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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED PACIFIC ENERGY OPERATIONS AND CONSULTING, INC., a California Corporation, and PAUL GILLER, an individual, Plaintiff, vs. GAS AND OIL TECHNOLOGIES, INC., a Delaware corporation, individually and doing business as UNITED PACIFIC ENERGY CORP.; WESTERN STATES INTERNATIONAL, INC., a California corporation, individually and doing business as UNITED PACIFIC ENERGY CORP.; INGRID ALIET-GASS, an individual; DAVID SMUSHKEVICH, an individual; MICHAEL SMUSHKEVICH, an individual; TEARLACH RESOURCES LTD., a Canadian corporation; and DOES 1 through 20, inclusive, Defendants.	Case No.: 1:11-0756-OWW-SMS **TRIAL BRIEF OF TEARLACH RESOURCES (CALIFORNIA), LTD.** **TRIAL DATE: August 2, 2011** **TIME: 8:30 a.m.** **COURTROOM: 3**

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TO PLAINTIFF UNITED PACIFIC ENERGY OPERATIONS AND CONSULTING, INC. AND TO ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE THAT THIRD PARTY CLAIMANT, TEARLACH RESOURCES (CALIFORNIA), LTD. SUBMITS ITS TRIAL BRIEF AS FOLLOWS:

I. INTRODUCTION.

Plaintiff UNITED PACIFIC ENERGY OPERATIONS AND CONSULTING, INC. (hereafter "UPEOC" or "Plaintiff") obtained, by stipulation, a monetary judgment against Western States International, Inc. (Western States) in **May, 2008**. It has only recently sought to attach assets of Western States but, in so doing, has also sought to attach property that had been transferred to Third-Party Claimant Tearlach Resources (California), Ltd. **in 2006**, a fact well-known to Plaintiff at all times.

In its petition, Plaintiff UPEOC sought to execute against properties which it knows (and previously acknowledged in court pleadings and elsewhere) were properly transferred by its judgment debtor to Third Party Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. years before Plaintiff obtained its purported stipulated judgment (which itself was based on a questionable $500,000 investment after Tearlach acquired its interest). Based on a complete absence of facts, Plaintiff seeks to disregard the facts and further seeks to ignore the valid declaratory judgment in the Kern County Superior Court, which ruled that **Defendant "WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to … [Claimant] TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field"** which is the subject of this Petition and Third Party Claim. Moreover, this Superior Court ruling is consistent with the position acknowledged by UPEOC long before it obtained its judgment.

Trial (unless disposed of by Tearlach's Motion in Limine #1) will establish that the Plaintiff's underlying (stipulated) Judgment was obtained in May 2008, and next to no action was taken by Plaintiff, until it recently obtained new counsel, who seeks to seize property to which Plaintiff has no possible right. This property was acquired by Tearlach in 2006.

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Moreover, Plaintiff and its counsel have apparently already wrongfully seized or frozen Tearlach's money and its oil. The Alex Gendelman declaration previously presented to this Court (paragraph 3) admitted that Plaintiff has executed on $34,000.00 in cash (60% of which belongs to Tearlach), and $100,000.00 in crude oil (at least 60% of which—possibly 100%—belongs to Tearlach.

II. PLAINTIFF CANNOT, AS A MATTER OF FACT AND LAW, ESTABLISH ANY RIGHT TO THE PROPERTY ACQUIRED BY TEARLACH IN 2006.

In a petition to invalidate Tearlach's Third-Party Claim (which is now the subject of the pending trial), Plaintiff UNITED PACIFIC ENERGY OPERATIONS AND CONSULTING, INC. (UPEOC or "Plaintiff") seeks to execute against properties which it knows (and previously acknowledged) were properly transferred by its judgment debtor to Third Party Claimant TEARLACH RESOURCES (CALIFORNIA) LTD., years before Plaintiff obtained its purported stipulated judgment (which was based on a suspect $500,000 investment by Plaintiff's principal's wife). Based on a complete absence of facts, Plaintiff seeks to disregard the facts and, moreover, further seeks to ignore the valid declaratory judgment in the Kern County Superior Court, which ruled that **Defendant "WESTERN STATES INTERNATIONAL, INC. transferred, <u>effective on or before December 13, 2006</u>, to … [Claimant] TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field"** which is the subject of this Petition and Third Party Claim.[1] Moreover, this Superior Court ruling is consistent with the position acknowledged by UPEOC long before it obtained

