IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

CASE NUMBER F065511

WEATHERFORD ARTIFICIAL LIFT SYSTEMS, INC.,
Plaintiff,

vs.

GAS AND OIL TECHNOLOGIES, INC., TEARLACH RESOURCES (CALIFORNIA) LTD., WESTERN STATES INTERNATIONAL INC.,
Defendants.

(SUPERIOR COURT CASE NO. S-1500-CV-266707, SPC)
Consolidated with

TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; CHARLES E. ROSS;
Cross-complainants and Appellants

vs.

WESTERN STATES INTERNATIONAL, INC.; UNITED PACIFIC ENERGY CORPORATION (formerly known as GAS AND OIL TECHNOLOGIES, INC.), INGRID ALIET-GASS; DAVID SMUSKEVIETCH; GLEN MORINAKA; and ROES 1 through 100, inclusive;
Cross-defendants.

(SUPERIOR COURT CASE NO. S-1500-CV-264931-DRL)

Appeal from the Superior Court of the County of Kern, No. S-1500-CV-264931-DRL, Consolidated with No. S-1500-CV-266707, SPC

CASE NUMBER F065511

The Honorable David R. Lampe, Judge.

APPELLANTS' OPENING BRIEF

Richard D. Farkas, Cal. State Bar # 89157
Law Offices of Richard D. Farkas
15300 Ventura Boulevard
Suite 504
Sherman Oaks, California 91403
Telephone: 818-789-6001
Facsimile: 818-789-6002

Attorneys for Appellants TEARLACH RESOURCES LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA) LTD., a California corporation; MALCOLM FRASER, an individual; CHARLES E. ROSS, an individual

Court of Appeal
State of California
Fifth Appellate District

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: F065511

Case Name: TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; CHARLES E. ROSS;
Cross-complainants and Appellants

vs.

WESTERN STATES INTERNATIONAL, INC.; UNITED PACIFIC ENERGY CORPORATION (formerly known as GAS AND OIL TECHNOLOGIES, INC.), INGRID ALIET-GASS; DAVID SMUSKEVIETCH; GLEN MORINAKA; and ROES 1 through 100, inclusive;
Cross-defendants.

Interested entities or parties are listed below

Name of Interested Entity or Person	Nature of Interest
Riverwood Energy, LLC	Alleged lease interest holder/assignee

DATED: November 21, 2012 LAW OFFICES OF RICHARD D. FARKAS

By: _____
RICHARD D. FARKAS, Bar #89157
Attorneys for Appellants
TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; and CHARLES E. ROSS

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1. INTRODUCTION

The question before this court is a simple one: did the California Superior Court have subject matter jurisdiction over the Respondents' Cross-complaint for alleged contractual breaches and related torts, and Appellant's Cross-complaint for alleged contractual breaches and related torts, which proceeded through trial? The answer is an unqualified "yes." Yet, the court below improperly set the Appellant's Judgment aside and dismissed the entire case sixteen (16) months after trial, solely on the basis that the case involved, in part, an undisputed assignment of a working interest in a federal lease and thus held that "Federal courts have exclusive jurisdiction over federal lands." [Appellants' Appendix (hereafter "Appendix") 895.] Purportedly relying on a finding that "A working interest is an interest in realty and, in this case, federal realty," the trial court took the extraordinary step of dismissing Appellants' entire case, a year and a half after it heard the case through trial and awarded Appellants Declaratory Relief and Judgment in the amount of $18,724,901.58. As a matter of law, the lower court erred in later setting the Judgment aside and dismissing the action. Appellant respectfully requests that this Court reverse the Trial Court's Order setting aside the previously-entered Amended Judgment, and reinstate the Superior Court Judgment of March 2, 2011.

2. STATEMENT OF THE CASE

A. Nature of Action and Relief Sought

In the primary Superior Court case which is the subject of this appeal (originally Superior Court case number S-1500-CV-266707 SPC), Respondents GAS AND OIL TECHNOLOGIES, INC. and WESTERN STATES INTERNATIONAL, INC., on March 16, 2009 filed a complaint against Appellants TEARLACH RESOURCES LIMITED, TEARLACH RESOURCES (CALIFORNIA), LTD., MALCOLM FRASER, and CHARLES ROSS alleging "claims for relief" for "(1) Rescission of Agreement Due to Fraud; (2) Rescission of Agreement Due to Failure of Consideration; (3) Fraud and Deceit—Intentional Misrepresentation; (4) Breach of Agreement; and (5) Punitive Damages." [Appendix 71.][1] Following a demurrer, Respondents filed a First Amended Complaint in September, 2009. [Appendix 255.] Appellants TEARLACH RESOURCES LIMITED, TEARLACH RESOURCES (CALIFORNIA), LTD., MALCOLM FRASER, and CHARLES ROSS, in turn, filed a Cross-complaint against Respondents WESTERN STATES INTERNATIONAL, INC., UNITED PACIFIC ENERGY CORPORATION (formerly known as GAS AND OIL TECHNOLOGIES, INC. and INGRID ALIET-GASS, and others, alleging causes of action for Breach of Written Contracts, Breach of the Implied Covenant of Good Faith and Fair Dealing, Fraud, Negligence and Negligent Misrepresentation,

[1] In the subsequently consolidated case number S-1500-CV-264931-AEW (later S-1500-CV-264931-DRL), Gas and Oil Technologies, Inc. and Western States International, Inc. had filed a cross-complaint for (1) Breach of Agreement; (2) Breach of Covenant of Good Faith and Fair Dealing; (3) Indemnity; and (4) Unjust Enrichment against Tearlach Resources (California) Ltd. only. [Appendix 66.]

Declaratory Relief, Accounting, Declaration of Constructive Trust, and Conversion. [Appendix 279.] The case was fiercely litigated for more than three years, despite Appellants' repeated demurrers and motions to have the action dismissed. [Appendix 209, 234, Register of Actions, Appendix 897 through 943.] Ultimately, after the trial court received and considered a mountain of documentary evidence and declarations, in addition to the oral testimony of witnesses at trial, and awarded Judgment in favor of the Appellants herein in the amount of $18,724,901.58. [Appendix 552.] In addition (in an subsequently Amended Judgment), the Trial Court granted declaratory relief, confirming 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 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, Appendix 558.]

