

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY SEP 10 2012  
STATE OF OKLAHOMA

PATRICIA PRESLEY, COURT CLERK

OKLAHOMA DEPARTMENT OF )  
SECURITIES, ex rel, IRVING L. FAUGHT, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID WARREN HARRIS, an individual, )  
 )  
Defendant. )

~~by \_\_\_\_\_~~  
BEBBY

Case No.: CJ-2012-2604  
Judge Barbara G. Swinton

**MOTION TO COMPEL**

COMES NOW Defendant David W. Harris ("Defendant"), by and through his attorney of record, and submits this *Motion to Compel* as to investor statements taken by the Plaintiff Oklahoma Department of Securities ("ODOS"), sought by Defendant in discovery, of which ODOS denies existence. In support, Defendant would state as follows:

1. Defendant served discovery requests upon ODOS seeking the information upon which it relies in pursuing its injunctive and penal relief. In responding, ODOS referenced certain investor statements. *See*, Defendant's Interrogatory No. 11 and Response (attached as Exhibit "A"), stating:

**INTERROGATORY NO. 11:** Please state each and every basis, reason, and/or fact as to why you allege that "Defendant offered and sold the Units in and/or from Oklahoma" as alleged in paragraph 10 of your Petition for Permanent Injunction and/or Other Equitable Relief.

**RESPONSE TO INTERROGATORY NO. 11:** Statements from Southlake Energy and investors regarding the offers and sales of the investments by Defendant. statements from Southlake Energy regarding investments by individuals from sales by Defendant and payments from Southlake Energy to Defendant for those sales, and bank records that confirm the payments to Defendant. (Emphasis added).

2. Defendant asked ODOS to produce the stated investor statements in its Request for

Production No. 7:

**REQUEST FOR PRODUCTION NO.7:** Please produce all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 11.

**RESPONSE TO REQUEST FOR PRODUCTION NO.7:** Attached to response. *See, Exhibit "A."*

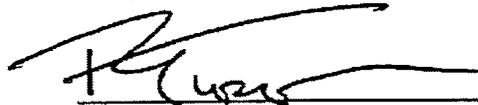
3. No investor statements were attached to ODOS' responses, so counsel for Defendant followed up with counsel for ODOS by letter. *See, Exhibit "B."*
4. Counsel for ODOS responded by email stating that ODOS did not in fact have any investor statements, though they were referenced in the interrogatory responses. *See, Exhibit "C."*
5. Under the Oklahoma Discovery Code, Defendant is entitled to all relevant, non-privileged information relating to any claim of the Plaintiff. OKLA. STAT. tit. 12, § 3226(B)(1)(a). ODOS did not assert any privilege as to the investor statements in its response.
6. This is particularly applicable here, in this quasi-criminal proceeding, where there are other considerations at stake that go beyond a typical financial remedy sought in a civil lawsuit. *Johnson v. Board of Governors of Registered Dentists of State of Okl.* 1996 OK 41, 913 P.2d 1339 (citing *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808 (1979)).
7. In essence, Defendant is entitled to know what evidence ODOS will use, or attempt to use, against him in seeking its requested injunctive and penal relief.
8. Counsel for Defendant is in possession of one investor statement taken by ODOS with regard to Defendant and the subject matter at issue in this case. *See, Exhibit*

"D."

9. Presumably, more such statements exist and would be subject to, *and required to be produced pursuant to*, Defendant's discovery requests. OKLA. STAT. tit. 12, § 3226(B)(1)(a). The statement is not attached hereto because Defendant fears that if it is attached, Plaintiff would have the opportunity to claim a mere oversight as to this one particular statement and not produce any others that it may have in its possession.

WHEREFORE, Defendant prays that this Court compel ODOS to produce all investor statements taken by it or its agents, relating to the Defendant, that are relevant to the claims and defenses made in this matter. Defendant also seeks his attorney fees, costs, and any other and further relief as is equitable and just under the facts and circumstances presented.

Respectfully submitted,



P.R. Tirrell, OBA #21555  
DENTON LAW FIRM  
925 West State Highway 152  
Mustang, Oklahoma 73064  
Telephone: (405) 376-2212  
Facsimile: (405) 376-2262  
*perry@dentonlawfirm.com*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 10, 2012, a true and correct copy of the above and foregoing *Motion to Compel* was served via facsimile and US mail upon:

Patricia A. Labarthe, OBA #10391  
Robert Fagnant, OBA #30548  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 280-7700  
Facsimile: (405) 280-7742  
*plabarthe@securities.ok.gov*  
*rfagnant@securities.ok.gov*



P.R. Tirrell

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3. The Department responds to the Requests based upon information and documentation available as of the date hereof and reserves the right to supplement and amend its responses.

