

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TEXAS PACIFIC LAND TRUST and, solely in their
respective capacities as trustees for Texas Pacific Land
Trust, DAVID E. BARRY and JOHN R. NORRIS III,

Plaintiffs,

v.

ERIC L. OLIVER,

Defendant.

and

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

Counterclaim Plaintiffs,

v.

DAVID E. BARRY and JOHN A. NORRIS III, in their
individual capacities and in their capacities as trustees for
the Texas Pacific Land Trust,

Counterclaim Defendants.

Case No. 3:19-CV-01224-B

**DEFENDANT ERIC L. OLIVER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT
OF HIS FED. R. CIV. P. 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS
DISMISSING PLAINTIFFS' FEDERAL SECURITIES CLAIMS**

In support of his Fed. R. Civ. P. 12(c) motion for judgment on the pleadings dismissing
Plaintiffs' federal securities claims (Counts I and II of the Amended Complaint), Defendant Eric
L. Oliver respectfully requests that the Court take judicial notice of the documents listed in
Section I below pursuant to Fed. R. Evid. 201.

I. DOCUMENTS**A. Public SEC Filings By Plaintiff Texas Pacific Land Trust (“TPL”)**

Exhibit	Description	Date
1.	Form 8-K, Current Report	3/4/2019
2.	Form 8-K, Current Report (press release) (also filed as Form DEFA14A)	3/25/2019
3.	Form PREC14A, Preliminary Proxy Statement	3/28/2019
4.	Form DEFC14A, Definitive Proxy Statement	4/8/2019
5.	Form DEFA14A, Proxy Soliciting Materials (press release)	4/8/2019
6.	Form DEFA14A, Proxy Soliciting Materials (letter)	4/8/2019
7.	Form DEFA14A, Proxy Soliciting Materials (website)	4/8/2019
8.	Form DEFA14A, Proxy Soliciting Materials (press release)	4/9/2019
9.	Form DEFA14A, Proxy Soliciting Materials (advertisements)	4/10/2019
10.	Form DEFA14A, Proxy Soliciting Materials (letter from trustees)	4/15/2019
11.	Form DEFA14A, Proxy Soliciting Materials (investor presentation)	4/15/2019
12.	Form DEFA14A, Proxy Soliciting Materials (letter from Sidley)	4/15/2019
13.	Form DEFA14A, Additional Proxy Soliciting Materials (letter from trustees)	4/15/2019
14.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	4/17/2019
15.	Form DEFA14A, Proxy Soliciting Materials (website URLs)	4/17/2019
16.	Form DEFA14A, Proxy Soliciting Materials (advertisements)	4/17/2019
17.	Form DEFA14A, Proxy Soliciting Materials (investor presentation)	4/18/2019
18.	Form DEFA14A, Proxy Soliciting Materials (press release and letter)	4/22/2019

Exhibit	Description	Date
19.	Form DEFA14A, Proxy Soliciting Materials (letter)	4/23/2019
20.	Form DEFA14A, Proxy Soliciting Materials (press release)	4/24/2019
21.	Form DEFA14A, Proxy Soliciting Materials (advertisements)	4/24/2019
22.	Form DEFA14A, Proxy Soliciting Materials (webcast transcript)	4/25/2019
23.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	4/25/2019
24.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	4/26/2019
25.	Form DEFA14A, Proxy Soliciting Materials (social media and advertisements)	4/26/2019
26.	Form DEFA14A, Proxy Soliciting Materials (press release)	4/29/2019
27.	Form DEFA14A, Proxy Soliciting Materials (presentation to ISS)	4/29/2019
28.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	4/29/2019
29.	Form DEFA14A, Proxy Soliciting Materials (letter)	4/30/2019
30.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/1/2019
31.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	5/1/2019
32.	Form DEFA14A, Proxy Soliciting Materials (social media)	5/1/2019
33.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	5/2/2019
34.	Form DEFA14A, Proxy Soliciting Materials (social media and advertisements)	5/2/2019
35.	Form DEFA14A, Proxy Soliciting Materials (article)	5/2/2019
36.	Form DEFA14A, Proxy Soliciting Materials (letter)	5/6/2019
37.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/7/2019
38.	Form DEFA14A, Proxy Soliciting Materials (article)	5/8/2019

Exhibit	Description	Date
39.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/8/2019
40.	Form DEFA14A, Proxy Soliciting Materials (social media)	5/8/2019
41.	Form DEFA14A, Proxy Soliciting Materials (advertisements)	5/8/2019
42.	Form DEFA14A, Proxy Soliciting Materials (proxy supplement)	5/10/2019
43.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/13/2019
44.	Form DEFA14A, Proxy Soliciting Materials (website screenshot)	5/13/2019
45.	Form DEFA14A, Proxy Soliciting Materials (social media and advertisements)	5/15/2019
46.	Form DEFA14A, Proxy Soliciting Materials (letter)	5/16/2019
47.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	5/17/2019
48.	Form DEFA14A, Proxy Soliciting Materials (letter)	5/17/2019
49.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/20/2019
50.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/21/2019
51.	Form DEFA14A, Proxy Soliciting Materials (letter)	5/22/2019
52.	Form DEFA14A, Proxy Soliciting Materials (website screenshots)	5/22/2019
53.	Form DEFA14A, Proxy Soliciting Materials (press release)	5/23/2019
54.	Form 8-K, Current Report (press release)	6/14/2019