Nearly a year later, Respondents filed a Motion to Set Aside the Amended Judgment in favor of Appellants [Appendix 642], contending that the entire judgment was "void" for lack of jurisdiction, despite the fact that it was Moving

Parties themselves who chose to litigate the matter in the Superior Court, and who opposed all efforts to have the matter heard elsewhere. Over Appellants' opposition, the trial court set aside its own Amended Judgment, on the grounds that it never had subject matter jurisdiction, merely because a single issue in the case tangentially involved an undisputed interest in a federal lease.

Appellants herein contend that the trial court erred in setting aside the Amended Judgment in its entirety and dismissing the case, and request that this Appellate Court vacate the Order Setting aside the Amended Judgment, allowing the original Amended Judgment of March 2, 2011 to remain intact.

B. Summary of Material Facts

Long after judgment had been entered against them at trial, Defendants and Cross-complainants and Respondents herein, WESTERN STATES INTERNATIONAL, INC., UNITED PACIFIC ENERGY CORPORATION, (formerly known as GAS AND OIL TECHNOLOGIES, INC.), and INGRID ALIET-GASS (hereafter occasionally referred to as "Respondents"), belatedly sought to set aside the Trial Court's March 2, 2011 Amended Judgment After Trial on the basis that the Trial Court's Judgment was "void." [Appendix 642 at 646.] Appellants opposed the Respondents' motion to set aside the Amended Judgment, and sought to have sanctions imposed for a frivolous motion. [Appendix 664 through 705 and 760 through 768.]

Appellants opposed the Respondents' (also occasionally "Moving Parties") Motion to Set Aside the Amended Judgment on the following grounds, among others:

- "The Moving Parties' arguments are based on false and misleading assertions;
- Moving Parties repeatedly hire and dismiss attorneys, in an effort to circumvent this and other Judgments;
- The Motion is unsupported by competent evidence;
- Judgment was entered, after trial, against Moving Parties, nearly one year ago;
- Judgment was entered on its merits, after factual presentation at trial, at which Moving Parties chose not to appear;
- Until shortly before trial, all of the Moving Parties were represented by counsel, who substituted out on the eve of trial;
- Moving Parties' claim of exclusive jurisdiction of the Federal courts is a "smokescreen," unsupported by the facts and rejected by this Court and a separate Federal Court;
- Moving Parties have been intimately aware of the Judgment of this Court since January, 2011, and have done nothing to challenge it or set it aside;
- The Motion is untimely;
- Moving Parties themselves filed this action, and fought to preserve the jurisdiction of this Court;
- The jurisdiction of this Court was never heretofore challenged by the Moving Parties;

- The Moving Parties aggressively fought to resist Tearlach's efforts to change venue or contest the jurisdiction of this Court;
- This Court's ruling has already been scrutinized and affirmed in another United States District Court action, in which Moving Parties participated;
- Moving Parties cannot demonstrate any meritorious claims or defenses;
- Moving Parties' Motion has no merit, factually or legally" [Appendix 664 at 665, 666.]

C. Judgment/Ruling of Superior Court and Statement of Appealability

On May 21, 2012 (following Appellants' Motion for Reconsideration), the Trial Court dismissed its own Amended Judgment of March 2, 2011 on the basis that it lacked subject matter jurisdiction over the entire matter, despite the fact that it had heard the case through its inception, in September 2008, all the way through trial in January, 2011, more than two years later. [Appendix 895.] Based on its conclusion that it lacked subject matter jurisdiction over the case, the Trial Court dismissed the entire action. [Appendix 895.] Appellants herein appeal from the Trial Court's May 21, 2012 final Order of Dismissal as erroneous as a matter of law.

D. Standard of Review

The Trial Court dismissed the Superior Court action following entry of judgment, pursuant to Respondents' Motion to Vacate the Amended Judgment. [Appendix 895.] The basis for the dismissal was purportedly lack of subject

matter jurisdiction. Questions of subject matter jurisdiction are reviewed de novo. [*Pillow v. Bechtel Const., Inc*., 201 F.3d 1348, 1351 (11th Cir. 2000); *Robbins vs. Foothill Nissan* (1994) 22 Cal.App. 4th 1769, 1773-1774].

3. ARGUMENT

A. PROCEDURAL BACKGROUND

After Tearlach Resources, Ltd. initiated an action against Western States International, Inc. and Gas & Oil Technologies, Inc. in the Supreme Court of British Columbia (the "Canadian Action") [Appendix 56], **Plaintiffs and Moving Parties (Respondents herein)** filed a Complaint [Appendix 66; see also 71], and later a First Amended Complaint in the California Superior Court for "Claims of Relief" for "(1) Breach of Agreement; (2) Fraud and Deceit-Intentional Misrepresentation; (3) Fraud and Deceit—Negligent Misrepresentation; (4) Concert of Action; (5) Alter Ego; and (6) Declaratory Relief" (even though these are remedies, not causes of action or "claims for relief").[2] [Appendix 225; see also 255.] These purported "causes of action" were brought against Defendants TEARLACH RESOURCES LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA), LTD., a California Corporation; MALCOLM FRASER, an individual, and CHARLES E. ROSS, an individual (both of whom

[2] The "claims for relief" in Respondents' original complaint were for "(1) Rescission of Agreement Due to Fraud; (2) Rescission of Agreement Due to Failure of Consideration; (3) Fraud and Deceit—Intentional Misrepresentation; (4) Breach of Agreement; and (5) Punitive Damages." [Appendix 71.] Moving Parties/Respondents herein vigorously fought to maintain jurisdiction in the Superior Court, and never raised issues requiring Federal consideration.

reside in Canada), all of whom filed a cross-complaint, and "DOES 1 through 10, inclusive." The substance of the claims in the Appellants' Cross-complaint is detailed in footnote 6, below.