[1] TEARLACH is not, by any means, relying solely upon the Superior Court's Judgment that TEARLACH acquired its 60% interest in 2006. Irrespective of the Court's Judgment, there never has been a dispute as to the facts of TEARLACH's acquisition of this interest in 2006, which Plaintiff itself acknowledged (and benefitted from). Not even Western States ever questioned TEARLACH's interest. Mountains of evidence support this fact, and the Kern County Superior Court Judgment further memorialized the fact that TEARLACH acquired its interest in 2006.

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its judgment. Plaintiff cannot demonstrate any entitlement to property that was transferred to Tearlach in 2006.

III. THIRD PARTY CLAIMANT

Claimant TEARLACH RESOURCES (CALIFORNIA), LTD. (hereafter "Claimant" or "TEARLACH") is a Third Party Claimant with respect to the property sought to be attached and sold, through Writ of Execution and Notice of Sale, by the Plaintiff in this action.[2] Moreover, the property sought to be sold belongs to Claimant TEARLACH, and is not properly subject to the Notice of Sale of Real Property.

IV. PROPERTY THAT IS SUBJECT TO THIRD PARTY CLAIM

The property against which Claimant has an ownership, lien and security interest consists of:

Parcel 1 - A.P.N.: 07405032; a Bureau of Land Management federal oil and gas leasehold (Lease No. CACA 45618), commonly referred to as the Mitchel Lease, consisting of approximately 160 acres of leased lands, with oil wells and related production facilities, located in the North Kern Front oil field area of Kern County, California (part of Section 34, Township 27 South, Range 27 East, MDB&M);

Parcel 2 - A.P.Ns.: 48101103, 48101113, and 48101124; a Bureau of Land Management federal oil and gas leasehold (Lease No. CACA 45619), commonly referred to as the Witmer B West, Witmer A and Sentinel A Leases, consisting of approximately 279 acres of leased lands, with oil wells and related production facilities, located in the North Kern Front oil field area of Kern County, California (part of Section 2, Township 28 South, Range 27 East, MDB&M);

This property includes the property sought to be attached, through Writ of Execution and sold, pursuant to Notice of Sale of Real Property, by the Plaintiff in this

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[2] Plaintiff recently filed a Motion in Limine (#2), arguing that Tearlach Resources (California), Ltd. is an "alter ego") of Tearlach Resources, Ltd., a publicly-traded Canadian corporation named as a defendant, and thus cannot be a "Third Party." As argued in Tearlach's opposition to that Motion in Limine, this argument has no merit, factually or legally.

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action; specifically, the lease interests belonging to Tearlach, confirmed by a judicial declaration in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), dated March 2, 2011.

V. FACTS IN SUPPORT OF THIRD PARTY CLAIM

The facts upon which Tearlach's claim is based are as follows:

All evidence demonstrates the undisputed fact that TEARLACH acquired a 60% interest in the subject property in 2006. Moreover, **it has already been adjudicated that Defendant WESTERN STATES INTERNATIONAL, INC. transferred, <u>effective on or before December 13, 2006</u>, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field** described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618)." [See, Amended Judgment, Tearlach's Trial Exhibit 58.][3] Therefore, the property purportedly subject to the Marshal's Notice of Sale cannot be sold, and cannot be the subject of Plaintiff's purported Writ of Execution. To the contrary, the property already wrongfully seized by Plaintiff should be turned over to Third Party

