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

JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(f)

The Rule 26(f) conference was held on June 5, 2019, in the Dallas office of the law firm Sidley Austin LLP and was attended in person by Yvette Ostolaza, Yolanda C. Garcia, and Tiffanie N. Limbrick of Sidley Austin LLP on behalf of Texas Pacific Land Trust ("TPL"), David E. Barry, and John R. Norris III (collectively, "Plaintiffs"), and Rob Walters and Russell Falconer on behalf of Eric L. Oliver ("Defendant") as well as SoftVest L.P., Horizon Kinetics

LLC, and ART-FGT Family Partners Limited (collectively, "Counter-Plaintiffs").

1. ***A brief statement of the nature of the case, including the contentions of the parties*.**

Plaintiffs' Position: TPL is a trust that has been publicly traded on the New York Stock Exchange since 1888, and its organizational document (a "Declaration of Trust") provides that it will be overseen by three trustees with lifetime appointments. In early 2019, one of the three trustees resigned, and in the subsequent months, a proxy contest ensued to fill that trustee vacancy. This case relates to Defendant Eric Oliver's attempt to manipulate and disenfranchise TPL's shareholders in connection with that proxy contest. Defendant is part of a Dissident Group[1] that has engaged in a materially misleading proxy campaign to elect Defendant as a trustee.

As detailed in the Amended Complaint, Defendant has violated the federal securities laws in myriad ways. For example, Defendant violated Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), together with SEC rules promulgated thereunder, by issuing innumerable solicitation materials, including proxy statements, press releases, presentations, blog articles, videos, and letters, replete with material misstatements and omissions. Defendant also has refused to answer basic questions concerning, among other things, his actual or potential conflicts of interests with TPL; Defendant's refusal to answer these basic questions impedes the Trustees' ability to carry out their duties, including to ensure that any candidate for trustee of TPL is not disqualified from serving.

Further, Defendant violated Section 13(d) of the Exchange Act by failing to disclose that he and his Dissident Group formed a group with Santa Monica Partners L.P. and Universal

[1] The Dissident Group is defined as SoftVest, L.P., ART-FGT Family Partners Limited, Allan Tessler, the Tessler Family Limited Partnership, and Horizon Kinetics LLC. *See* Pls.' Am. Compl., Dkt. 15, ¶ 27.

Guaranty Life Insurance Company, thereby illegally concealing the nature of their involvement in Defendant's proxy campaign.

Defendant also has sought to disenfranchise shareholders by purporting to hold an invalid shareholder meeting on May 22, 2019 in order to illegally install himself as a trustee of TPL. Defendant and his Dissident Group purported to hold this invalid meeting at a location that was not publicly noticed in accordance with the notice provisions in the Declaration of Trust. Defendant and his Dissident Group also held this invalid meeting after the Trustees had previously announced to all shareholders that the originally scheduled meeting would be temporarily postponed until after Defendant produced corrective disclosures that no longer violated the federal securities laws in numerous, material ways. As a result, numerous TPL shareholders did not participate in Defendant's sham meeting to install himself as trustee.

As a result of Defendant's misconduct, Plaintiffs seek 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 from serving 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.

Plaintiffs dispute Counter-Plaintiffs' purported counterclaims and intend to move to dismiss them.

Defendant / Counter-Plaintiffs' Position: The case is an effort by Plaintiffs to prevent Defendant Eric L. Oliver from being seated as a trustee of the Texas Pacific Land Trust. The results of a nearly two-month proxy solicitation showed that TPL's shareholders favored Mr. Oliver over Plaintiffs' nominee by a margin of roughly 2-to-1. Instead of respecting the will of TPL's shareholders and holding the May 22, 2019 special meeting of shareholders they had called to elect a new trustee, Plaintiffs filed this lawsuit and then used the lawsuit—which, after two months of active proxy solicitation, was filed less than 24 hours before the May 22 special meeting—as a pretext to attempt to indefinitely postpone the special meeting. But the Plaintiffs did not have the power to indefinitely postpone the special meeting, and when the meeting was conducted as scheduled, TPL's shareholders elected Mr. Oliver as trustee. Mr. Oliver and his fellow shareholders have a right to have the results of that vote implemented and to have Mr. Oliver seated as a trustee, and Counter-Plaintiffs have brought counterclaims seeking to enforce that right.

Defendant Eric Oliver contends that the Plaintiffs' claims against him are baseless, that he complied with all applicable federal securities laws by making all required and proper disclosures during the recently concluded proxy solicitation, and that the incumbent trustees do not have the power to disqualify a trustee candidate or impose their preferred candidate on shareholders.

Counter-Plaintiffs—each of whom is a TPL shareholder—contend that TPL's two incumbent trustees (Counter-Defendants Norris and Barry) have engaged in negligence, mismanagement, and waste, and have exceeded their power and authority under the Declaration of Trust in multiple ways, such as by breaching their contractual and fiduciary duties as trustees, and should be held individually and personally liable for the losses they have caused to TPL. Counter-Plaintiffs also contend that Mr. Barry was never duly elected as a trustee.

2. ***Any challenge to jurisdiction or venue***.

Parties' Position: The Parties agree that federal jurisdiction is proper. All Parties consent to the personal jurisdiction of this Court and acknowledge that venue is proper in the Northern District of Texas.

3. ***Any pending motions***.

Parties' Position: Defendant Eric Oliver has filed a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) and a Request for Judicial Notice in support thereof. Plaintiffs intend to oppose both the Motion and the Request. The Court has approved the deadlines for Plaintiffs to respond by July 15, 2019 and for Counter-Plaintiffs to file a reply by August 5, 2019.

No other motions are pending at this time, although Plaintiffs intend to file a motion to dismiss Counter-Plaintiffs' counterclaims, and Counter-Plaintiffs intend to file a motion for preliminary injunction.

4. ***Any matters which require a conference with the Court***.

Plaintiffs' Position: Plaintiffs request a status conference to discuss Defendant and Counter-Plaintiffs' recent refusal to engage in discovery, including negotiating an ESI Protocol,

exchanging custodians and search terms, and responding to any discovery propounded by Plaintiffs. Defendant and Counter-Plaintiffs have engaged in a Rule 26(f) conference with Plaintiffs, but they subsequently asserted that discovery should be stayed pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") pending resolution of Defendant's partial motion for judgment on the pleadings. Defendant's and Counter-Plaintiffs' position is unavailing for numerous reasons. Defendant did not move to dismiss Plaintiffs' complaint against him; rather, he filed an answer together with counterclaims. Defendant and Counter-Plaintiffs then participated in a Rule 26(f) conference on June 5, 2019 so that discovery could commence, and Plaintiffs promptly served discovery requests that same day. It was not until June 10, 2019 that Defendant and Counter-Plaintiffs suggested that discovery should be stayed. As explained further below, there are no grounds for a PSLRA discovery stay to apply under the circumstances of this case, and Defendant and Counter-Plaintiffs have refused to provide any binding authority supporting their position. Accordingly, Plaintiffs request a conference with the Court to address this issue.