Prior to the initiation of this action, Cross-complainant TEARLACH RESOURCES, LTD. had initiated and successfully concluded a separate action in the Supreme Court of British Columbia, Vancouver Registry entitled TEARLACH RESOURCES, LTD., Plaintiff, and WESTERN STATES INTERNATIONAL, INC. and GAS & OIL TECHNOLOGIES, INC. ("G&O"), case number S088666 (the "Canadian Action"). [Appendix 56.] In the California Superior Court action (the subject of this appeal), Defendants and Cross-complainants (Appellants herein) previously—but unsuccessfully—moved, by way of demurrer, motion to abate, and motion for summary judgment to have the Superior Court action abated or dismissed because of the Canadian filing. [Appendix 209, 355.] In the Canadian Action, judgment was entered in favor of TEARLACH RESOURCES, LTD., and against WESTERN STATES INTERNATIONAL, INC. and GAS & OIL TECHNOLOGIES, INC. in the sum of $18,043,691.74 [Appendix 254], and remains intact and unpaid. Respondents made no attempt to vacate or set aside the Canadian Judgment.

B. FACTUAL BACKGROUND.

Tearlach Resources Limited ("Tearlach" or "the "Company") is a Canadian public company whose shares are listed on the TSX Venture Exchange ("TSX-

V"). [Complaint ¶5, Appendix 71]; First Amended Complaint ¶5; Appendix 257; Ross Declaration, Appendix 369 at 371, para. 3.] Tearlach 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 California"). [Appendix 369 at 371.]

Commencing in early 2006, the Company entered into discussions with Western States International, Inc. ("WSI," a Plaintiff and Respondent herein) and its affiliate company, Gas & Oil Technologies, Inc. ("G&O," the other Plaintiff and a Respondent in this case), represented by their senior officers and principal shareholders, including Cross-defendants Ingrid ALIET-GASS and Glen MORINAKA (collectively, "Western States").3 Tearlach was represented by Malcolm Fraser ("FRASER," an Appellant herein, who resides in Canada) and Chuck Ross ("ROSS," another individual Canadian Appellant in this action), both of whom are directors and officers of Tearlach, and the Company's legal counsel, Leschert & Company, represented by Allen D. Leschert, an individual lawyer who resides in Canada as well. (Mr. Ross, traveling from Canada, testified at the trial in the Superior Court action; Moving Party and Respondent Ingrid Aliet-Gass called this Court on the telephone during the trial presentation, claiming she was

[3] Ingrid Aliet-Gass, the principal of Western States, apparently filed for Chapter 13 bankruptcy protection on August 9, 2010 (case number 2:10-bk-43110-VZ). [Appendix 471.] 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*.

"on her way" to the courthouse with new counsel; she never appeared, nor did any attorney for her or her entities.)[4]

Western States represented that it was developing a number of resource projects in the US, Russia and Indonesia, including an oil and gas project located near Bakersfield, California known as the "Kern Front Property" (the "Property") with a value 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.

Defendants/Cross-complainants/Appellants herein demonstrated at trial that, as a result of various inducements and false representations by the Plaintiffs/Respondents herein (outlined in the action filed in Canada, which resulted in a $18,043,691.74 judgment in favor of Tearlach [Appendix 254]), Tearlach entered into an agreement (hereafter, the "Letter Agreement") dated for reference April 21, 2006 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 common shares of Tearlach stock and warrants, subject to the conditions set out in the agreement including approval of the Canadian Stock

[4] Respondents confusingly argued to the Trial Court that "this Court either held a trial or a default hearing" and that "it is immaterial how the hearing was characterized." [Motion to Set Aside Judgment, page 4, line 25 through page 5, line 1. Appendix 642 at 645.]

Exchange, TSX-V, a copy of which was attached to the original Plaintiffs' complaint [Appendix 29] as Exhibit "B".[5] [Appendix 99.]

Various disputes and differences arose between the Respondents herein and Tearlach (and the other defendants/Appellants herein), which led Tearlach to file a lawsuit against the Respondents herein. [Appendix 56.] This lawsuit was filed in Canada, because the Letter Agreement provided for venue in Canada with the application of Canadian law.[6] Judgment in the Canadian action was entered by the

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[5] There were at least two amendments to the Letter Agreement, neither of which, Tearlach had unsuccessfully argued, would provide for jurisdiction of this matter in California.

[6] All of the allegations of the Canadian action filed by Tearlach are complex, and need not be fully developed and documented within this Appellate Brief. Essentially, Tearlach, its subsidiary and its principals maintained that the Respondents herein deliberately and fraudulently:

a. Misled Tearlach to believe WSI had wells in production on the Property when it 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;

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;

Canadian court (for $18,043,691.74) and, pursuant to the Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA" or "Revised Act"), California *Code of Civil Procedure* §§ 1713-1724, Tearlach previously asserted that Judgment should have been entered against Cross-Defendants/Respondents in the California Superior Court action based upon the Canadian action; this was presented as a separate Motion before the Trial Court, but denied without prejudice due to concerns about service of process. [Appendix 343.]

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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. [Appendix 279 at 284, footnote 2.]

Thereafter, on the evidence presented at trial in this Court (including the facts enumerated in footnote 6, above), Defendants/Cross-complainants/Appellants herein prevailed at the California Superior Court trial against the Cross-defendants/Respondents, including Ingrid ALIET-GASS and her corporate entities (separately-represented Glenn MORINAKA[7] settled the case against him prior to trial).[8] [Appendix 552, 558.]

Until immediately before the trial in the Superior Court, Respondents were represented by counsel (an oil & gas expert, who presented an *ex parte* motion to

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[7] Cross-defendant MORINAKA had previously asserted that he had essentially nothing to do with these transactions. However, the evidence demonstrated, among other things, that the Judkins lease was not valid. He filed false lease/affidavits in the Judkins case, he knew the Witmer B and Sentinel B leases were not valid, he knew the surface leases were not paid up to date, he knew 51,000 barrels were not in tanks, he knew production figures were not real, he knew equipment, pumps did not work, and he knew property reports were out of date. Moreover, he accepted Tearlach shares knowing representations made to Tearlach were not true, and that cash flows were false. He took part in discussions on the transaction between Plaintiffs and Defendants, and he acted as CFO, so he would have known about undisclosed transactions which led to separate litigation against the Plaintiffs herein.