[3] Throughout his earlier briefs, Plaintiff's counsel repeatedly argued to this Court that the Kern County Superior Court Amended Judgment does not hold what, in fact, it clearly does. Moreover, as noted in footnote 1, above, **<u>even without that Judgment, the undisputable fact remains that the 60% interest was transferred to Tearlach in 2006</u>**, and the Superior Court confirmed that fact in its ruling. Plaintiff's counsel further misleads this Court when he repeatedly states that "the cross-complaint … prayed for damages relief only." [Motion, page 5, line 5 (emphasis in original).] In fact the fifth cause of action of the Tearlach cross-complaint was for declaratory relief [Motion, exhibit 1-5; Plaintiff's Trial Exhibit 2, page 36], and the prayer asks "for a judicial declaration that cross-complainants hold all right, title, and interest in stock interests that are disputed in this matter." [Motion, exhibit 1-7; Plaintiff's Trial Exhibit 2, page 40, lines 24-28.]

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Claimant (inasmuch as Plaintiff's "authorized agent," Alex Gendelman, now admits to already seizing property to which Tearlach has at least a 60% ownership interest).[4]

VI. HISTORICAL BACKGROUND LEADING TO JUDGMENT AND CLAIM.

Tearlach Resources Limited ("Tearlach Canada" or "the "Company") is a Canadian public company (referenced by Petitioner as a "foreign interest") whose shares are listed on the TSX Venture Exchange ("TSX-V"). Tearlach Canada is engaged in the business of exploration and development of natural resource properties directly and through its wholly owned subsidiary Tearlach Resources (California) Ltd. ("Tearlach" or "Tearlach California").

Commencing in early 2006, the Company entered into discussions with Western States International, Inc. ("WSI," a Defendant in this case, and a judgment debtor of Petitioner and Tearlach) and its affiliate company, Gas & Oil Technologies, Inc. ("G&O", also a Defendant in this case), represented by their senior officers and principal shareholders, including defendant Ingrid ALIET-GASS and Glen MORINAKA (collectively, "Western States").[5] Tearlach was represented by Malcolm Fraser ("FRASER," who resides in Canada) and Chuck Ross ("ROSS," another individual in Canada), both of whom are directors and officers of Tearlach, and the Company's legal counsel, Leschert & Company, represented by

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[4] Moreover, Judgment has been entered in favor of Claimant Tearlach, against WESTERN STATES INTERNATIONAL, INC., a Delaware corporation; and UNITED PACIFIC ENERGY CORPORATION, a Delaware corporation, (formerly known as GAS AND OIL TECHNOLOGIES, INC.), and INGRID ALIET-GASS, an individual, and each of them, JUDGMENT OF EIGHTEEN-MILLION, SEVEN-HUNDRED AND TWENTY-FOUR THOUSAND, NINE-HUNDRED AND ONE DOLLARS AND FIFTY-EIGHT CENTS ($18,724,901.58). This Judgment remains unsatisfied and outstanding. Facts strongly suggest collusion between Plaintiff herein and the Western States' defendants, perhaps to defeat Tearlach's own collection efforts.

[5] Defendant Ingrid Aliet-Gass, a principal of Western States, apparently filed for Chapter 13 bankruptcy protection on August 9, 2010 (case number 2:10-bk-43110-VZ). That case was dismissed on August 30, 2010, because she "failed to file all of the documents required" under the *Federal Rules of Bankruptcy Procedure*.

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Allen D. Leschert ("ADL"), an individual lawyer who resides in Canada as well. (Mr. Ross will testify at trial; Mr. Leschert is unable to appear at trial, because of conflicting matters away from the United States and Canada.)

Western States represented that it was developing a number of resource projects in the U.S., Russia and Indonesia, including an oil and gas project located near Bakersfield, California known as the "Kern Front Property" (the "Property") with a value of U.S. $10 to $60 million, and wanted to find a Canadian public company such as Tearlach to acquire the properties in exchange for public company shares.

