suspended, or vacated by any federal or state authority.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 32:</b> All Documents or Communications Relating to any sanction or order against You, issued by any Self-Regulatory Organization Including any sanction or order that suspended or expelled You from membership in, or suspended or barred You from association with a member of, a registered national securities exchange or a registered national or affiliated securities association, Including any such sanction or order that may have been subsequently reversed, suspended, or vacated.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 35:</b> For any period of time (and not limited to the last five years), all Documents or Communications Relating to any personal, professional, economic, business, or other involvement or connection (past or current) to any existing Trustee or anyone that You know has been or may be nominated to become a trustee of the Trust.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 36:</b> All Documents or Communications Relating to any investment You have made in any investment fund that owns or has owned</p>	<p>Limited to those investments within Defendant's knowledge.</p>

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
securities of the Trust, including any equity securities or options.	
<b>[Oliver] REQUEST FOR PRODUCTION NO. 37:</b> All Documents or Communications Relating to any instance during the last five years in which You have been publicly or privately nominated, proposed, or selected to become a director, trustee, or Executive Officer of any publicly held company or any investment company registered under the Investment Company Act of 1940 (other than the Trust).	Limited to documents sufficient to show.
<b>[Oliver] REQUEST FOR PRODUCTION NO. 38:</b> Documents sufficient to show each position You or any of Your Family Members hold or have held with any other entity (including corporations, companies, partnerships, public issuers, trusts, charitable organizations, etc.), besides the Trust, in which You or any of Your Family Members are a director, trustee, partner, or Executive Officer, regardless of the ownership in that entity.	Limited to entities with a relationship to TPL or one of Counter-Plaintiffs.
<b>[Oliver] REQUEST FOR PRODUCTION NO. 39:</b> All Documents or Communications Relating to any entities (includes companies, partnerships, trusts, etc.) that You control (directly or indirectly); serve as an Executive Officer, partner, or director for; or of which You hold 1.0% or more of the voting securities.	Limited to entities that You control (directly or indirectly); serve as an Executive Officer, partner, or director for; or of which You hold <b>5.0%</b> or more of the voting securities.
<b>[Oliver] REQUEST FOR PRODUCTION NO. 43:</b> All Documents or Communications Relating to whether, in the past five years, You or any of Your Family Members have had a direct or indirect interest in any Transaction (including any currently proposed Transaction) to which the Trust or any of its Subsidiaries is or was, or is contemplated to be, a party.	Plaintiffs are willing to withdraw this request for purposes of this Motion if Oliver produces a list of his Family Members (as defined in the Requests for Production).
<b>[Oliver] REQUEST FOR PRODUCTION NO. 47:</b> All Documents or Communications Relating to Your assertion that a "clerical error" resulted in the incorrect disclosure to investors of AMEN Properties, Inc. that You are or ever served as a director of First National Bank of Midland, including all Documents or Communications Relating to any efforts to correct the foregoing "clerical error."	Limited to documents sufficient to show.
<b>[Oliver] REQUEST FOR PRODUCTION NO. 48:</b> All Documents or Communications Relating to the negotiation,	Limited to documents sufficient to show.

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
<p>execution, or financing of a preferred promissory note between You and any of, AMEN Properties, Inc.; SoftVest; SoftVest GP I, LLC; and SoftVest Advisors, LLC, Including Documents or Communications relating to any efforts to ensure that the promissory note was negotiated at an arms-length basis.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 49:</b> All Documents or Communications Relating to any donation, tithe, or charitable grant made by You or any of Your Family Members in connection with the tithing dividend Relating to AMEN Properties, Inc.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 50:</b> For any period of time (and not limited to the last five years), all Documents or Communications Relating to any surface maps or other information Relating to the Trust provided to You by former General Agent and Chief Executive Officer Roy Thomas over ten years ago, as stated in a video released by You on April 16, 2019.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 51:</b> For any period of time (and not limited to the last five years), all Documents or Communications Relating to any acquisition or sale of, or any decision to acquire or sell, any assets, trade any securities (or options), or pursue any commercial or financial ventures, whether personally or through any entity or Person under Your direction, or on behalf of any Person, using information Relating to surface maps or other information Relating to the Trust provided to You by former General Agent and Chief Executive Officer Roy Thomas over ten years ago, as stated in a video released by You on April 16, 2019.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 55:</b> All Documents or Communications Relating to, since January 1, 2018, You, or any of Your Family Members, receiving products or services from the Trust or its Subsidiaries.</p>	<p>Plaintiffs are willing to withdraw this request for purposes of this Motion if Oliver produces a list of his Family Members (as defined in the Requests for Production).</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 56:</b> All Documents or Communications Relating to whether, since January 1, 2018, any compensation (Including securities, property, or personal benefits) has been distributed to You, directly or indirectly, proposed to be made in the future, or accrued for Your account, by any Person or entity other than</p>	<p>Limited to documents sufficient to show.</p>



Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
<p>the Trust (i) for services rendered or Relating to the Trust, (ii) pursuant to any Transaction between the Trust and such Person or entity, or (iii) on account of Your position as a nominee to serve as trustee of the Trust.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 58:</b> All Documents or Communications Relating to any Agreements or arrangements, whether written or oral, Including any Contract, voting trust, or pledge of Trust securities that may result in a change of control of the Trust at any time, Including any Agreements, whether written or oral, formal or informal, for Shareholders to vote in a particular manner.</p>	<p>Limited to documents sufficient to show.</p>
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 59:</b> All Documents or Communications Relating to any financial instrument (Including any prepaid variable forward Contract, equity swap, collar, or exchange fund) held by You or Your designees intended to hedge or offset any decrease in the market value of Trust equity securities held by You directly or indirectly.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 60:</b> All Documents or Communications Relating to any pledge, proxy, voting trust, voting Agreement or arrangement, option, warrant, or any other Agreement or arrangement, whether written or oral, Relating to Your power to vote the shares, Including any such Agreement or arrangement that may require You to dispose of the shares of the Trust that You or any of Your Family Members beneficially own.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 61:</b> All Documents or Communications Relating to any Agreement, whether written or oral, or act by You or any of Your Affiliates to act together with any other Person or entity as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, voting, holding, or disposing of shares or options, rights, or warrants to purchase shares of the Trust.</p>	
<p><b>[Oliver] REQUEST FOR PRODUCTION NO. 62:</b> All Documents or Communications Relating to Your, any of Your Family Members', or any of Your Affiliates' participation in investment decisions made by any corporation, partnership, limited liability company, or any other business or investment</p>	

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
entity, or by any nonprofit organization, with respect to the Trust's securities.	
<b>[Oliver] REQUEST FOR PRODUCTION NO. 64:</b> All Documents or Communications Relating to Your or any of Your Family Members' acquisition of any property from the Trust during the 2018 fiscal year pursuant to any Agreement, plan, or arrangement, whether written or oral.	Plaintiffs are willing to withdraw this request for purposes of this Motion if Oliver produces a list of his Family Members (as defined in the Requests for Production).
<b>[Oliver] REQUEST FOR PRODUCTION NO. 65:</b> All Documents or Communications Relating to, any Transactions in Trust securities of which You or any of Your Affiliates are deemed the beneficial owner, which have not been reported under Section 16 of the Securities Exchange Act of 1934, as amended.	
<b>[Oliver] INTERROGATORY NO. 13:</b> Explain the "clerical error" that You contend resulted in AMEN Properties, Inc. ("AMEN") incorrectly disclosing to its investors that You were a director of "First National Bank of Midland," Including why You did not correct the "clerical error" when a shareholder of AMEN first pointed the "clerical error" out to You as early as 2012.	
<b>[Oliver] INTERROGATORY NO. 14:</b> In its governing documents, AMEN committed to donate 10% of its earnings to Christian charitable organizations. You acknowledge in Your May 20, 2019 press release that AMEN's Board determined instead to "pay the tithe directly to shareholders and allow them to pass the funds along as they see fit." You further state that "my family and I have contributed significant sums to Christian (and non-Christian) charitable organizations." For the past five years, trace the disposition of any such "tithe" paid to You and any of Your Family Members by AMEN, Including the amount of "tithe" received from AMEN and the amount that was contributed to Christian charitable organizations or non-Christian charitable organizations.  <i>Also SoftVest Interrogatory 9</i>	
<b>[Oliver] INTERROGATORY NO. 15:</b> During Your tenure as AMEN's Chair and CEO, SoftVest provided AMEN a preferred promissory note that financed a royalty acquisition in late 2007. Explain what efforts were taken to ensure that this	

Plaintiffs' Original Discovery Request	Limitations Offered by Plaintiffs
<p>related party transaction was negotiated on an arms-length basis such that it did not constitute unlawful self-dealing, including but not limited to all “steps” taken to ensure the transaction did not constitute unlawful self-dealing, as alluded to in Your May 20, 2019 press release.</p> <p><i>Also SoftVest Interrogatory 10</i></p>	
<p><b>[Oliver] INTERROGATORY NO. 16:</b> Identify all oil and gas interests located in the Permian Basin that You, the Dissident Group, Your Affiliates, or any of Your Family Members own, either directly or indirectly, 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. For the avoidance of doubt, this Interrogatory is not limited to interests located “within nine miles of TPL acreage,” as set forth in Your May 20, 2019 press release.</p> <p><i>Also Horizon Interrogatory 9, Softvest Interrogatory 11, and ART-FGT Interrogatory 8</i></p>	
<p><b>[Horizon] REQUEST FOR PRODUCTION NO. 24:</b> All Documents or Communications Relating to any favorable or unfavorable opinions provided by any proxy advisory firm or other external consultant or expert concerning Oliver’s nomination as trustee of the Trust.</p> <p><i>Also Softvest RFP 24 and ART-FGT RFP 24</i></p>	

**Category 3: Procedural Request**

Discovery Request
<p><b>[Horizon] INTERROGATORY NO. 11:</b> Identify each Person answering these Interrogatories, the specific Interrogatory(ies) he or she answered, and each Person who has knowledge of, or who provided information or Documents used in connection with, answering these Interrogatories or Plaintiffs’ First Set of Requests for Production to You.</p> <p><i>Also Oliver Interrogatory 18, SoftVest Interrogatory 13, and ART-FGT Interrogatory 10</i></p>