[8] Tearlach also discovered that G&O, Ingrid Aliet-Gass and Glen Morinaka had previously been subject to proceedings by the U.S. Securities and Exchange Commission (the "SEC") arising from preparation of misleading disclosure documents resulting in various sanctions, including cease and desist orders against each of G&O, Ingrid Aliet-Gass and Glen Morinaka and termination of GM's right to appear or practice as an accountant before the SEC. In noting that registration statements they prepared "contained affirmative material misrepresentations," the SEC stated "Gass and Morinaka assisted in the preparation and drafting of the disclosures in the registration statement. They were intimately familiar with the company's business and knew very well that it had no factories, no sales of product, no cash and no operations." [SEC Cease and Desist Order, File No. 3-10858.]

be relieved on the eve of trial [Appendix 524], which was granted in chambers), and the case was fiercely litigated. [See, e.g., extensive Register of Actions, Appendix 897 through 943.] Judgment was rendered after presentation of evidence at the scheduled trial. The trial court received and considered a mountain of documentary evidence and declarations, in addition to the oral testimony of Richard Farkas and Charles Ross at trial, which incorporated and reaffirmed their previously-submitted written declarations and exhibits. [Appendix 539; see also, Appendix 355, 399, 369, 489.] Moreover, the Superior Court did not rely upon Tearlach's Canadian foreign judgment, but rather awarded a separate judgment in favor of Tearlach and other parties (not parties to the Canadian action), later amended to include the judicial declaration that the subject property had been transferred to Tearlach in 2006. [Appendix 552, 558.]

In addition, at the trial in the 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, Judgment was granted in favor of the Tearlach parties (Appellants herein), with the Court specifically declaring, as part of the Amended Judgment, 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 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)." [Amended Judgment, Appendix 558.]

Tearlach maintained that it was an insult to the judicial system for Moving Parties/Respondents herein to read the clear language of the Superior Court Judge's declaratory judgment and call it "void" for lack of jurisdiction, when **it was Moving Parties themselves (Respondents herein) who chose to litigate the matter in the Superior Court, and who opposed all efforts to have the matter heard elsewhere**.[9] The United States was not a party to the Superior Court cases, and no one ever suggested or argued that it should be; neither was the Bureau of Land Management or any other federal entity or agency.[10]

[9] Nothing renders the Superior Court's judgment "void," as argued by the Respondents/Moving Parties. The United States was not a party to the Superior Court litigation, and is not affected by it. Similarly, the Bureau of Land Management was not involved; its role, if any, is merely to review and approve leases involving Federal lands. Moving parties/Respondents initiated the state court litigation in the Superior Court, and fought to maintain jurisdiction in State Court, never previously challenging the Superior Court's jurisdiction.

[10] Registration by the Bureau of Land Management ("BLM"), moreover, has no bearing on the validity of the transfers in 2006. In addition, one of Tearlach's Trial Exhibits was 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 Eastern Dist. Ex. U, page 1; Appendix 833 at 841, footnote 5], 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

C. MOVING PARTIES/RESPONDENTS DID NOT MEET THE LEGAL STANDARD FOR SETTING ASIDE THE JUDGMENT.

Respondents' attempt to argue that the Judgment in this case is "void," Appellants argued, was an obvious attempt to circumvent the provisions of *Code of Civil Procedure* section 473(b). Unless an Application for Relief is accompanied by an "attorney affidavit of fault," relief is discretionary and must be based on a showing of "mistake, inadvertence, surprise or excusable neglect." [*Code of Civil Procedure* section 473(b); see *Lorenz v. Commercial Accept. Ins. Co.*, Cal.App.4th 981, 989 (1995).]

Mislaying of process, forgetfulness, or intentional disregard of service are not "mistake, inadvertence, surprise or excusable neglect" as those terms are used in *Code of Civil Procedure* section 473(b), and they do not require the Court to set aside default. *Price v. Hibbs*, 225 Cal.App.2d 209 (1964). To be entitled to relief, the acts, which brought the default, must have been the acts of a reasonable prudent person under the same circumstances. [*Conway v. Municipal Court*, 107 Cal.App.3d 1009 (1980).]

Relief under *Code of Civil Procedure* section 473(b) is proper where defendant was mistaken as to some fact material to the defendant's duty to respond, by reason of which defendant failed to make a timely response. [See

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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). Appendix 833 at 841, footnote 5.]

Lieberman v. Aetna Ins. Co. (1967) 249 Cal.App.2d 515.] Mistake of fact is when a person understands the facts to be other than as they are. [*Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653.]

Parties may claim inadvertence and excusable neglect as the grounds for a motion. Inadvertence is defined as lack of heedfulness or attentiveness; and in the abstract, is no plea on which to vacate a default. [*Baratti v Baratti*, 109 Cal.App.2d 917 (1952).] Excusable neglect is by far the most common ground for obtaining discretionary relief from default. The issue, however, boils down to one very simple consideration – whether the moving party has shown a reasonable excuse for the default. [*Davis v. Thayer*, 113 Cal.App.3d 892 (1980).] The test in determining whether a party acted with excusable neglect is reasonable diligence. In the absence of an "Attorney affidavit of fault," the burden is on the moving party to show that neglect was excusable, i.e., that the default could not have been avoided through the exercise of ordinary care. [*Jackson v. Bank of America*, 141 Cal.App.3d 55, 58 (1983).]

Evidence that the defendant was seriously ill, feeble, or unable to understand that he was being served with process is sufficient to justify discretionary relief under *Code of Civil Procedure* section 473(b). [See *Kesselman v. Kesselman*, 212 Cal.App.2d 196, 207-208 (1963).] In a hearing on a motion to set aside a default and default judgment, the credibility of the persons executing the Declarations and the weight to be given to their contents is for the trial court. [*Conway v. Municipal Court*, 107 Cal.App.3d 1009 (1980).]

No doubt recognizing their inability to demonstrate "excusable neglect," Moving Parties, through their latest counsel, claimed (erroneously but successfully) that the Trial Court had no jurisdiction (an assertion previously rejected by a federal court) [Order Denying Petition to Invalidate Third Party Claim, 9/30/11, page 12, lines 15-20, Appendix 634; and page 9, lines 17-19, Appendix 631], and that its Judgment was "void." This disregards the fact that nothing in the claims of any parties required federal adjudication, the fact that the well-represented Moving Parties/Respondents themselves chose the California Superior Court for adjudication, that they vigorously opposed transfer to any other court, and that they had already failed to convince a Federal District court of their position.