As a result of various inducements and false representations by the Western States parties (outlined in the action filed in Canada, which resulted in a $18,043,691.74 judgment in favor of Tearlach, Tearlach Trial Exhibit PPP), Tearlach entered into an agreement (hereafter, the "Letter Agreement", Tearlach Trial Exhibit M) dated for reference <u>April 21, 2006</u> (Tearlach's Trial Exhibit M) among Tearlach, as purchaser, WSI, G&O as vendors (the "Vendors") and certain direct or indirect principal shareholders of WSI and G&O as covenanters (the "Shareholders") which provided for the purchase and sale of a 60% working interest in the Property in exchange for the issuance by Tearlach of 7,500,000 common shares of Tearlach and a royalty on the Property convertible into up to 30,000,000 additional common shares on and subject to the conditions set out in the agreement including approval of the Canadian Stock Exchange, TSX-V, a copy of which was attached to the Plaintiffs' complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) as Exhibit "B".

Various disputes and differences arose between WESTERN STATES and Claimant Tearlach, which led Tearlach's parent company to file a lawsuit against the WESTERN STATES parties. That lawsuit was filed in Canada, because the Letter Agreement provided for venue <u>in Canada</u> with the application of Canadian law.[6] Judgment in the Canadian action

[6] All of the allegations of the Canadian action filed by Tearlach are complex, and cannot be fully developed and documented within this Trial Brief. Essentially, Tearlach, its subsidiary and its principals maintain that the Western States parties deliberately and fraudulently:

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a. Misled Tearlach to believe WSI had wells in production on the Property when they did not;

b. Purported to cause WSI and G&O to sell an interest in three leases – Judkins, Witmer B East and Sentinal B – which they knew they did not then own;

c. Grossly overstated oil production from the Property;

d. Grossly understated lifting costs and management costs on the Property;

e. Concealed the fact that WSI had received formal notice of termination on the Judkins lease and had received formal notice of cancellation of the Witmer B East and Sentinal B leases prior to Closing;

f. Concealed the fact that WSI did not have proper surface rights or access agreements on the Property sufficient to authorize the work required to be done thereon;

g. Concealed the fact that the agreements WSI did have were all ready in default due to serious arrears in payments;

h. Concealed the fact that they were not were not able to produce oil from the Property on an economic basis using the methods they were employing;

i. Concealed the fact that they had not met the requirements for maintaining the Snow lease and were in danger of losing the lease, until after it had already been lost;

j. Withheld accurate accounting and production information from Tearlach, in spite of repeated requests, in order to prevent or delay Tearlach in its attempts to discover the true state of affairs with respect to the Property;

k. Misrepresented their level of skill and experience in operating oil fields like the Property or at all.

Tearlach also maintained, in the Canadian action that led to the $18,043,691.74 judgment in favor of Tearlach, that the Plaintiffs in this subsequently-filed case engaged in gross mismanagement of the Property, as evidenced by, among other things:

a. Failing to prepare and deliver accounting and production reports;

b. Failing to consult with Tearlach prior to commencing operations on the Property;

c. Failing to prepare and deliver any AFE's for proposed or completed work on the Property;

d. Failing to file required reports with government authorities;

e. Failing to achieve economic production;

f. Failing to maintain good title to the Property;

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was entered by the Canadian court (for $18,043,691.74) and can be entered in California, pursuant to the Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA" or "revised Act"), California *Code of Civil Procedure* §§ 1713-1724.