4. The Department reserves all objections as to the competence, relevance, materiality, admissibility, or privileged or protected status of any information provided in response to the Requests, unless the Department specifically states otherwise.

5. The Department's general objections set forth in paragraphs 1-4 above are incorporated into each of the following responses, shall be deemed continuing as to all requests, and are not waived, nor in any way limited, by the following responses.

### INTERROGATORIES

INTERROGATORY NO. 1: Please identify by name and address of each witness with knowledge of the allegations contained in your *Petition for Permanent Injunction and/or Other Equitable Relief* who will appear on your behalf at trial.

#### RESPONSE TO INTERROGATORY NO. 1:

1. John Ulrey, Investigator, Oklahoma Department of Securities, 120 North Robinson, Suite 860, Oklahoma City, Oklahoma 73102. Will testify to the receipt by Defendant of payments from Southlake Energy.
2. Carol Gruis, Supervisory Examiner, Oklahoma Department of Securities, 120 North Robinson, Suite 860, Oklahoma City, Oklahoma 73102. Will testify to the registration status of Southlake Energy and Defendant.
3. Kenneth Maillard, Director of Registrations, Oklahoma Department of Securities, 120 North Robinson, Suite 860, Oklahoma City, Oklahoma 73102. Will testify to the registration status of the securities of Southlake Energy and Defendant.

4. Brenda London, Paralegal, Oklahoma Department of Securities, 120 North Robinson, Suite 860, Oklahoma City, Oklahoma 73102. Will testify as a custodian of the records of the Department.
5. Mark Teinert, Southlake Energy, LLC, 777 Main Street, Suite 3100, Fort Worth, TX 76102. Will testify to the sales of working interests in oil and gas wells by Defendant and the payment to Defendant from Southlake Energy as well as his knowledge of the facts and circumstances relative to the claims made against the Defendant.
6. Nicholas Owen Gunden, 128 Bright Street, #4, Jersey City, NJ 07032. Will testify to the communications with Defendant in connection with investments in Southlake Energy.
7. Matt Kinney, 11611 Tammy Way, Grass Valley, CA 95969. Will testify to the communications with Defendant in connection with investments in Southlake Energy.
8. William E. Kinney, 16565 Aileen Way, Grass Valley, CA 95949. Will testify to the communications with Defendant in connection with investments in Southlake Energy.
9. Stacy Burk, 120 Fade Away Road, Branson, MO 65616. Will testify to the communications with Defendant in connection with investments in Southlake Energy.
10. James M. Harris, 8820 Walther Boulevard, Apartment 1502, Parkville, MD 21234-9040. Will testify to the communications with Defendant in connection with investments in Southlake Energy.
11. David W. Harris, 8708 Ally Way, Yukon, OK 73099-9646. Will testify to the offer and sale of investments in Southlake Energy as well as his knowledge of the facts and circumstances relative to the claims made against him.

Plaintiff expressly reserves the right to identify additional witnesses and

supplement this response through the date that the final pre-trial conference order is filed of record in this case.

**INTERROGATORY NO. 2:** Please provide a summary of the anticipated testimony that each person listed in your answer to Interrogatory No. 1, will provide.

**RESPONSE TO INTERROGATORY NO. 2:** See Response to Interrogatory No. 1.

**INTERROGATORY NO. 3:** Provide the name and address of each and every expert consulted by or retained by you or on your behalf with respect to any of the claims in this action and, as provided for by OKLA. STAT. tit. 12, § 3226 (B)(3)(a)(3), and, for each such person that Plaintiff expects to call as an expert witness, state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. **Please note this Interrogatory "shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title." Okla. Stat. tit. 12, § 3226(B)(3)(a)(3).**

**RESPONSE TO INTERROGATORY NO. 3:** At this time, Plaintiff has retained no expert witnesses. Plaintiff expressly reserves the right to identify additional witnesses and supplement this response through the date that the final pre-trial conference order is filed of record in this case.