D. JUDGMENT WAS ENTERED AFTER TRIAL, AND MOVING PARTIES NEVER MADE ANY EFFORT TO SET IT ASIDE.

In the Amended Judgment entered in the 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. Appendix 558.] Notice of Judgment Lien was recorded with the California Secretary of State, and an Abstract of Judgment was issued on June 8, 2011. [Appendix 561, 563.] Monetary Judgment was also granted in favor of Claimant Tearlach in the amount of $18,724,901.58. [Appendix 558.] This interest was granted in 2006, years before Moving Parties'/Respondents' lawsuit.

Moving Parties/Respondents had never made any effort to set this Judgment aside, although they have known about it since the day it was entered.

E. IN A SEPARATE, FEDERAL ACTION, IN WHICH MOVING PARTIES PARTICIPATED, THE DISTRICT COURT UPHELD THE VALIDITY OF THE SUPERIOR COURT'S JUDGMENT.

In a separate action, United Pacific Energy Operations and Consulting, Inc. (hereafter "UPEOC," not a party to this case) obtained, by stipulation, a monetary (not property[11]) judgment against Western States International, Inc. (Western States) in May, 2008. It thereafter sought—unsuccessfully—to attach assets of Western States but, in so doing, also sought to attach property that had been

[11] In its final September 30, 2011 Order, the Court specifically noted: the 2008 Consent Judgment does not adjudicate any interest in real property. To the contrary, the only claims on which judgment was entered under the 2008 Consent Judgment are claims for money damages." [Order, page 11, line 27 to page 12, line 2. Appendix 623 at 633.]

transferred to Tearlach Resources (California), Ltd. in 2006, a fact well-known to UPEOC at all times.

In a successfully-opposed [Appendix 623, 636] petition filed with the United States District Court, UPEOC sought to execute against properties which it knew (and previously acknowledged in court pleadings and elsewhere) were properly transferred by its judgment debtor to Tearlach Resources (California) Ltd. years before UPEOC obtained its purported stipulated judgment (executed by Ingrid Aliet-Gass). In so doing, UPEOC disregarded the facts and further ignored the valid declaratory judgment in this Kern County Superior Court, which ruled that Defendant "WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to … TEARLACH RESOURCES (CALIFORNIA) LTD. a sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field."[12] Moreover, the Superior Court ruling was consistent with the position acknowledged by UPEOC long before it obtained its monetary judgment.

Trial in the UPEOC case established that UPEOC's underlying (stipulated) money Judgment was obtained in May 2008. The Federal court acknowledged,

[12] Tearlach is not relying solely upon this Superior Court's Judgment that Tearlach acquired its 60% interest in 2006. Irrespective of the Superior Court's Judgment, there never has been a dispute as to the facts of Tearlach's acquisition of this interest in 2006. Not even Western States ever questioned Tearlach's interest. This Kern County Superior Court Judgment further memorialized the fact that Tearlach acquired its interest in 2006, and resolved the myriad of other state court issues in Tearlach's favor.

however, that the lease interests claimed by Tearlach were acquired by Tearlach in 2006. [Appendix 623, 636.]

Near the conclusion of the Federal trial in *UPEOC vs. Tearlach*, **which Moving Party/Respondent Ingrid Aliet-Gass attended and in which she participated as a party**, the trial judge stated, on the record, "Well, let me say this. What you haven't proved, Mr. Draper [then-counsel for UPEOC], is you haven't proved that the Kern County judgment is void, unenforceable or otherwise improper." [Reporter's Transcript of Proceedings, August 3, 2011, page 333, lines 16-18. Appendix 750 at 754-A (this page was omitted from Respondent's pleading (Appendix 730) that incorporated the exhibit).]

Thereafter, on September 30, 2011, the Federal court issued its Orders denying the Petition of UPEOC to invalidate Tearlach's claim. [Appendix 623, 636.] In its Order, the Federal judge acknowledged that "Tearlach's judgment against WSI adjudicated that WSI transferred a sixty-percent working interest in Federal Leases which produced the oil subject to UPEOC's levy." [Order, page 8, lines 25-27. Appendix 630.] In addition, the Federal court's Order decidedly rejected UPEOC's argument (and Moving Parties'/Respondents' argument) that Tearlach's state court judgment should be set aside:

> "UPEOC attempts to collaterally attack the Kern County Superior Court's judgment by arguing that it does not mean what it says. UPEOC also contends that the judgment was entered in excess of the Superior Court's jurisdiction. Federal district courts have no authority to review the validity of state court judgments. *See, e.g., Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (noting that federal district courts are

> prohibited from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment). The court may not disturb the Kern County Superior Court's judgment based on UPEOC's arguments. *See, e.g., id.* ("A federal action constitutes such a *de facto* appeal where 'claims raised in the federal court action are "inextricably intertwined" with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.'"). This is not the appropriate forum for UPEOC's collateral challenge to the findings expressed in the Kern County Superior Court's judgment." [Order, page 9, lines 2-19. Appendix 631.]

The Court then concluded, after the trial in which Moving Parties/Respondents herein participated: "Because UPEOC has not carried its burden of establishing that Tearlach California's interest is inferior to UPEOC's interest, the petition to invalidate must be denied. See, e.g., *Whitehouse*, 40 Cal. App. 4th at 535." [Order Denying Petition to Invalidate Third Party Claim, 9/30/11, page 12, lines 15-20, Appendix 634.] The Federal Court also stated, "<u>This is not the appropriate forum for UPEOC's challenge to Tearlach California's interest as established by the Kern County Superior Court's judgment.</u>" [Order Denying Petition to Invalidate Third Party Claim, 9/30/11, page 9, lines 17-19. Appendix 631 (emphasis added).]

F. THE TRIAL COURT HAD AT LEAST CONCURRENT JURISDICTION WITH RESPECT TO THE CLAIMS ASSERTED IN BOTH CROSS-COMPLAINTS.

In determining whether state courts are allowed to entertain jurisdiction over federally created causes of action, the Supreme Court has applied a

presumption of concurrency. [*See, e.g., Robb v. Connolly*, 111 U.S. 624 (1884); *Claflin v. Houseman*, 93 U.S.130, 136 (1876). *See generally* Martin H. Redish & John Muench, *Adjudication of Federal Causes of Action in State Court,* 75 Mich. L. Rev. 311 (1976).] Under this presumption, state courts may exercise jurisdiction over federally created causes of action as long as Congress has not explicitly or implicitly made federal court jurisdiction exclusive. [*Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 822 (1990).] "In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state courts enjoy concurrent jurisdiction." [*Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).]