Tearlach Resources (California) Ltd. (not a party to the Canadian action) had different and additional claims against the Western States parties, which it asserted in a cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), the files and records of which Petitioner itself has requested that this Court take Judicial Notice. [Petition, page 2, lines 6-8. UPEOC's Trial Exhibit 2.] Contrary to the suggestion of Petitioner, this state court action also included a fifth cause of action for declaratory relief as to the date and validity of the property transferred to Tearlach. It is false for Plaintiff to assert that Tearlach merely obtained a

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g. Failing to obtain surface rights and access agreements that permitted the type of operations carried on by them on the Property and failing to maintain such agreements;

h. Failing to keep equipment in proper repair;

i. Failing to advise Tearlach of pending difficulties, including potential loss of leases due to non-payment or other action or inaction by them;

j. Failing to make government rental payments including, in particular, a $420 payment that resulted in the termination of an important lease which, but for corrective action taken by Tearlach and it staff, would have been lost permanently;

k. Failure to pay operating expenses as and when due;

l. Conducting themselves in a manner so as to attract litigation affecting, not only Western States and its principals, but the Property and Tearlach and its principals also;

m. Selecting production methods they knew or ought to have know would be uneconomic for the type of hydrocarbons and oil bearing formations located on the Property;

n. Continuing to focus substantially all of the efforts and expenditures on the Property on the Judkins lease even after receiving formal notice of termination, resulting in a complete loss of the work, effort and expenditures, including Tearlach's share thereof, and continuing to do so (and attempting to coerce Tearlach to contribute to the cost of such efforts) even after final judgment confirming effectiveness of that termination had been granted.

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"mere default **money judgment**," [Petition, page 4, line 9; Motion, page 4, line 9], as is clearly evidenced by the Amended Judgment itself, granted after the Court's admission and consideration of substantial amounts of documentary evidence.

Petitioner further incorrectly stated that Tearlach obtained summary judgment [Petition, page 2, line 2; Motion, page 4, line 9] "when WSI without legal representation failed to property [*sic*] oppose such motion." [Petition, page 2, line 3.] WSI was represented by counsel, and the case was fiercely litigated. [See, e.g., 41-page Register of Actions, UPEOC's Trial Exhibit 4.] Judgment was rendered after presentation of evidence at the scheduled trial. The trial court received and considered a mountain of documentary evidence and declarations (to which Plaintiff now objects, and which was omitted from its own trial exhibits), in addition to the oral testimony of Richard Farkas and Charles Ross at trial, which incorporated and reaffirmed their written declarations and exhibits [UPEOC's Trial Exhibit 1, e.g., page 10, line 1 through page 12, line 17.]. Moreover, the Superior Court never "recognized the foreign judgment," but rather awarded a separate judgment in favor of Tearlach and other parties (not parties to the Canadian action), which included the judicial declaration that the subject property had been transferred to Tearlach in 2006.

In addition, at the trial in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), based on the evidence presented (in support of the facts enumerated in footnote 2, above), Judgment was granted in favor of Claimant herein, with the Court specifically declaring, as part of the Judgment, that **"Defendant WESTERN STATES INTERNATIONAL, INC. transferred, <u>effective on or before December 13, 2006</u>, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field** described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010),

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including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618)." [See, Amended Judgment, Tearlach's Trial Exhibit 58.]

There is nothing inconsistent in the cited trial testimony of Richard Farkas that is inconsistent with the actual Amended Judgment. Mr. Farkas' testimony was elicited by the Court on the limited issue of the amount and reasonableness of the attorneys' fee award, not on the issue of the assignment of property to Tearlach. [UPEOC's Trial Exhibit 1, page 12, line 18 through page 13, line 20.]

Tearlach maintains that it is an insult to the judicial system for Petitioner herein to read the clear language of the Superior Court Judge's declaratory judgment and call it, three times in the Petition and elsewhere, "mere dictum" [Petition, page 4, lines 23-24, page 5, line 17, page 6, line 5] or "ambiguous dictum" [Petition, page 5, line 15.] Nor is there a need for "interpretation" of the Amended Judgment; the Judgment is crystal clear and, in any event, the transfer documents presented for trial (e.g., Tearlach's Trial Exhibits D, E, F, J, M, P, R, S, T, U, W, Z) make is undisputable that the 60% interest was assigned to Tearlach in 2006, long before Plaintiff's lawsuit or stipulated judgment.[7]