**INTERROGATORY NO. 4:** Identify specifically each and every exhibit you

anticipate using at trial as well as any demonstrative aid, impeachment item, or other document of which you are aware. Please note your continuing obligation to supplement your response to this Interrogatory, as any document or other evidence you attempt to use at trial, for any reason whatsoever, will be objected to if this Interrogatory is not timely supplemented.

**RESPONSE TO INTERROGATORY NO. 4:**

1. Bank statements of Defendant and copies of checks received by Defendant from Southlake Energy.
2. Affidavit of Carol Gruis, Supervisory Examiner, Oklahoma Department of Securities.
3. Affidavit of Kenneth Maillard, Director of Registrations, Oklahoma Department of Securities.
4. Southlake Energy Subscription Agreements.
5. David Harris Commission Schedule.

Plaintiff expressly reserves the right to identify additional documents and supplement this response through the date that the final pre-trial conference order is filed of record in this case.

**INTERROGATORY NO. 5:** Please identify each and every offer or sale of securities that you allege the Defendant made as alleged in paragraphs 4 and 5 of your *Petition for Permanent Injunction and/or Other Equitable Relief.*

**RESPONSE TO INTERROGATORY NO. 5:**

Nicholas Owen Gunden  
Nicholas Owen Gunden  
Barefoot MK Investments, LLC  
William E. Kinney

Precision Marketing, LLC  
Stacy Burk  
James M. Harris  
James M. Harris

**INTERROGATORY NO. 6:** Please identify each and every document, record, and record custodian, that relates to or supports your allegation that Defendant offered or sold securities as alleged in paragraphs 4 and 5 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 6:** See Response to Interrogatory No. 4.

**INTERROGATORY NO. 7:** Please identify each and every "Investor," as described in paragraph 5 of your *Petition for Permanent Injunction and/or Other Equitable Relief* by name, address, and contact information.

**RESPONSE TO INTERROGATORY NO. 7:** See Response to Interrogatory No. 1 and Response to Interrogatory No. 5.

**INTERROGATORY NO. 8:** Please identify each and every document, record, and/or recording, that relates to any "Investor" as alleged in paragraph 5 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 8:** See Response to Interrogatory No. 4.

**INTERROGATORY NO. 9:** Please identify each and every payment that you allege was made to Defendant as alleged in paragraph 6 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 9:**

12/21/10	\$ 287.40
12/30/10	\$7,200.00
1/4/11	\$1,800.00
2/7/11	\$9,000.00
2/10/11	\$3,600.00

3/14/11	\$43,200.00
3/24/11	\$5,400.00
7/5/11	\$5,625.00

**INTERROGATORY NO. 10:** Please identify each and every document, record, and/or recording, that relates to any alleged payment as alleged in paragraph 6 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 10:** Bank statements of Defendant and copies of checks received by Defendant from Southlake Energy.

**INTERROGATORY NO. 11:** Please state each and every basis, reason, and/or fact as to why you allege that "Defendant offered and sold the Units in and/or from Oklahoma" as alleged in paragraph 10 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 11:** Statements from Southlake Energy and investors regarding the offers and sales of the investments by Defendant, statements from Southlake Energy regarding investments by individuals from sales by Defendant and payments from Southlake Energy to Defendant for those sales, and bank records that confirm the payments to Defendant.

**INTERROGATORY NO. 12:** Please identify all "activities [by Defendant] in the offer and/or sale of securities in and/or from this state," as alleged in paragraph 2 of your *Petition for Permanent Injunction and/or Other Equitable Relief*.

**RESPONSE TO INTERROGATORY NO. 12:** Telephonic and/or electronic communications.

**INTERROGATORY NO. 13:** Please state the manner in which all offers and sales of securities, as alleged in your *Petition for Permanent Injunction and/or Other*



*Equitable Relief*, occurred.

**RESPONSE TO INTERROGATORY NO. 13:** Primarily through telephonic and/or electronic communications.

**INTERROGATORY NO. 14:** Please identify all offers and sales of securities, as alleged in your *Petition for Permanent Injunction and/or Other Equitable Relief* by Investor name, description and amount of Units, date and time of sale, persons involved, and alleged funds paid to Defendant because of the offer or sale.