As noted in the Appellants' opposition papers, The United States was not a party to the Superior Court case, and no one ever suggested or argued that it should be; neither was the Bureau of Land Management or any other federal entity or agency.[13] [Appendix 679 at 685, para. 15.] Indeed, the existence and propriety

[13] Registration by the Bureau of Land Management ("BLM"), moreover, has no bearing on the validity of the transfers in 2006. In addition, one of Tearlach's Trial Exhibits was 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 Eastern Dist. Ex. U, page 1; Appendix 833 at 841, footnote 5], 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). Appendix 833 at 841, footnote 5.]

of the lease assignment was not even a disputed issue being litigated. Since the United States had no interest in the Superior Court matter, and because it was not a party to the case, none of the authorities cited by Moving Parties / Respondents mandate exclusive Federal jurisdiction over the claims as asserted in either cross-complaint. Even if there was exclusive Federal jurisdiction, only the first of the three components (Section G, below) of the Amended Judgment (**which was not even a contested issue in this lawsuit**)[14] should have been subject to the Motion to Vacate.

G. THE TRIAL COURT'S RULING OF MARCH 9, 2012 EXCEEDED THE RELIEF SOUGHT IN THE UNDERLYING MOTION, AFFECTING NON-PARTIES TO THE LEASE AGREEMENT. THE STATE COURT CLAIMS, JUDGMENT ON THE COMPLAINT, AND MONETARY DAMAGES WERE SEVERABLE FROM THE JUDGMENT ON THE LEASEHOLD INTEREST.

On March 9, 2012, the Trial Court held "The judgment is vacated in its entirety. The damages claim is not severable from the underlying issue of the

[14] To the contrary, Moving Parties' own cross-complaint alleged, at paragraph 3: "In or about November November [*sic*] 27, 2006, Cross-Complainants UPEC and WSI executed an ASSIGNMENT OF OIL AND GAS LEASES AND BILL OF SALE which assigned sixty (60) percent of valuable oil properties to Cross Defendant TEARLACH CALIFORNIA." The fact of this assignment was never contested in this litigation by Moving Parties or the Tearlach parties; the disputes all pertained to monetary issues wholly unrelated to the assignment itself. Thus the entire ruling of this court is based on the erroneous assumption that "The issue presented was an assignment of a leasehold interest." This was never a contested issues that could remotely have required adjudication in the Federal Court.

assignment of interest." [Appendix 895.] It is submitted that the Trial Court erred in holding that the monetary damages claim "is not severable."

The Amended Judgment entered by this Court on March 2, 2011 contained three separate components, only one of which dealt with the validity of the transfer of a working interest to Tearlach (which was not even disputed by the Moving Parties/Respondents until they filed their belated Motion to Vacate). The Amended Judgment provided:

- "IT IS HEREBY ADJUDICATED THAT Cross-Defendant WESTERN STATES INTERNATIONAL, INC. transferred, effective on or before December 13, 2006, to Cross-complainant 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 (and Exhibit T to the Charles Ross Declaration signed on February 18, 2010 and filed on February 22, 2010), including the Witmer A, B West and Sentinal A Lease (CACA 045619) and the Mitchell Lease (CACA 045618);
- On the Cross-Complaint of WESTERN STATES INTERNATIONAL, INC., a Delaware corporation; and UNITED PACIFIC ENERGY CORPORATION, a Delaware corporation, (formerly known as GAS AND OIL TECHNOLOGIES, INC.), JUDGMENT IS HEREBY FOUND IN FAVOR OF CROSS-DEFENDANTS TEARLACH RESOURCES

LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA) LTD., a California corporation; MALCOLM FRASER, an individual; CHARLES E. ROSS, an individual;

- On the Cross-Complaint of TEARLACH RESOURCES LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA) LTD., a California corporation; MALCOLM FRASER, an individual; CHARLES E. ROSS, an individual, 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) IS HEREBY FOUND IN FAVOR OF CROSS-COMPLAINANTS TEARLACH RESOURCES LIMITED, a Canadian Corporation; TEARLACH RESOURCES (CALIFORNIA) LTD., a California corporation; MALCOLM FRASER, an individual; and CHARLES E. ROSS, and each of them, calculated as follows:

Judgment as prayed:	$18,589,412.80, plus
Costs:	$ 6,296.28, plus
Attorneys' Fees:	$ 129,192.50
TOTAL:	**$18,724,901.58"** [Appendix 558.]

Clearly, only the first of these three components is directly related to the sixty percent (60%) working interest in the oil and gas property known as the Kern Front Field (a working interest that was not denied by the Moving Parties/Respondents). Thus, only this limited component of the Amended Judgment should have even been subject to the Motion to Vacate. Nevertheless, the Trial Court dismissed the entire action.

Similarly, the Cross-complaint of Western States International, Inc. and United Pacific Energy Corporation consisted solely of state court claims[15] (the action was initiated in the California Superior Court by these Moving Parties/Respondents), was brought against individuals (Malcolm Fraser and Charles Ross) who were not even parties to the agreements which assigned the leasehold interest, and was fully considered by the Trial Court, which ruled in favor of Messrs. Ross and Fraser, as well as the Tearlach entities. The issues of this Cross-complaint were litigated at phenomenal expense. Nothing in the Motion to Vacate challenged or should have affected the second component of the Amended Judgment, since it involved issues separate and apart from the working interest, subject to the jurisdiction of the Trial Court.

[15] The original claims were for "(1) Breach of Agreement; (2) Fraud and Deceit-Intentional Misrepresentation; (3) Fraud and Deceit—Negligent Misrepresentation; (4) Concert of Action; (5) Alter Ego; and (6) Declaratory Relief." [Appendix 66.]

Finally, the third component, monetary damages against the Respondents, is clearly severable from the underlying issue of the assignment of the oil and gas working interest. Among other reasons, the damages were awarded, in part, to individuals (Messrs. Ross and Fraser) who were not parties to the lease assignment agreements. The claims set forth in the Tearlach parties' cross-complaint were for damages concerning matters over which this court had concurrent jurisdiction, and are severable from the "disposition of federal real property" which was never even a contested issue.

H. THE *JUDKINS* LEASE WHICH LED TO THE INITIATION OF LITIGATION IN THE KERN COUNTY SUPERIOR COURTS DID NOT EVEN INVOLVE FEDERAL LAND OR FEDERAL LEASES.