Defendant / Counter-Plaintiffs' Position: Plaintiffs' position that "there are no grounds for a PSLRA discovery stay" in the wake of Defendant's filing of a Rule 12(c) motion for judgment on the pleadings is contrary to both the plain language of the statute, 15 U.S.C. § 78u–4(b)(3), and case law. *See Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058, 1063 (2014) (explaining that the PSLRA provides for "automatic stays of discovery"); *FDIC as Receiver for Franklin Bank v. Morgan Stanley & Co. LLC*, No. H-12-CV-1777, 2012 WL 12894738, *2 (S.D. Tex. Oct. 30, 2012) (explaining that the filing of a Rule 12(c) motion would "trigger the [PLSRA discovery] stay in the same way as a Rule 12(b)(6) motion"). Defendant and Counter-Plaintiffs would be pleased to participate in a conference with the Court concerning the applicability of the

PSLRA's automatic stay of discovery if such a conference would be helpful to the Court.

Counter-Plaintiffs request a conference with the Court so that the Parties and the Court can discuss the scheduling and timetable for briefing and resolution of a motion that Counter-Plaintiffs intend to file for a preliminary injunction prohibiting the Counter-Defendants from 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 or from holding any meeting, taking any other official act, or conducting any other official business on behalf of TPL without Mr. Oliver's participation.

5. ***Likelihood that other parties will be joined or the pleadings amended***.

Plaintiffs' Position: Plaintiffs reserve the right to timely file counterclaims against the parties who were added to the suit by Defendant, namely Horizon Kinetics LLC, SoftVest, L.P., and ART-FGT Family Partners Limited.

Defendant / Counter-Plaintiffs' Position: At this time, Counter-Plaintiffs do not anticipate joining additional parties or filing additional amended pleadings.

6. ***Discovery Plan***:

a. ***Time Needed to Complete Discovery***

Plaintiffs' Position: Plaintiffs anticipate that fact and expert discovery will require approximately 11 months due to the number of parties and the complex nature of the claims and counterclaims. Plaintiffs propose that fact discovery (including depositions) be completed by February 28, 2020, and expert discovery (including depositions) be completed by May 8, 2020.

Plaintiffs conveyed their position to Defendant's and Counter-Plaintiffs' counsel at the Rule 26(f) conference on June 5, 2019, and Defendant's and Counter-Plaintiffs' counsel agreed

generally with the proposed timeline and agreed that a trial date set in late summer 2020 would be appropriate. Following the conference, Plaintiffs served initial discovery requests on Defendant and Counter-Plaintiffs on June 5, 2019; responses are due by July 5, 2019. Plaintiffs also have served additional party and non-party discovery. Counter-Plaintiff SoftVest has served an improper books and records demand, which seeks documents and information related to disputes at issue in this litigation (*see, e.g.*, *Nerium SkinCare, Inc. v. Nerium Int'l, LLC*, No. 3:16-cv-1217-B, 2017 WL 9471419, at *2 (N.D. Tex. Apr. 5, 2017) (rejecting books and records demand because "[t]he availability of discovery in [the pending litigation] undercuts [a plaintiff's] alleged need to investigate mismanagement through an inspection demand") (Boyle, J.)); nonetheless, Plaintiffs have informed SoftVest that they will convert its improper books and records request into requests for documents or interrogatories under Rules 33 and 34 of the Federal Rules of Civil Procedure.

On June 10, 2019 (or five days after the Rule 26(f) conference), Defendant and Counter-Plaintiffs informed Plaintiffs that they intended to file a motion for judgment on the pleadings and that, as a result of that anticipated filing, they would be seeking to stay discovery pursuant to the PSLRA. Plaintiffs responded that authority in the Fifth Circuit stated that a contemplated motion for judgment on the pleadings did not trigger the PSLRA discovery stay. *FDIC as Receiver for Franklin Bank v. Morgan Stanley & Co. LLC*, No. H-12-CV-1777, 2012 WL 12894738, *2 (S.D. Tex. Oct. 30, 2012) (declining to apply PSLRA stay to a Rule 12(c) motion for judgment on the pleadings, reasoning that doing so would be "a recipe for eternal delay . . . because a Rule 12(c) motion can be filed at any time before trial"). Faced with that authority, Defendant filed his partial motion for judgment on the pleadings prematurely in an effort to

thwart discovery.[2]

However, Defendant's attempt to trigger the PSLRA discovery stay fails for several reasons, not least of which is that Defendant and Counter-Plaintiffs fail to carry their burden to demonstrate that the PSLRA discovery stay applies to this matter. Most significantly, Defendant and Counter-Plaintiffs have refused to provide to Plaintiffs any citations supporting Defendant's and Counter-Plaintiffs' position that discovery may be stayed pursuant to the PSLRA in this specific context: where a defendant has answered, filed five counter-claims, and added three parties to the lawsuit; participated in a Rule 26(f) conference without mentioning a stay of discovery under the PSLRA; plaintiffs served discovery; Counter-Plaintiffs filed a Rule 12(c) motion which only seeks dismissal of some of Plaintiffs' claims and does not address their counterclaims; and finally, after filing their Rule 12(c) motion amended their lawsuit to add two new counterclaims. Defendant's and Counter-Plaintiffs' refusal to provide such authority is not surprising: Plaintiffs are not aware of any such authority. And even focusing solely on the issue of whether the PSLRA may stay discovery upon the filing of a partial Rule 12(c) motion (and therefore ignoring the other pleadings that have been filed, and discovery that has already begun, in this case), the only authority in this Circuit addressing the applicability of the PSLRA to motions for judgment on the pleadings found that the discovery stay under PSLRA did not apply to a contemplated motion for judgment on the pleadings. *FDIC as Receiver for Franklin Bank v. Morgan Stanley & Co. LLC*, No. H-12-CV-1777, 2012 WL 12894738, *2 (S.D. Tex. Oct. 30,

---

[2] Defendant's partial motion for judgment on the pleadings was prematurely filed because the pleadings in this matter are not closed; Counter-Defendants Barry and Norris have until July 26, 2019 to answer, move, or otherwise respond to Counter-Plaintiffs' counterclaims. *See Ward v. Am. Red Cross*, No. 3:13-cv-1042-L, 2013 WL 2916519, at *1 (N.D. Tex. June 14, 2013) (explaining that if a "'counterclaim . . . is interposed, . . . the filing of a reply to [the] counterclaim . . . normally will mark the close of the pleadings'") (quoting 5C Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1367 at 213 (3d ed. 2004)) (Lindsay, J.). And the fact that the pleadings were not closed at the time of the filing of Defendant's partial motion is emphasized by Counter-Plaintiffs' filing of amended counterclaims after the partial motion was filed.