**RESPONSE TO INTERROGATORY NO. 14:**

Nicholas Owen Gunden, 2/17/11, 6 units,	\$180,000 invested
Nicholas Owen Gunden, 2/24/11, 4 units	\$120,000 invested
Barefoot MK Investments, LLC, 2/1/11, 2 1/2 units	\$75,000 invested
William E. Kinney, 1/30/11, 1 unit	\$30,000 invested
Precision Marketing, LLC, 2/25/11, 2 units	\$60,000 invested
Stacy Burk, 3/8/11, 1 1/2 units	\$45,000 invested
James M. Harris, 12/29/10, 2 units	\$60,000 invested
James M. Harris, 7/5/11, unit number unknown	\$46,875 invested

See Response to Interrogatory No. 9 for funds paid to Defendant.

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please produce copies of all reports produced by, and any documents referred to in such production, by any expert that you identified in your response to Interrogatory No. 3, propounded herewith.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** None at this time.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies of all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 1.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** Attached to response.

**REQUEST FOR PRODUCTION NO. 3:** Please produce copies of all documents identified in your response to Interrogatory No. 4.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** Attached to response.

**REQUEST FOR PRODUCTION NO. 4:** Please produce all documents and records that were used in answering, referred to, or which support your responses to Interrogatory Nos. 5 and 6.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** Attached to response.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all documents and records that were used in answering, referred to, or which support your responses to Interrogatory Nos. 7 and 8.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** Attached to response.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documents and records that were used in answering, referred to, or which support your responses to Interrogatory Nos. 9 and 10.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** Attached to response.

**REQUEST FOR PRODUCTION NO. 7:** Please produce all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 11.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** Attached to response.

**REQUEST FOR PRODUCTION NO. 8:** Please produce all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 12.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** None at this time.

**REQUEST FOR PRODUCTION NO.9:** Please produce all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 13.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** None at this time.

**REQUEST FOR PRODUCTION NO. 10:** Please produce all documents and records that were used in answering, referred to, or which support your response to Interrogatory No. 14.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Attached to this response.

**REQUEST FOR PRODUCTION NO. 11:** Please produce all Investor statements and/or recordings upon which you based your allegations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** None at this time.

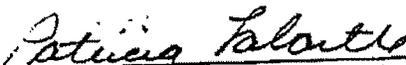
**REQUEST FOR PRODUCTION NO. 12:** Please produce all documents and records relating to the Units upon which you base your allegations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** Attached to this response.

**REQUEST FOR PRODUCTION NO. 11:** Please produce all documents and records relating to the alleged payments to Defendant upon which you base your allegations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Attached to this response.

Respectfully submitted,

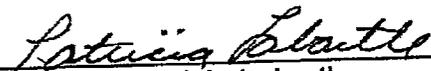
  
\_\_\_\_\_  
Patricia Labarthe, OBA #10391  
Robert Fagnant, OBA #30548  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102  
Telephone: (405) 280-7700  
Facsimile: (405) 280-7742  
Email: [plabarthe@securities.ok.gov](mailto:plabarthe@securities.ok.gov)  
[rfagnant@securities.ok.gov](mailto:rfagnant@securities.ok.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2012, the foregoing document was sent by email and first-class mail to the following:

P.R. Tirrell  
Denton Law Firm  
1102 E. State Highway 152  
Mustang, OK 73064  
[perry@dentonlawfirm.com](mailto:perry@dentonlawfirm.com)

Attorney for Defendant

  
\_\_\_\_\_  
Patricia Labarthe

# DENTON LAW FIRM

ATTORNEYS AND COUNSELORS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

July 23, 2012

Patricia A. Labarthe, Esq.  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102

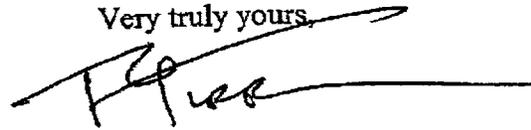
Re: *Oklahoma Dept. of Securities v. David W. Harris*  
District Court of Oklahoma County, State of Oklahoma  
Case No. CJ-2012-2604 (Judge Barbara G. Swinton)

Dear Ms. Labarthe:

Thank you for the discovery responses that your office provided. As a follow up, and for clarification, in Response to Interrogatory No. 11, the Department states that it relied upon investor statements in determining that my client offered and/or sold securities in the State of Oklahoma. No investor statements were attached, though they were requested in Request for Production No. 7. Can you please clarify and advise if the Department has any statements from investors?

Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to call.