Among the facts not considered by the Trial Court when it granted the Motion to Vacate and dismissed the case is the fact that the *Judkins* lease, which triggered the litigation in the Kern County Superior Court, did not involve Federal land at all, and did not involve Federal leases or any possible United States interest. [Appendix 1; see also 679 at 685, para. 15.]

Moving Parties/Respondents initiated the litigation in the California State Court in their cross-complaint and, in a related action, initiated State Court litigation concerning the same leases which did not involve any Federal interest. [Appendix 66, 71.] This was not only concealed by the Moving Parties/Respondents, but contradicted in their disingenuous Motion to Vacate. Moving Parties'/Respondents' Complaint Exhibit A, for example, is an

"assignment" (executed only by Tearlach Resources (California) Ltd.) of certain oil and gas leases which were held to be invalid by the Court in *Susan Lee Judkins Gibson, etc., Plaintiffs, vs. Western States International, Inc., Defendant*, Kern County Superior Court case number S-1500-CV-259949 WDP. [Appendix 89; see also, Appendix 1, 21.] At the trial in the underlying Superior Court action, the Tearlach entities demonstrated that most of the funds allegedly expended by Western States were on property it did not own—the Judkins Lease—making them worthless to all parties. This was a key element of the Superior Court case, and involved land and leases with no Federal connection. [Appendix 29, 66, 71.]

Examination of the allegations of Tearlach in this action which led to the Amended Judgment illustrate that substantial focus was placed on the non-Federal *Judkins* leases. A cursory review of the Tearlach allegations[16], for example, reveals that the Tearlach entities alleged that Moving Parties deliberately and fraudulently:

> a. Misled Tearlach to believe WSI had wells in production on 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. 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;

[16] See, e.g., footnote 4 of the Motion for Reconsideration. [Appendix 833 at 837.]

d. 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.

As part of the Tearlach Entities' evidence that led to the Amended Judgment in this matter after trial, Charles Ross testified, in connection with the non-Federal *Judkins* lease:

"On or about March 31, 2008, the Superior Court of The State of California for the County of Kern – Metropolitan North Central District decided against WSI in the Judkins Action, effectively confirming prior termination of their entire interest in the Judkins Lease. A copy of a summary of orders granted extracted from the Court's website is attached as Exhibit "XX". Among other things the Court ordered that:

- WSI had been given notice of termination of the Judkins lease on June 7, 2006;
- The Lease was effectively terminated on December 7, 2003;
- A lease filed by GM on behalf of WSI on or about January 26, 2006 was not an effective lease.
- WSI's cross complaint was dismissed." [Ross Declaration, admitted at trial, paragraph 61. Appendix 389.]

I. THE TRIAL COURT FAILED TO CONSIDER THE FACT THAT (A) THE 60% INTEREST ASSIGNMENT WAS NOT A CONTESTED ISSUE IN THIS CASE, SO (B) THE UNITED STATES HAD NO INTEREST IN THIS STATE COURT ACTION, AND (C) THE AMENDED JUDGMENT, AS ENTERED, WAS EASILY SEVERABLE FROM ANY POTENTIAL FEDERAL INTEREST.

As noted in the opposition papers, The United States was not a party to the Superior Court case, and no one ever suggested or argued that it should be; neither was the Bureau of Land Management or any other federal entity or agency. [Appendix 679 at 685, para. 15.] Indeed, **the existence and propriety of the lease assignment was not even a disputed issue being litigated**. Since the United States had no interest in this matter, and because it was not a party to this case, none of the authorities cited by Moving Parties/Respondents mandate exclusive Federal jurisdiction over the claims as asserted in either cross-complaint. Even if there was exclusive Federal jurisdiction, only the first of the three components of the Amended Judgment (**which was not even a contested issue in the Superior Court lawsuit)**[17] should have been subject to the Motion to Vacate.

[17] To the contrary, Respondents' own cross-complaint alleged, at paragraph 3: "In or about November November [*sic*] 27, 2006, Cross-Complainants UPEC and WSI executed an ASSIGNMENT OF OIL AND GAS LEASES AND BILL OF SALE which assigned sixty (60) percent of valuable oil properties to Cross Defendant TEARLACH CALIFORNIA." The fact of this assignment was never contested in this litigation by Moving Parties or the Tearlach parties; the disputes

J. THE TRIAL COURT ERRED IN DENYING APPELLANTS' MOTION FOR RECONSIDERATION.

On March 9, 2012, the Trial Court Ruled on Cross-Defendants'/Respondents' Motion to Vacate Amended Judgment and to Dismiss Cross-Complaint. At that time, the Trial Court held that it had no subject matter jurisdiction, thus vacating the March 2, 2011 Amended Judgment. Appellants' then filed a timely Motion for Reconsideration. [Appendix 833.]

In their Motion for Reconsideration [Appendix 833], Appellants argued that "on the day of the hearing of the Motion to Vacate (February 22, 2012), another Kern County Court issued its ruling in a related action, rejecting Moving Parties "exclusive Federal jurisdiction" claims. [Appendix 833 at 840.] This was never made known to the Court. Moreover, Moving Parties wrongfully submitted a supplemental memorandum of (inapplicable) points and authorities on March 1, 2012, after the matter had been heard and submitted, to which the Tearlach parties could not respond. In this supplemental and improper filing, Moving Parties made **no mention** of the ruling in *Riverwood Energy, LLC vs. Ingrid Aliet-Gass*, Kern County Superior Court case number S-1500-CV-272590, which had just rejected their identical arguments.

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pertained to monetary issues wholly unrelated to the assignment itself. Thus the entire ruling of the trial court is based on the erroneous assumption that "The issue presented was an assignment of a leasehold interest." Even with respect to the Federal lease, the assignment was never a contested issue that could remotely have required adjudication in a Federal Court.

K. SHORTLY BEFORE THE TRIAL COURT'S MARCH 9, 2012 RULING, ANOTHER KERN COUNTY SUPERIOR COURT JUDGE REJECTED MOVING PARTIES' IDENTICAL ARGUMENTS.