2012) (declining to apply PSLRA stay to a Rule 12(c) motion for judgment on the pleadings, reasoning that doing so would be "a recipe for eternal delay . . . because a Rule 12(c) motion can be filed at any time before trial"). Defendant and Counter-Plaintiffs' argument that the stay is "automatic" is unpersuasive, because Defendant and Counter-Plaintiffs have not identified a single district court or appellate court opinion in the Fifth Circuit that applies the PSLRA discovery stay when a motion for judgment on the pleadings has been filed. Nor, in the 24 years since the PSLRA became law, has any court held that the stay applies in circumstances akin to those here, where the parties claiming the stay have asserted counterclaims. It is Defendant and Counter-Plaintiffs' burden to meet, and they do not.

Moreover, applying the PSLRA discovery stay to Defendant's partial motion for judgment on the pleadings is inconsistent with the purpose of the PSLRA, which is "to curtail the champertous vice of 'lawyer-driven' securities litigation." *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.*, 844 F. Supp. 2d 498, 500 (S.D.N.Y. 2012) (internal citation omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 234 F. Supp. 2d 301, 305 (S.D.N.Y. 2002) (finding that purpose of PSLRA discovery stay is to "minimize the incentives for plaintiffs to file frivolous securities class actions in the hope either that corporate defendants will settle those actions . . . or that the plaintiff will find during discovery some sustainable claim not alleged in the complaint."). Here, both sides have sued one another, and none of the claims or counterclaims seek potential fees on behalf of shareholders. A PSLRA discovery stay's purpose is to protect the company from frivolous lawsuits, not to frustrate the company's attempt to protect itself from dissident shareholders violating securities laws, particularly where the dissident has filed counterclaims against the company and sought discovery via an improper demand to inspect books and records based on the same facts and circumstances at issue in the

lawsuit.

Finally, even if the PSLRA discovery stay applies to this case (and it does not), the Court should order discovery pursuant to an express exception under the PSLRA: that staying discovery would cause "undue prejudice." 15 U.S.C. § 78u–4(b)(3)(B). Here, the parties are in the midst of a proxy campaign, and the contentiousness flows from Defendant's material misstatements and omissions in proxy materials, together with his and Counter-Plaintiffs' repeated misrepresentations to the public that Defendant was duly elected as a trustee of TPL at a sham meeting. TPL wants to schedule a meeting for the election of a trustee, but it cannot do so until Defendant's misconduct is remediated—and a discovery stay will impede TPL's shareholders from obtaining corrective information from Defendant and Counter-Plaintiffs so that shareholders may make an informed vote at a duly noticed meeting.

In addition, Counter-Plaintiff SoftVest has propounded discovery relating to its counterclaims; that discovery is styled in the form of an improper "books and records" demand, which Plaintiffs are treating as requests for production or interrogatories under Rules 33 and 34 of the Federal Rules of Civil Procedure. But if Plaintiffs must answer this discovery, it plainly would be prejudicial to Plaintiffs to be simultaneously precluded from pursuing discovery on their claims in this action. *See In re WorldCom, Inc. Sec. Litig.*, 234 F. Supp. 2d 301 at 305 (applying exception where circumstances included unequal availability of information to all parties, explaining that it is important to consider the "rationale underlying the PSLRA's discovery stay provision," and finding that lift of stay was appropriate where the plaintiff had "clearly not filed the complaint to initiate a 'fishing expedition' in search of sustainable claims").

In summary, Defendant and Counter-Plaintiffs are attempting to stay discovery—discovery which Plaintiffs are entitled to—on a procedurally improper motion and without any

case law in the Fifth Circuit in support. They have failed to carry their burden to demonstrate that PSLRA discovery stay applied to the procedural posture of this case. Accordingly, no automatic stay of discovery applies and discovery should proceed as initially discussed during the Rule 26(f) conference.

Defendant / Counter-Plaintiffs' Position: Defendant Eric Oliver has filed a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) seeking dismissal of Plaintiffs' claims under Sections 13(d) and 14(a) of the Securities Exchange Act of 1934. Under the "stay of discovery" provision in the Private Securities Litigation Reform Act, "all discovery" in the action was automatically stayed upon the filing of Mr. Oliver's motion and will remain stayed during the pendency of the motion. See 15 U.S.C. § 78u–4(b)(3); *see also Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058, 1063 (2014) (explaining that the PSLRA provides for "automatic stays of discovery"); *Gardner v. Major Automotive Cos.*, No. 11-CV-1664 (FB), 2012 WL 1230135, at *3–4 (E.D.N.Y. Apr. 12, 2012) (explaining that "a Rule 12(c) motion is a 'motion to dismiss' within the meaning of the PSLRA automatic stay provision"); *FDIC as Receiver for Franklin Bank v. Morgan Stanley & Co. LLC*, No. H-12-CV-1777, 2012 WL 12894738, *2 (S.D. Tex. Oct. 30, 2012) (citing *Gardner* with approval and explaining that the filing of a Rule 12(c) motion would "trigger the [PLSRA discovery] stay in the same way as a Rule 12(b)(6) motion"); *Powers v. Eichen*, 961 F. Supp. 233, 235 (S.D. Cal. 1997) ("By its language, the Reform Act addresses 'all discovery' with no distinction between that sought from nonparties as opposed to parties.").

In violation of the PSLRA discovery stay that the Supreme Court has recognized is "automatic," *Troice*, 134 S. Ct. at 1063, after the filing of Defendant's Rule 12(c) motion, Plaintiffs have purported to serve, and refused to withdraw, ***more than two dozen*** subpoenas, most of them on entities and individuals affiliated with Counter-Plaintiffs, including Mr. Oliver's son. *See*

Powers v. Eichen, 961 F. Supp. 233, 235 (S.D. Cal. 1997) ("By its language, the Reform Act addresses 'all discovery' with no distinction between that sought from nonparties as opposed to parties.").