This Amended Judgment, moreover, (Petitioner only provides as its Trial Exhibit 16 an unsigned version and a superseded form judgment) is consistent with the position <u>acknowledged by Petitioner itself</u> before it ever obtained its judgment. Such "evidence" and

[7] Tearlach's Trial Exhibit U is pertinent to another theory belatedly raised by Plaintiff, i.e., that the subject leases were not timely registered by the Bureau of Land Management ("BLM"). The timing of the registration has no bearing on the validity of the transfers in 2006. In addition, Tearlach Trial Exhibit U is a signed Declaration of Trust, part of the Tearlach closing documents, which memorializes that "the Trustee (Western States) "has no interest whatsoever in the Trust Property other than that of a bare trustee…" [Tearlach Ex. U, page 1], and that the Trustee shall "hold and stand possessed of the Trust Property fully on behalf of the Beneficiary (Tearlach Resources (California), Ltd.), and receive and hold all proceeds, benefits, and advantages accruing in respect of the Trust Property fully for the benefit, use and ownership of the Beneficiary, without entitlement at any time to commingle any of them with its own or any other property…." [Tearlach Trial Exhibit U, page 2, paragraph 3(a).]

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argument seeking to mislead this Court and disregard the mountain of evidence of the 2006 transactions should be precluded through this Motion in Limine.

VII. A CALIFORNIA JUDGMENT WAS ENTERED AGAINST WESTERN STATES, WITH THE SUPERIOR COURT FURTHER DECLARING AND ADJUDICATING CLAIMANT'S INTEREST IN THE SUBJECT LEASES.

In the Amended Judgment entered in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC), dated March 2, 2011, it was adjudicated that "WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to Claimant TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field described in the TEARLACH RESOURCES (CALIFORNIA), LTD. Cross-complaint in Kern County Superior Court case number Case No. S-1500-CV-264931-DRL (Consolidated with S-1500-CV-266707, SPC) (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed in that case on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchel Lease (CACA 045618)." [See, Amended Judgment, Tearlach's Trial Exhibit 58.] Notice of Judgment Lien was recorded with the California Secretary of State [Tearlach Trial Exhibit 59], and an Abstract of Judgment was issued on June 8, 2011 [Tearlach Trial Exhibit 60]. Monetary Judgment was also granted in favor of Claimant Tearlach in the amount of $18,724,901.58. This interest was granted in 2006, years before Plaintiff's lawsuit, and well before its stipulated Judgment.

VIII. PLAINTIFF AND ITS COUNSEL REPEATEDLY ACKNOWLEDGED TEARLACH'S OWNERSHIP INTEREST IN THE PROPERTY IN ITS OWN COMPLAINTS IN 2007; TEARLACH'S MOTION IN LIMINE SEEKS TO PRECLUDE THEM FROM CONTRADICTING THEIR OWN ARGUMENTS.

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In the District Court action in which Petitioner obtained its stipulated judgment, Petitioner itself acknowledged—indeed, alleged—that Western States had transferred its interest to Tearlach in 2006. Plaintiff now wishes to ignore this fact, and this Court should preclude such an argument or supporting "evidence."[8]

In the District Court action in which Plaintiff obtained its judgment (2:07-cv-04436-CJC –RNB), Tearlach presented a motion and sworn declaration, in January 2008, stating that "Tearlach Resources (California) Ltd. was formed to complete the acquisition of a 60% working interest in an oil and gas property known as the Kern Front Field (the 'Property')." [Allen D. Leschert declaration ¶ 13.] Plaintiff never refuted this statement and, in fact, acknowledged and alleged in its own complaint, that Tearlach had acquired its interest in 2006, long before it obtained a judgment.[9]

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[8] If Plaintiff UPEOC heretofore felt it had any interest in the leases assigned to Tearlach, it could have alleged so in any of its own pleadings in this case, rather than alleging the opposite. Interestingly, it should also be noted that UPEOC itself could have challenged Tearlach's claims in the Kern County Superior Court action, which ultimately ruled in Tearlach's favor. UPEOC was fully aware of—and supported—Tearlach's activities in the state court action. It could have sought to intervene in that state court action, if it felt it had that right, but did not do so. To the contrary, it sat idly by, never seeking to enforce its "rights," and only now seeks to belatedly have this Court review the Amended Judgment of the state court.