On January 18, 2012 (the same day as originally scheduled for the Motion to Vacate the First Amended Judgment), Kern County Superior Court Judge Sidney P. Chapin heard oral arguments on Defendants' (Moving Parties and Respondents' herein) demurrer to the pending complaint in *Riverwood Energy, LLC vs. Ingrid Aliet-Gass*, Kern County Superior Court case number S-1500-CV-272590. [Appendix 760.] Seeking to have the *Riverwood Energy, LLC* action dismissed on with the same assertion of "exclusive Federal jurisdiction," the defendants (Moving Parties and Respondents herein) filed a demurrer based on lack of jurisdiction, citing the same authorities as presented in their Motion to Vacate Judgment. **On January 17, 2012, Judge Chapin posted his tentative ruling, which was to overrule the demurrer, directing the defendants to file and serve an answer to the state court complaint within ten days.** After oral argument, however, the matter was taken under submission. On February 22, 2012 (the same day the Trial Court heard the Motion to Vacate), Judge Chapin overruled the demurrer, thus rejecting the same arguments presented to the Trial Court in this action. Moving Parties/Respondents concealed this fact from the Trial Court, even though they had filed supplemental pleadings on March 1, 2012, after their Motion had been taken under submission.

To vacate the Amended Judgment based on the "exclusive Federal jurisdiction" arguments of Moving Parties/Respondents was to render a judgment that is inconsistent with another matter pending in the same Superior Court, on the same lease interest and the same legal arguments. Such a dichotomy has thus presented a bizarre result and constitutes a gross injustice and unfair hardship to the Tearlach parties.[18]

4. CONCLUSION.

All of the arguments asserted by Respondents in support of their Motion to Vacate were based on their contention (not accepted by other Courts) that, as the Trial Court ruled, "a state court cannot issue a judgment disposing of a real property right arising from a lease of federal land." [Appendix 895.] The portion of the Trial Court's ruling to vacate the judgment "in its entirety" exceeded the relief even sought by the Moving Parties / Respondents, and was not required, even if one were to accept the Trial Court's rationale that "the only court that has subject matter jurisdiction over the disposition of federal real property is a federal court."

Examination of all of the pleadings in this case demonstrates that the substance of the parties' dispute is an action founded in fraud and breaches of contract resulting in damages, the majority of which flowed from negligent or

[18] The Trial Court stated, in its May 21, 2012 ruling, "The allegedly contrary trial court ruling from Department 4 in Riverwood CV 272590, on a demurrer, is not binding on this court and is not persuasive to this court." [Appendix 895.]

fraudulent misstatement, and additional resulting damages, much of which arose from failure to deliver title to a non-Federal lease (the *Judkins* field). The association with matters of potential Federal jurisdiction was at best incidental—the Federal leases, the assignment of which was not disputed, were the only assets remaining after Western States' negligent and fraudulent actions. In terms of the fraud allegation, it was proven that the Western States' cross-defendants (Respondents herein) promised to deliver clear and unencumbered title to all the leases including *Judkins*, and did so when they knew prior to closing that they had already received a termination notice on the non-Federal Judkins lease—a fact they deliberately concealed from Tearlach, resulting in a determination by another California state court that Western States had in fact lost its interest almost two years before it purportedly sold it and the other interests to Tearlach, resulting in significant damages. The Superior Court matter was non-Federal in nature for the foregoing reasons.

Arguably, the association with any Federal rights is at best incidental to the breach of contract and fraud claims, and has nothing requiring Federal jurisdiction, except that the Federal leases may be the only assets remaining to satisfy judgment for Respondents' negligent and fraudulent conduct, which has already been proven at least twice on the merits, both in Canada and again in the United States (State and Federal). By invalidating this, and every other judgment against them, the tortfeasers now merely attempt to circumvent legitimate recovery, as well as to

unlawfully reclaim the remaining rights they have admittedly already sold, essentially attempting to make the Courts unwitting participants to their actions.

For the reasons stated herein, Appellants respectfully request that this Court should reverse the lower court's decision to dismiss the Superior Court action in its entirety, and thus reinstate the Amended Judgment of March 2, 2011. If not, the Ruling should be modified to vacate only the first component of the Amended Judgment, the only portion of the Judgment which could arguably require adjudication by a Federal Court.

DATED: November 21, 2012 LAW OFFICES OF RICHARD D. FARKAS

By: _____
RICHARD D. FARKAS
Attorneys for Appellants
TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; and CHARLES E. ROSS

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California *Rules of Court*, I hereby certify that this brief is proportionately spaced in Times New Roman 13 point type, consisting of 8,013 words, including the footnotes. In making this certification, I have relied on the word count of the computer program (Microsoft Word®) used to prepare the brief.

DATED: November 21, 2001 LAW OFFICES OF RICHARD D. FARKAS

By: _____
RICHARD D. FARKAS
Attorneys for Appellants
TEARLACH RESOURCES LIMITED; TEARLACH RESOURCES (CALIFORNIA) LTD.; MALCOLM FRASER; and CHARLES E. ROSS

Western States International, Inc. vs. Tearlach Resources, (California) Ltd. etc., et al.
Superior Court Case No. S-1500-CV-264931-DRL C/W S-1500-CV-266707, SPC
FIFTH APPELLATE DISTRICT CASE NUMBER F065511

PROOF OF SERVICE

I am a resident of the State of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is Law Offices of Richard D. Farkas, 15300 Ventura Boulevard, Suite 504, Sherman Oaks, California 91403. On the date listed below, I served the following document(s):

APPELLANTS' OPENING BRIEF

_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5 p.m. Our facsimile machine reported the "send" as successful.

XX by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. According to that practice, items are deposited with the United States mail on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

_ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, deposited with Federal Express Corporation on the same date set out below in the ordinary course of business; that on the date set below, I caused to be served a true copy of the attached document(s).

_ by personally delivering the document(s) listed above to the person at the address set forth below.

David W.T. Brown, Esq. (SBN 147321) A. Alexander Gorman, Esq. (SBN 158719) HUSKINSON, BROWN & GORMAN, PC 16th Floor, Park Tower 980 9th Street Sacramento, California 95814	California Court of Appeal Fifth Appellate District 2424 Ventura Street Fresno, California 93721
Kern County Superior Court Clerk of the Court of Appeal 1415 Truxtun Avenue, 5th floor Bakersfield, California 93301	Supreme Court of California 350 McAllister Street, 2nd floor San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November ____, 2012

_____
KERRI CONAWAY