Plaintiffs cannot cite even a single case that supports their position that the PSLRA's stay provision does not apply to Rule 12(c) motions. The one case Plaintiffs cite—*FDIC as Receiver for Franklin Bank v. Morgan Stanley & Co. LLC*, No. H-12-CV-1777, 2012 WL 12894738, *2 (S.D. Tex. Oct. 30, 2012)—held only that the stay did not apply to a defendant's "mere intention to file a motion" under Rule 12(c); "there [was] no motion to dismiss pending in this case." *Id.* Here, by contrast, the Rule 12(c) motion has been filed and is pending. As the *Morgan Stanley* court recognized, the filing of a Rule 12(c) motion would "trigger the [PLSRA discovery] stay in the same way as a Rule 12(b)(6) motion." *Id.* That is the situation here.

The lack of case law support for Plaintiffs' position is not surprising. It is well settled in this Circuit and elsewhere that a "motion for judgment on the pleadings under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6)." *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *see also Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) ("Rule 12(c) is functionally identical to Rule 12(b)(6)") (cleaned up). There is no reason why the Court should deviate from this approach and treat Defendant's Rule 12(c) motion—which was filed just 26 days after Plaintiffs filed their amended complaint—any differently than it would treat a 12(b)(6) motion.

Because all discovery is stayed during the pendency of Defendant's Rule 12(c) motion, and because the relevant scope of discovery may be substantially narrowed following the Court's ruling on the motion, Counter-Plaintiffs respectfully request that the Court allow the parties to submit a proposed discovery schedule 14 days after the Court enters its ruling on Defendant's

motion.

b. *Whether Discovery Should be Conducted in Phases*

<u>Plaintiffs' Position</u>: Discovery need not be completed in phases or confined to certain issues. However, discovery should not be delayed during the pendency of Defendant's motion for judgment on the pleadings. *See* Pls.' position in ¶¶ 4 and 6(a), herein.

<u>Defendant / Counter-Plaintiffs' Position</u>: Counter-Plaintiffs do not anticipate that any discovery will be necessary for the Court to resolve the motion for a preliminary injunction, as the facts relevant to the issues raised by the motion—Counter-Defendants' lack of authority to indefinitely postpone the May 22 special meeting, and the validity of the shareholder vote that was conducted at the May 22 special meeting—are undisputed. The Court should defer discovery on the remaining issues and claims until after resolution of the motion for preliminary injunction and Defendant's Rule 12(c) motion.

c. *Subjects on which Discovery May be Needed*

<u>Plaintiffs' Position</u>: Given the breadth of topics covered by the claims and counterclaims in this matter, Plaintiffs anticipate that discovery may be conducted on several topics including:

- Information related to the nomination, candidacy, proxy solicitation, and election process for the vacant trustee position;
- Information related to the Counter-Plaintiffs' formation of a group to support the nomination of Defendant as a candidate for the vacant trustee position;
- Information related to the coordination and execution of the proxy campaign by Defendant, including the preparation, filing, and/or distribution of proxy statements, press releases, presentations, blog articles, videos, letters, and other similar publicly available documents related to the proxy campaign;
- Information related to Defendant's qualifications to serve as trustee for the Trust, including information requested on the trustee candidate questionnaire;

- Information related to the meeting of certain shareholders of TPL which occurred on May 22, 2019, on the fifth floor of 2021 McKinney Avenue, Dallas, Texas, and which was not sanctioned by TPL, including any notice provided for the meeting;
- Information related to noticing shareholder meetings and any postponement thereof, including the special meeting originally scheduled for May 22 which was postponed;
- Fees and other expenses incurred and/or paid associated with the proxy campaign;
- Information related to the election of David Barry as trustee in 2017 and the discovery of the alleged facts underlying Counter-Plaintiffs' assertion that David Barry was not validly elected as trustee in 2017;
- Information related to TPL's business operations and transactions associated therewith, including specifically the four transactions identified by Counter-Plaintiffs;
- Information related to the Trustees' and executive management's respective equity interest in TPL and compensation structure;
- Information related to allegations of conflicts of interests between David Barry and TPL, including decisions to hire Kelley Drye & Warren LLP to represent TPL and/or transactions with Tarka Resources and/or Manti Tarka Permian, L.P.;
- Information related to damages reportedly incurred by Counter-Plaintiffs; and
- Any other information related to the various counter-claims asserted by Counter-Plaintiffs.

Defendant / Counter-Plaintiffs' Position: Because all discovery is stayed during the pendency of Defendant's Rule 12(c) motion, and because the relevant scope of discovery may be substantially narrowed following the Court's ruling on the motion, Counter-Plaintiffs respectfully submit that the identification of subjects for discovery is premature at this time. *See Newby v. Enron Corp.*, 338 F.3d 467, 471 (5th Cir. 2003) ("The rationale underlying the [PSLRA discovery] stay was to prevent costly 'extensive discovery and disruption of normal business activities' until a court could determine whether a filed suit had merit . . . . The stay protected defendants from plaintiffs who would use discovery to substantiate an initially frivolous complaint."). Counter-Plaintiffs request that the Court allow the parties to submit their proposed subjects of discovery 14 days after the Court enters its ruling on Defendant's Rule 12(c) motion.

7. ***Any issues related to disclosure or discovery of electronically stored information.***

A. Written consent to service by e-mail.

<u>Parties' Position</u>: Under Rule 5(b)(2)(F) of the Federal Rules of Civil Procedure, the Parties hereby consent in writing to accept service of discovery requests and responses by e-mail. Any discovery request or response served by e-mail must be served on all counsel who have appeared of record in this action. The Parties agreed to accept service by e-mail during the Rule 26(f) conference on June 5, 2019, and the agreement to accept service by e-mail is effective as of the date of the Rule 26(f) conference.

B. ESI protocol

<u>Plaintiffs' Position</u>: Plaintiffs submit an ESI Protocol attached hereto and incorporated herein as Exhibit 1 to govern the exchange of electronically stored information in this case. Plaintiffs provided a draft of this ESI Protocol to Defendant and Counter-Plaintiffs' counsel at the Rule 26(f) conference and provided a modified version on June 9, 2019. However, Defendant and Counter-Plaintiffs did not provide any comments to the proposed ESI Protocol until 6:45 pm on June 21, 2019 (the date that this report is due).

<u>Defendant / Counter-Plaintiffs' Position</u>: Defendant and Counter-Plaintiffs have no objection to the vast majority of the provisions in Plaintiffs' proposed ESI protocol and anticipate that the Parties will easily be able to agree on an ESI Protocol at an appropriate time. With the PSLRA's automatic stay of discovery in place, there is no need for an ESI protocol at this time, and Plaintiffs' proposed ESI Protocol includes provisions that would circumvent the PSLRA discovery stay and are premature in light of pending Rule 12(c) motion that could substantially narrow the issues in the case. Counter-Plaintiffs respectfully request that the Court allow the

parties to submit an agreed ESI protocol 14 days after the Court enters its ruling on Defendant's Rule 12(c) motion.