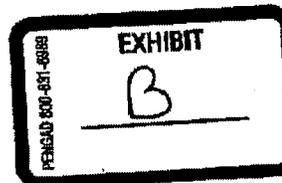
Very truly yours,



P.R. Tirrell

/tmm

Q:\38-000 General Civil\2012\74 Harris, David\Correspondent\Labarthe (discovery response clarifications) 7.23.12.vpd



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## Fax Confirmation Report

DENTON LAW FIRM  
405-376-2262  
Jul-23-2012 12:35PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
3413	7/23/2012	12:34:33PM	Send	2807742	0:59	1	OK

**DENTON LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

July 23, 2012

Patricia A. Labarthe, Esq.  
Oklahoma Department of Securities  
129 North Robinson, Suite 850  
Oklahoma City, Oklahoma 73102

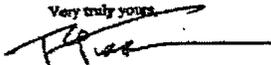
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Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to call.

Very truly yours,

  
P.R. Timell

Amn

**Perry Tirrell**

---

**From:** Patty Labarthe [plabarthe@securities.ok.gov]  
**Sent:** Monday, July 30, 2012 3:08 PM  
**To:** Perry Tirrell  
**Subject:** RE: David Harris Deposition

Hi Perry:

Our receptionist was out of the office last week and for some reason no faxes were forwarded so I apologize for my delay in responding. I received your letter this morning and wanted to let you know that we have no documents responsive to the request. Were you able to get Mr. Harris scheduled for August 9? If not, what day would work for both of you? Thanks.

Patty Labarthe

---

**From:** Perry Tirrell [mailto:perry@dentonlawfirm.com]  
**Sent:** Tuesday, July 24, 2012 1:37 PM  
**To:** Patty Labarthe  
**Subject:** RE: David Harris Deposition

Patty – Sorry for the delay. I haven't heard back from my client yet, and August is pretty busy for me – I have trials on the third and twenty-seventh. Let me check the ninth and see what I have and see if I can get a hold of my client today.

Regards –

Perry

P.R. Tirrell  
Denton Law Firm  
925 West State Highway 152  
Mustang, OK 73064  
Tel: (405) 376-2212  
Fax: (405) 376-2262  
[perry@dentonlawfirm.com](mailto:perry@dentonlawfirm.com)

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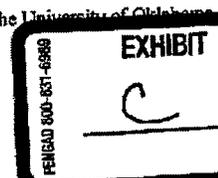
**From:** Patty Labarthe [mailto:plabarthe@securities.ok.gov]  
**Sent:** Tuesday, July 24, 2012 12:59 PM  
**To:** [perry@dentonlawfirm.com](mailto:perry@dentonlawfirm.com)  
**Subject:** David Harris Deposition

I am planning the deposition of David Harris for Thursday August 9 at 9:30 a.m. unless you have a conflict. Please let me know by the end of the day if there is a conflict with that date and time. Thank you.

Patty Labarthe

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Visit [InvestEdOK.org](http://InvestEdOK.org) for unbiased investor education resources. InvestEdOK.org is a collaboration between the Oklahoma Securities Commission and the University of Oklahoma  
OUTREACH



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF )  
SECURITIES, ex rel, IRVING L. FAUGHT, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID WARREN HARRIS, an individual, )  
 )  
Defendant. )

Case No.: CJ-2012-2604  
Judge Barbara G. Swinton

AFFIDIVIT OF P.R. TIRRELL

STATE OF OKLAHOMA )  
 ) ss.  
COUNTY OF OKLAHOMA )

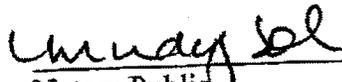
I, P.R. Tirrell, counsel for Defendant in this matter, David Harris, and being of lawful age, sound mind, and sworn upon oath, state as follows:

1. I am in possession of one statement made by and alleged "Investor" (as defined in the *Petition*) in this matter taken by the Oklahoma Department of Securities.
2. That this statement was received from the alleged "Investor."
3. That the statement was taken by an ODOS listed witness in this matter, and relates to the Defendant, and the claims and defenses in this matter.
4. That the statement is not attached hereto, nor attached to Defendant's *Motion to Compel*, for the reason stated therein.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
P.R. Tirrell, counsel for Defendant  
David Harris

Subscribed and sworn to before me by P.R. Tirrell, who demonstrated his identity to me on this 10<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Notary Public

My Commission Expires 12/24/14  
  
MINDY JOHNSON  
Notary Public  
State of Oklahoma  
Commission # 02019506 Expires 12/24/14

EXHIBIT  
D  
PENKAD 800-831-6888