

CAUSE NO. 2013-59098

XS CAPITAL INVESTMENTS, LP and
RURAL ROUTE 3 HOLDINGS, LP,

Plaintiffs,

vs.

ORCA ICI DEVELOPMENT JV,
ORCA ASSETS G.P., LLC,
and MRC ENERGY CORPORATION
f/k/a MATADOR RESOURCES
COMPANY,

Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

**ORCA DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SUMMARY JUDGMENT
EVIDENCE AND MOTION TO STRIKE**

TO THE HONORABLE WESLEY WARD:

COME NOW Defendants, Orca ICI Development JV ("Orca ICI") and Orca Assets, GP, LLC ("Orca Assets"), collectively referred to as "Orca Defendants," in the above-captioned cause, and file their Objections to Plaintiffs' Summary Judgment Evidence and Motion to Strike and, in support thereof, would respectfully show this Honorable Court as follows:

In support of their Response to Orca Defendants' Motion for Summary Judgment, Plaintiffs submitted, amongst other things, Exhibit 2 and Exhibit 3. Exhibit 2 is an incomplete, un-notarized Assignment related to the Cowey 3H well. Exhibit 3 is an Affidavit from Adam Sinn which, in part, endeavors to prove up the incomplete Assignment. Both Exhibit 2 and Exhibit 3 are improper and should be struck.

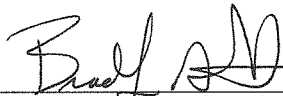
Exhibit 2, the incomplete Assignment, is not notarized, as specifically required in the document itself in order to ensure its accuracy and enforceability. Further, this Assignment was never consummated as it was "subject to the terms and provisions of the JOA and the PSPA." As this Court now knows, MRC Energy Corp. withheld its consent – as it was entitled to do by

virtue of the PSPA. Consequently, no Assignment was ever made and the Assignment is a nullity. As such, the Assignment is not proper evidence. Additionally, Mr. Sinn's statements concerning the validity of the Assignment are likewise objectionable as no amount of swearing on his part can change the fact that the Assignment was never consummated because Matador withheld its consent – a fact that Plaintiffs embrace as the principal ground supporting their entire lawsuit.

Orca Defendants further object to Exhibit 3 on the grounds that it is inaccurate and improper in that Mr. Sinn swears that the Assignment “related to the Cowey 3H and 4H wells.” This is simply not true. The Assignment makes no reference whatsoever to the Cowey 4H well and Mr. Sinn's testimony to that effect must be struck.

Respectfully submitted,

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**ATTORNEYS FOR ORCA ICI
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CERTIFICATE OF SERVICE

I hereby certify that, on the 19 day of May 2014, a true and correct copy of the above and foregoing was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the following:

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