8. ***Any issues relating to claims of privilege or of protection as trial-preparation material including—if the parties agree on a procedure to assert such claims after production—whether they will be asking the Court to include their agreement in an order.***

Plaintiffs' Position: Plaintiffs' position is that the Parties should negotiate a mutually agreeable confidentiality agreement and protective order, including provisions to address the inadvertent production of privileged information, by the date of the status conference. Plaintiffs respectfully submit that to the extent there are any open issues on the confidentiality agreement and protective order, the Parties may present them for resolution during the status conference. There is no reason to delay negotiation and entry of a confidentiality agreement and protective order, particularly given that the PLSRA discovery stay does not apply to this matter. *See* Pl.'s Position in paragraphs 4 and 6(a), *supra*.

Defendant / Counter-Plaintiffs' Position: The Parties appear to be in agreement that a confidentiality order, including procedure for asserting claw-back claims based on privilege and protection of trial-preparation material, should be negotiated and agreed to. Counter-Plaintiffs propose that the parties should submit an agreed Confidentiality and Protective Order for the Court's consideration within 14 days after the Court issues its ruling on Defendant's Rule 12(c) motion.

9. ***Changes to limitations on discovery imposed under the Federal rules or local rules***.

Plaintiffs' Position: The complex nature of this case warrants changes to the limitations on discovery imposed under the Rules, specifically increasing the number of interrogatories and

depositions. As evident from Plaintiffs' Position in paragraph 6(c), there are a number of issues requiring discovery. Plaintiffs' claims relate to the appointment of a trustee who will have an important role over the operations of a multi-billion dollar trust that has existed for over 130 years. Plaintiffs' claims also impact critically important issues of shareholders' rights, including how those rights are interpreted under TPL's governing documents. Likewise, a number of Defendant's and Counter-Plaintiffs' claims address the same issues. Defendant and Counter-Plaintiffs have further expanded the scope of discovery needed by adding counterclaims related to at least four different transactions that TPL has engaged in since 2011 as well as the overall management and operations of TPL's water business. Moreover, this lawsuit is particularly complex because it involves seven parties and ten claims among the parties.

Accordingly, Plaintiffs respectfully request the following:

- that the limits on interrogatories imposed by Rule 33 of the Federal Rules of Civil Procedure be extended to allow for the service of fifty (50) written interrogatories, including all discrete subparts, on each party; and
- that the Court allow fifteen (15) depositions to be taken per side.

Plaintiffs respectfully submit that the proposed changes concerning the number of interrogatories and depositions are necessary to ensure that the parties have the discovery needed to present their case to the Court and for the Court to adjudge this matter, as it will have a lasting impact on the ongoing operations of TPL. *See, e.g., Kiewit Offshore Servs., Ltd. v. Dresser-Rand Global Servs., Inc.*, No. H-15-1299, 2016 WL 6905874, at *2 (S.D. Tex. Apr. 1, 2016) (granting leave to take additional depositions after "considering the issues at stake in this case" including substantial damages at issue); *United States v. RES Holdings*, No. 11-739, 2012 WL 4369658, at *2 (E.D. La. Sept. 24, 2012) (noting that "the complex facts involved in this case warrant an

extension of the typical ten-deposition limit . . . [because] district courts are to construe the discovery rules liberally so as to effectuate their purpose of enabling parties to obtain pertinent information"); *In re Pabst Licensing GmbH Patent Litig.*, No. Civ. A. 99-MD-1298, 2001 WL 797315, at *2-4 (E.D. La. July 12, 2001) (amending case management plan because "the scope of core discovery should be expanded" based on "the technicalities of the subject matter and the complexity of the applicable substantive law" and granting additional discovery); *see also Gordon v. Allen*, No. Civ. A. 303CV1685R, 2004 WL 627496, at *1 (N.D. Tex. Mar. 25, 2004) (In the Fifth Circuit, courts "construe discovery rules liberally.").

Defendant / Counter-Plaintiffs' Position: There is nothing extraordinary about this case that will require extra discovery, especially at this early stage of the proceedings and with discovery stayed. Plaintiffs' request for interrogatories and depositions in excess of the limits established by the Federal Rules of Civil Procedure is premature, and Counter-Plaintiffs oppose it.

Absent a stipulation, a party must obtain leave of court to exceed the number of depositions and interrogatories permitted by Rules 32 and 33. Fed. R. Civ. P. 30(a)(2)(A)(i), 33(a)(1). In making that determination, the Court considers whether (1) the additional discovery will be "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive"; (2) the party seeking extra discovery will have "ample opportunity to obtain the information by discovery in the action"; and (3) the extra discovery is "proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1), (b)(2)(C); *see also Barrow v. Greenville Indep. Sch. Dist.*, 202 F.R.D. 480, 481 (N.D. Tex. 2001) ("When a party seeks leave to take more than ten depositions, the court's decision whether to grant such leave is governed by the principles set out in Rule 26(b)(2)[.]").

As to interrogatories, the issue frequently turns on "whether the requesting party has

adequately shown that the benefits of additional interrogatories outweigh the burden to the opposing party." *Shaw Grp., Inc. v. Zurich Am. Ins. Co.*, No. CIV.A. 12-257-JJB-RL, 2014 WL 1816494, at *8 (M.D. La. May 7, 2014); *see also Reeves v. Wells Fargo Bank, NA*, No. EP-14-CV-00187-DCG, 2015 WL 11598710, at *2 (W.D. Tex. June 26, 2015) ("This means the Court should consider whether the additional interrogator[ies] would advance the goals of proportional and nonduplicative discovery."). This requires the requesting party to make a "particularized showing why the court should grant it leave to serve more than twenty-five interrogatories"; conclusory references to the action's complexity and the importance of the issues at stake do not suffice. *Id.* at *8–9 (party "failed to adequately show, however, that the benefits of these additional requests will actually narrow the issues or streamline the trial"); *see also Atkinson v. Denton Pub. Co.*, 84 F.3d 144, 148 (5th Cir. 1996) (no abuse of discretion in denying additional interrogatories where the plaintiff "did not explain why additional interrogatories were necessary, beyond stating that the information related to [the defendant's] defenses in some unspecified way"); *Hall v. Louisiana*, No. CV 12-657-BAJ-RLB, 2014 WL 12812112, at *3 (M.D. La. Mar. 18, 2014) ("Plaintiffs have simply described the nature of litigation, as opposed to offering a reason why the particular facts and circumstances of their case set it apart from others and merit additional the discovery requested and the accompanying burden on the defendants.").