[9] Not only was Plaintiff aware of Tearlach's 60% interest, it discussed it in its own initial lawsuit. [See, e.g., UPEOC Trial Exhibit 22 (First Amended Complaint), page 6, paragraph 19: **"Tearlach acquired from UPEC a 60% working interest…."**] Moreover, Plaintiff and its principals (Gendelman and his wife, Grukhina) were present when Tearlach initially discussed and formulated its acquisition on April 29, 2006 [UPEOC Trial Exhibit 22, line 9, paragraph 26], **and even obtained shares of Tearlach stock in connection with this acquisition!** [See, e.g, Tearlach Trial Exhibit 57, indicating 2,000 shares issued to Gendelman's wife, Tatyana Grunkhina, and another 220,000 shares issued to Plaintiff UPEOC's Paul Giller (page 2 of 6).] Later, on March 9, 2008, Gendelman, on behalf of UPEOC, wrote to Western States' Aliet-Gass: "You pushed Tearlach to an agreement that Tearlach and UPEOC would pay the outstanding bills for the field…." [Tearlach Trial Exhibit 66, page 1.] He further wrote, on March 9, 2008, "About 10 days ago, UPEOC arranged with Tearlach to pay besides other expenses, these $15,000 salaries to the people worked on the field." [Tearlach Trial Exhibit 66, page 2.]

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Even earlier, in the District Court action filed by Plaintiff [UPEOC Trial Exhibit 22], Tearlach first appears only in the tenth and eleventh causes of action for imposition of resulting trust and imposition of constructive trust, with the allegation (at paragraph 120) that **"Tearlach acquired from UPEC a 60% working interest in a portion of the Field and any proceeds derived from the sale of the Field's extracted oil reserves."** [First Amended Complaint ¶ 120, UPEOC's Trial Exhibit 22; see also, original Complaint, ¶ 119.] Tearlach is also referenced in the twelfth cause of action for judicial foreclosure of security interest an accounting (and related thirteenth cause of action for Declaratory Relief), with an acknowledgment of Tearlach's 60% interest, by stating "**Tearlach has acquired or succeeded to a substantial portion of UPEC's interest in the Field's oil reserves**." [First Amended Complaint ¶ 142; UPEOC's Trial Exhibit 22, page 37.] This Court should not now tolerate Plaintiff's disingenuous and dishonest effort to disavow Tearlach's ownership interest, when it used that very interest to bring Tearlach into its lawsuit. Plaintiff and its counsel should not, at trial, be allowed to make assertions contrary to their own complaint allegations, in disregard of the undisputed facts and the Judgment of the Superior Court.

Later, in an October 6, 2008 Motion for an Assignment Order (in case number 2:07-cv-04436-CJC-RNB), Plaintiff told the District Court "Importantly, all of the leases have assignment clauses that allow Judgment Debtors to assign their rights in these leases to other developers for money. For example, **Judgment Debtors have utilized these assignment provisions to assign a 60% interest in several of their leases in Kern County to an oil developer, Tearlach Resources LTD** ('Tearlach'), in exchange for 7.5 million shares in Tearlach and 30 million special warrants…" [Plaintiff's Motion for Assignment Order, 10/6/08, page 4, lines 13-18 (emphasis added). Tearlach's Trial Exhibit 61.]

Plaintiff/Petitioner herein again acknowledged that it had no interest in Tearlach's 60% interest in its October 16, 2008 Reply Brief to a Tearlach Opposition Brief. [UPEOC Trial Exhibit 9, Tearlach Trial Exhibit TEA-62.] In that Reply, Plaintiff wrote "The instant Motion does not concern Tearlach Resources Ltd. or its interest in any property…. The instant Motion seeks only <u>Judgment Debtors' interests</u> in the following property…."