B. Public SEC Filings By Investor Group Supporting Eric L. Oliver's Candidacy

Exhibit	Description	Date
55.	Schedule 13D (SoftVest, L.P.)	3/15/2019
56.	Form PREN14A, Preliminary Proxy Statement	3/25/2019

Exhibit	Description	Date
57.	Form DFAN14A, Proxy Soliciting Materials (letter and questionnaire)	3/28/2019
58.	Form DEFC14A, Definitive Proxy Statement	4/9/2019
59.	Form DFAN14A, Proxy Soliciting Materials (press release)	4/15/2019
60.	Form DFAN14A, Proxy Soliciting Materials (video transcript)	4/17/2019
61.	Form DFAN14A, Proxy Soliciting Materials (press release, video transcript, and presentation)	4/23/2019
62.	Form DFAN14A, Proxy Soliciting Materials (press release)	5/7/2019
63.	Form DFAN14A, Proxy Soliciting Materials (press release)	5/9/2019
64.	Form DFAN14A, Proxy Soliciting Materials (proxy supplement)	5/10/2019
65.	Form DFAN14A, Proxy Soliciting Materials (press release)	5/20/2019
66.	Form DFAN14A, Proxy Soliciting Materials (complaint)	5/21/2019
67.	Form DFAN14A, Proxy Soliciting Materials (press release)	5/22/2019

C. Other Documents of Public Record

Exhibit	Description	Date
68.	Transcript, Interview of Roy Thomas, <i>The Wall Street Transcript</i>	12/24/2001
69.	Transcript, Interview of Roy Thomas, <i>The Wall Street Transcript</i>	3/27/2006
70.	Schedule 13D of Santa Monica Partners, L.P.	4/8/2019
71.	Universal Guaranty Life Insurance Company Press Release	4/16/2019
72.	Mission Advisors Press Release	4/25/2019
73.	Biography of David E. Barry, Kelley Drye & Warren LLP	6/17/2019
74.	LinkedIn Profile of David E. Barry	6/17/2019

II. ARGUMENT

On a Fed. R. Civ. P. 12(c) motion for judgment on the pleadings, the Court may properly consider “any judicially noticed facts,” *Hebert Abstract Co. v. Touchstone Props., Ltd.*, 914 F.2d 74, 76 (5th Cir. 1990), and “the same kinds of documents . . . that it could consider in a Rule 12(b)(6) motion,” *Mares v. Wood Group Mustang, Inc.*, 2015 WL 75271, at *2 (S.D. Tex. Jan. 6, 2015), including (i) any exhibits to Plaintiffs’ Amended Complaint; (ii) any documents whose contents are alleged in the Amended Complaint but are not attached to it; (iii) documents of public record, including public filings with the U.S. Securities and Exchange Commission; and (iv) any other matters for which judicial notice is appropriate. *See Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011); *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1018 (5th Cir. 1996); *In re Alamosa Holdings, Inc. Sec. Litig.*, 2005 WL 712001, at *4 (N.D. Tex. Mar. 28, 2005). Judicial notice is appropriate for those facts that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b)(2), and is appropriate “at any stage of the proceeding.” Fed. R. Evid. 201(f).

Here, the materials listed above all are appropriate subjects for judicial notice. The vast majority of the materials are public filings with the SEC, and it is settled law in this Circuit that in “deciding a motion to dismiss a claim for securities fraud on the pleadings, a court may consider the contents of relevant public disclosure documents which (1) are required to be filed with the SEC, and (2) are actually filed with the SEC.” *Lovelace*, 78 F.3d at 1018. This rule is subject to the limitation that the documents “should be considered only for the purpose of determining what statements the documents contain, not to prove the truth of the documents’ contents,” *id.*, and that is the only purpose for which Defendant asks the Court to consider the documents. The other materials listed above are also appropriate subjects for judicial notice. A district court may take “judicial notice of information on a website, ‘not for the truth of the

information’ but ‘merely to show that the information was publicly available.’” *See AGIS Software Dev. LLC v. Apple, Inc.*, 2018 WL 2721826, at *4 n.4 (E.D. Tex. June 6, 2018) (brackets omitted) (quoting *U.S. ex rel. Hong v. Newport Sensors, Inc.*, 728 F. App’x. 660, 661 (9th Cir. 2018) (mem.)). Likewise, district courts may consider “newspaper and magazine articles” “not for the truth of the assertions contained therein, but as an indication of the information available to the public at the time.” *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn*, 53 F. Supp. 3d 882, 901–02 (E.D. La. 2014) (collecting cases).

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court take judicial notice of the documents listed in Section I above.

Dated: June 17, 2019

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Robert C. Walters

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CERTIFICATE OF CONFERENCE

I hereby certify that on the morning of June 14, 2019, Defendant's counsel contacted Plaintiffs' counsel to determine if Plaintiffs opposed the relief sought in the foregoing request, and Defendant's counsel also offered to discuss the request by phone. On the morning of June 17, 2019, Defendant's counsel contacted Plaintiffs' counsel again regarding the request. At the time of this filing, Defendant's counsel had not heard back from Plaintiffs' counsel.

/s/ Robert C. Walters
Robert C. Walters

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019, a true and correct copy of the foregoing document was served through the Court's CM/ECF System on all counsel of record.

/s/ Robert C. Walters
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