To exceed Rule 30(a)(2)(A)'s the presumptive limit of 10 depositions, the party seeking leave to do so "must establish not only the necessity of each deposition identified in his motion (i.e., witnesses 11 through 20), but also the necessity of all the depositions he has taken *or will take* in reaching the prescribed limit (i.e., witnesses 1 through 10)." *MacKenzie v. Castro*, No. 3:15-CV-0752-D, 2016 WL 3906084, at *5 (N.D. Tex. July 19, 2016) (internal quotations omitted) (emphasis added); *see also Barrow v. Greenville Indep. Sch. Dist.*, 202 F.R.D. 480, 481 (N.D. Tex.

2001) ("the party must establish the necessity not only of the added depositions but of those taken without court permission pursuant to the presumptive limit of Rule 30(a)(2)(A)"). The requesting party cannot "posit[] in general and conclusory terms the supposed necessity of the depositions" taken within the presumptive limit of 10. *Barrow*, 202 F.R.D. at 484. Nor does a case's complicated nature or "the mere fact that more than ten individuals may have discoverable information in a case . . . mean that taking more than ten depositions makes sense." *Byers v. Navarro Cty.*, No. 3:09-CV-1792-D, 2011 WL 4367773, at *2 (N.D. Tex. Sept. 19, 2011).

Here, Plaintiffs/Counter-Defendants make no particularized showing of any need to propound more than 25 interrogatories, and they have not established the necessity either of the first 10 depositions they will take or of each deposition they plan taking beyond that presumptive limit. Allowing interrogatories and depositions in excess of the number permitted by the Rules at this early stage of litigation risks permitting discovery not proportional to the needs of the case; discovery that is unreasonably cumulative or duplicative, or that can be obtained from some other source that is more convenient, less burdensome, or less expensive; and discovery that Plaintiffs/Counter-Defendants may have ample opportunity to otherwise obtain during the action.

10. ***Any other orders that should be entered under Rule 26(c) or Rule 16(b) or (c).***

Plaintiffs' Position: As stated above, Plaintiffs respectfully submit that the Parties should negotiate and enter into a mutually agreeable confidentiality agreement and protective order by the date of the status conference.

Defendant / Counter-Plaintiffs' Position: As stated above, intend to negotiate an agreed Confidentiality and Protective Order and to submit that proposed agreed order for the for the Court's consideration once the PSLRA's automatic stay has been lifted.

11. ***Proposed deadlines with specific dates***.

a. *Deadline to join additional parties and to amend the pleadings*.

Parties' Position: July 26, 2019

b. *Deadline to file dispositive motions, including summary judgment and other dispositive motions*.

Plaintiffs' Position: Plaintiffs suggest that the deadline to file dispositive motions, including summary judgment and other motions, should be May 27, 2020, provided that the Court agrees that discovery should not be stayed in this action.

Defendant / Counter-Plaintiffs' Position: In light of the discovery stay currently in place under the PSLRA, Counter-Plaintiffs respectfully request that the Court allow the parties to submit a proposed schedule of trial and pre-trial deadlines 14 days after the Court enters its ruling on Defendant's Rule 12(c) motion for judgment on the pleadings. The PSLRA's discovery stay will remain in place until the Court issues its ruling, and at this time it is not possible for the Parties or the Court to predict when that ruling will issue. Fact-discovery, expert-discovery, and dispositive-motion deadlines all depend on the date on which discovery will commence, which cannot be known at this time. In addition, if Defendant's Rule 12(c) motion is granted in whole or in part, the scope of this case will be substantially narrowed, which would affect the amount of time the Parties need to complete discovery and motions practice. The Parties will be better able to provide the Court with a realistic and workable proposed trial schedule once the motion for judgment on the pleadings has been decided.

c. *Deadline to complete discovery*.

Plaintiffs' Position: Plaintiffs suggest that the deadline to complete discovery be May 1, 2020, provided that the Court agrees that discovery should not be stayed in this action.

Defendant / Counter-Plaintiffs' Position: Counter-Plaintiffs' position on this is stated above

under item 11.b.

d. *When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.*

Plaintiffs' Position: Plaintiffs suggest that the deadline for the party(ies) with the burden of proof to designate and provide expert disclosures be February 14, 2020, for the opposing party to provide rebuttal experts and disclosures by March 27, 2020, and for expert depositions to occur between March 30, 2020 and May 1, 2020, provided that the Court agrees that discovery should not be stayed in this action.

Counter-Plaintiffs' Position: Counter-Plaintiffs' position on this is stated above under item 11.b.

12. ***Requested trial date, estimated length of trial, and whether jury has been demanded*.**

Plaintiffs' Position: As stated above in Plaintiffs' Positions in paragraphs 4 and 6(a), the PSLRA discovery stay does not apply to this case and there is no reason to delay scheduling trial. Indeed, at the Rule 26(f) conference, the Parties discussed and agreed to a trial date in the summer of 2020. Accordingly, Plaintiffs respectfully request a trial on August 31, 2020, or on a date thereafter convenient to the Court and anticipate that the trial will take a total of eighty (80) hours divided evenly between the sides. Neither side has demanded a jury trial.

Defendant / Counter-Plaintiffs' Position: For the reasons explained above, in light of the stay of discovery under the PSLRA, Counter-Plaintiffs respectfully request that the Court allow the parties to select a requested trial date 14 days after the Court enters its ruling on Defendant's Rule 12(c) motion for judgment on the pleadings. The estimated length of trial will depend on the number and scope of issues that remain to be tried, but in no event do Counter-Plaintiffs

anticipate that a trial will require more than 35 hours of court time. Neither side has demanded a jury.

13. ***Whether Parties consent to trial (jury or non-jury) before a United States Magistrate Judge per 28 U.S.C. § 636(c)***.

Parties' Position: The Parties respectfully decline to proceed before the Magistrate Judge.

14. ***Progress made toward settlement and the present status of settlement negotiations***.

Parties' Position: The Parties have entered into a nondisclosure agreement that governs the confidentiality of settlement discussions. The Parties have engaged in settlement discussions, including several phone calls and e-mail correspondence. Further, specific proposals have been made and responded to by the Parties.

15. ***What form of alternative dispute resolution (e.g., mediation, arbitration, summary jury trial, court-supervised settlement conference, or early neutral evaluation) would be most appropriate for resolving this case and when would it be most effective***.

Plaintiffs' Position: Mediation before a former federal judge may be beneficial, although an initial exchange of discovery may be necessary to make the mediation more productive.

Counter-Plaintiffs' Position: Early mediation before a neutral may be beneficial. Counter-Plaintiffs do not believe any discovery needs to be exchanged for mediation to be beneficial.