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[Plaintiff's Reply to Tearlach's Opposition, page 2, lines 2-5 (emphasis in original). UPEOC Trial Exhibit 9, Tearlach Trial Exhibit TEA-62, page 2, lines 2-5.] The same brief noted "Obviously, Plaintiffs are not seeking the turnover and/or assignment of any interest not owned by Judgment Debtors—including any interest owned by Tearlach." [Plaintiff's Reply to Tearlach's Opposition, page 3, lines 1-2. UPEOC Trial Exhibit 9, Tearlach Trial Exhibit TEA-62, page 3, lines 1-2.] Plaintiffs also wrote "This is a dispute between Plaintiffs and Judgment Debtors. This dispute does not involve Tearlach, therefore there are not issues existing that Plaintiffs could have met and conferred about with Tearlach." [Plaintiff's Reply to Tearlach's Opposition, page 3, lines 17-19. UPEOC Trial Exhibit 9; Tearlach Trial Exhibit TEA-62.][10]

Based on the foregoing, pursuant to the Letter Agreement, various transfer documents, Plaintiff's own allegations and admissions, the Kern County Superior Court Judicial Declaration and Judgment, the Courts of this State and the U.S. Marshal's office must recognize the pre-existing December 2006 ownership interest of Claimant Tearlach in the subject properties, which are not and cannot be subject to Plaintiff's Writ of Attachment or to sale by the U.S. Marshal.

IX. PLAINTIFF ALSO NOW ADMITS SEIZING PROPERTY THAT BELONGS TO TEARLACH.

The CAPL Joint Venture and Accounting and Operating Procedures agreement to which Western States, UPEC and Tearlach were parties also allowed Tearlach to own and take its oil in kind. A copy of the pertinent provisions of that agreement is found in

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[10] This exhibit, potentially fatal to Plaintiff's claims, was originally found in Plaintiff's Exhibit List as its Exhibit 9. After this information was called to his attention, in a July 26, 2011 email, Plaintiff's counsel wrote: "**I am going to remove Exhibit 9** as a direct evidence item from this final exhibit list." In submitting his proposed "Joint Exhibit List, Plaintiff's counsel also said he had "withdrawn and replaced" his Plaintiff's Exhibits 10 and 11, which were Tearlach's Motion for Summary Judgment and Declaration of Charles Ross, two of the very documents upon which the Kern County Superior Court relied in awarding declaratory judgment to Tearlach, including confirmation of its 60% interests acquired in 2006!

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Tearlach‘s Trial Exhibit Z. In paragraph 3 of his previously-filed declaration, Plaintiff‘s —authorized agent, Alex Gendelman, admitted that Plaintiff has already executed on $34,000.00 in cash (60% of which belongs to Tearlach), and $100,000.00 in crude oil (at least 60% of which—possibly 100%—belongs to Tearlach. Thus, Plaintiff has already taken at least $80,400.00 to which it knows it has no right.

X. **CONCLUSION**.

Plaintiff, in all its filings in different courts, has presented no evidence whatsoever to demonstrate any entitlement to the 60% interest that was undeniably transferred to Tearlach in 2006. Plaintiff has already taken at least $80,400.00 that belongs to Tearlach, and any further taking should not be condoned by this Court.

Based on the foregoing, and on such evidence as will be presented at trial, it is respectfully submitted that Judgment herein must be entered in favor of Third-Party Claimant Tearlach Resources (California), Ltd., and against Plaintiff.

Third Party Claimant requests that this honorable court again reaffirm Tearlach Resources (Canada), Ltd.’s 60% interest in the subject properties, deny Plaintiff’s Petition, grant Tearlach’s Third Party Claim, and afford such other relief as is just and appropriate.

Dated: July 29, 2011 LAW OFFICES OF RICHARD D. FARKAS

By______________________________

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