16. ***Provide any other matters relevant to the status and disposition of this case***.

Parties' Position: None at this time.

Dated: June 21, 2019

Respectfully Submitted and Approved,

/s/ Russell H. Falconer

Robert C. Walters
Texas Bar No. 20820300
rwalters@gibsondunn.com
Russell H. Falconer
Texas Bar No. 24069695
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Ave., Suite 1100
Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Fax: (214) 698-3400

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

/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, Texas 75201
Telephone: (214) 981-3300
Fax: (214) 981-3400

and

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 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Fax: (212) 839-5599

Attorneys for Plaintiffs Texas Pacific Land Trust, David E. Barry, and John R. Norris III

EXHIBIT 1

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

ESI PROTOCOL

This document describes the format for delivery of electronic data, and is organized into six parts: (1) Document Collection and Review, (2) Document Production, (3) General Data Delivery, (4) Electronic Load Files, (5) Hard Copy Data and (6) Media Format.

I. Document Collection and Review

A. The parties will identify any and all servers and systems that they have used since January 1, 2014 to save and store relevant documents including without limitation (a) emails; (b) communications with Shareholders; (c) documents and communications related to the proxy solicitation; (d) documents and communications related to Defendant Oliver's nomination, candidacy, and

campaign for trustee of the Trust; (e) documents and communications related to Defendant Oliver's qualifications for candidacy for trustee of the Trust; (f) documents and communications related to the purported meeting of certain shareholders of TPL which occurred on May 22, 2019, on the fifth floor of 2021 McKinney Avenue, Dallas, Texas, which was neither sanctioned by TPL nor properly noticed; (g) documents and communications related to the Trust's operations, management, and governance; (h) documents regarding Counter-Plaintiffs' allegations concerning Plaintiff Barry's election; (i) documents and communications related to the damages reportedly incurred by Counter-Plaintiffs; and (j) all other documents and communications that developments in the litigation may cause to become relevant to the dispute.

1. This also includes the following forms of media:

   a. Each e-mail account for each custodian

      (i) For individual parties, this includes email accounts from all entities for which the individual party may work or conduct business as well as personal e-mail accounts.

   b. Laptops, computers or servers

      (i) For individual parties, this includes both business and personal laptops, computers, or servers.

   c. Personal electronic devices (including cell phones or tablets)

   d. Cloud storage

2. It includes any other system by which communications occur and documents are stored.

B. The parties will confirm that all of the systems and servers identified have been searched for relevant documents.

1. In connection with actual searches for responsive documents, the parties will indicate whether or not the searches have been conducted on the one hand physically by counsel and/or third party vendors, or the company in the case of the Trust, SoftVest, L.P., Horizon Kinetics LLC, and ART-FGT Family Limited Partners or the individuals in the case of Eric L. Oliver, John R. Norris III, and David E. Barry.

   a. If the company or individual party has conducted these searches then counsel will confirm they have been actively involved in overseeing the process or describe generally what steps they have taken to confirm proper searches have been done.

2. The parties will disclose that they have made a diligent inquiry and confirm that since the commencement of the lawsuit, no records have been deleted or destroyed. If they have, then those will be identified.

C. The parties will complete negotiations regarding custodians and search terms by July 3, 2019. Any changes or additions to a party's own custodians and search terms after that date shall only be made with consent of the opposing parties or court order.

D. When reviewing data, the parties are permitted to use global deduplication using hash values and industry standard e-mail threading features within a review database.

II. Document Production

A. Rolling productions should begin within two weeks of the deadline to respond to the respective requests for production. The parties agree that the time to produce documents may be modified by agreement of the parties.

B. Production of documents should be in the format described in Section III.

III. General Data Delivery

- Email attachments should be consecutively produced with the parent email record.
- Extracted text should be provided for all documents, except for documents that originated in hard-copy format. OCR provided for documents that do not have extracted text, or in the case that a document is redacted.
- All text (both extracted and OCR) should be produced as document level text files named after the Prod Bates Beg. For each document, a link to each corresponding text file should be Included within the Data Load File.
- All text (both extracted and OCR) and Metadata should be produced Unicode compliant (UTF-8).
- All header and footer information should be Included in the *.tif image
- Production of non-standard electronic files Including, but not limited to, database files (*e.g.*, Microsoft Access, *.MDB, *.SQL, etc.), source code, CAD drawings, large oversized documents, transactional data, etc., should be discussed with Sidley in advance of production to determine the optimal production format.
- The load file should Include the following fields:

Field Name	Populated For (E-mail, Electronic Files, or Both)	Field Data Type	Field Description	Field Format
Prod Bates Beg	Both	User Defined	Start Bates (Including prefix) – no spaces	Fixed-Length Text (50)
Prod Bates End	Both	User Defined	End Bates (Including prefix) – no spaces	Fixed-Length Text (50)
Prod Bates Beg Attach	Both	User Defined	Family Start Bates (Including Prefix) – no spaces	Fixed-Length Text (50)
Prod Bates End Attach	Both	User Defined	Family End Bates (Including Prefix) – no spaces	Fixed-Length Text (50)
Confidential Designation	Both	User Defined	Confidentiality Designation of document	Long Text
Custodian	Both	User Defined	The individual whose ESI was collected	Single Choice
Custodian - All	Both	User Defined	Name of all individuals that possessed a particular document (for global de-duplication only)	Multi-Choice
Record Type	Both	User Defined	Electronic record type (e.g., Email, Email Attachment, E-Doc, Hard Copy)	Single Choice
Native File Path	Both	User Defined	Relative file path location to the produced native file (if applicable)	Long Text
Email Subject	E-mail	Metadata	Subject line of email	Long Text
Date Sent	E-mail	Metadata	Date email was sent	Date MM/DD/YYYY
Time Sent	E-mail	Metadata	Time email was sent	Fixed-Length Text (20)
Date Received	E-mail	Metadata	Date email was received	Date MM/DD/YYYY
Time Received	E-mail	Metadata	Time email was received	Fixed-Length Text (20)
Email To	E-mail	Metadata	Email Recipient(s)	Long Text
Email From	E-mail	Metadata	Email Author	Long Text
Email CC	E-mail	Metadata	Email CC Recipient(s)	Long Text
Email BCC	E-mail	Metadata	Email BCC Recipient(s)	Long Text
Attachment Name	E-mail	Metadata	The file name(s) of the documents attached to the email	Long Text

Field Name	Populated For (E-mail, Electronic Files, or Both)	Field Data Type	Field Description	Field Format
Email Importance	E-mail	Metadata	Importance designation assigned to the email (i.e., High, Normal, Low)	Fixed-Length Text (20)
Email Sensitivity	E-mail	Metadata	Sensitivity designation assigned to the email (i.e., Confidential, Sensitive, Normal)	Fixed-Length Text (20)
Number of Attachments	Both	Metadata	Number of attachments Included with the email	Long Text
Date Created	Electronic Files	Metadata	Date the electronic document was created	Date MM/DD/YYYY
Time Created	Electronic Files	Metadata	Time the electronic document was created	Fixed-Length Text (20)
Date Last Modified	Electronic Files	Metadata	Date the electronic document was last modified	Date MM/DD/YYYY
Time Last Modified	Electronic Files	Metadata	Time the electronic document was last modified	Fixed-Length Text (20)
File Name	Both	Metadata	File name of the electronic files or email	Long Text
Document Title	Electronic Files	Updateable Metadata	All Title values populated in the electronic file metadata	Long Text
Document Subject	Electronic Files	Updateable Metadata	All Subject values populated in the electronic file metadata	Long Text
Document Author	Electronic Files	Updateable Metadata	Any Author values populated in the electronic file metadata	Long Text
Document Categories	Electronic Files	Updateable Metadata	Any Categories values populated in the electronic file metadata	Long Text
Document Comments	Electronic Files	Updateable Metadata	Any Comments values populated in the electronic file metadata	Long Text
Document Revision	Electronic Files	Updateable Metadata	Number of revisions that have been tracked in the electronic file metadata	Fixed-Length Text (20)
Documents Keywords	Electronic Files	Updateable Metadata	Any Keywords values populated in the electronic file metadata	Long Text
Source File Path	Both	Metadata	Original file path location of the file	Long Text
Document Extension	Both	Metadata	File extension of the document	Long Text

Field Name	Populated For (E-mail, Electronic Files, or Both)	Field Data Type	Field Description	Field Format
MD5 Hash	Both	Metadata	MD5 Hash value	Fixed-Length Text (50)
FileSize	Both	Metadata	Size of the file in bytes	Fixed-Length Text (50)

IV. Electronic Load Files

A. Image Load Files:

- Images produced as black and white, Group IV, single bit, single page tiffs; or single page color or grayscale jpg images
- Images should be 300 DPI.
- The tiff file name should be the same as the page Bates/control number associated with the page.
- No special characters or embedded spaces in file names.
- Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape).
- Image load files in Opticon format (i.e., OPT file).
- Every image in the delivery volume should be contained in the image load file.
- The image key value should be the same as the Bates control number associated with the page.
- Load files should not span across media (e.g., CDs, DVDs, Hard Drives, Etc.); a separate volume should be created for each piece of media delivered.
- The image load file name should mirror the delivery volume name containing an .OPT extension (i.e., ABC001.OPT).
- Volume names should be consecutive (i.e., ABC001, ABC002, et. seq.).

- All images must be assigned a Bates/control number. This number must always:
  - be unique across the entire document production;
  - maintain a constant length (0-padded) across the entire production;
  - contain no special characters of embedded spaces;
  - be sequential within a given document.

- Wherever possible, every *.tif image shall have its assigned Bates number electronically branded onto the image. Reasonable steps shall be taken to place the Bates number in a location that does not obscure any source document information.

- There shall be no other legend or stamp placed on a *.tif image unless the subject document qualifies for designation as confidential. In such case, the corresponding *.tif images may also have an appropriate legend concerning confidentiality branded on them in a location that does not obscure any source document.

B. Data Load Files:

- An ASCII delimited data load file should be provided that accounts for every document in the delivery. Records that account for these documents should be complete.

- The data load file should use standard Concordance delimiters:
  - Comma – ¶ (ASCII 20)
  - Quote – þ (ASCII 254)
  - Newline – ® (ASCII174)

- The first record should contain the field names corresponding to the data order.

- All date fields should be produced in MM/DD/YYYY format and should contain no incomplete dates (e.g., 00/00/2012, 00/05/1999, etc.). To the extent that a date cannot be produced for a particular record, the field should be left blank.

- Use carriage-return line-feed to indicate the start of the next record.

- Single choice fields should contain only one value

- Multi-choice field values should be separated using a semicolon character

- Load files should not span across media (e.g., CDs, DVDs, hard drives, etc.); a separate volume should be created for each piece of delivered media.

- The data load file name should mirror the delivery volume name, containing a .DAT extension (i.e., ABC001.DAT).

- The volume names should be consecutive (i.e., ABC001, ABC002, et. seq.).

V. Hard Copy Data

- Documents that originated in hard copy format should be produced in a separate delivery volume from that of the electronic files.

- Data load file format should be the same as with electronic data format.

- The following information should be in the data load file:
  - ProdBeg and ProdEnd for all documents;
  - all bibliographical coding information captured during review;
  - OCR text, if available.

- Reasonable efforts shall be made to maintain the unitization of documents. When scanning paper documents, distinct documents should not be merged into a single record or split into multiple records.

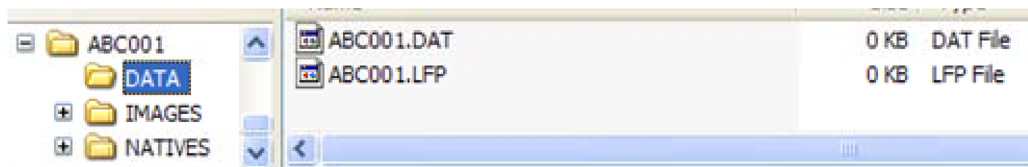
- All general image instructions should be followed.

VI. Media Format

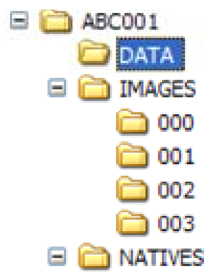
A. File Directory Structure:

The root folder on delivery media should be labeled after the delivery volume. Within each root folder should be three sub-folders labeled "Data", "Images", "Natives", and "Text".

All data and image load files for a particular delivery volume should be saved under the folder labeled "Data". All delivery volume images should be saved to the folder labeled "Images". All native files should be saved to the folder labeled "Natives".



Please note that there should be no more than one thousand files delivered to a particular sub-folder. When applicable, sub-folders should be created and labeled with an incrementing zero padded number beginning at number zero. These sub-directories must be Included in the appropriate place in both data and image load files.



Hard drive data deliveries should be limited to drives under 1TB.

B. Media Labeling:

The following information should be captured and Included on all delivered media:

- the producing party's contact information;
- a case reference caption;
- delivery date;
- volume name;
- number of document records;
- number of images;
- bates range(s) produced;
- if applicable, an incrementing media number (e.g., DVD 1 of 2).