

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SPYRIDON C. CONTOGOURIS &
STEPHEN A. BALDWIN

VERSUS

WESTPAC RESOURCES, LLC, PATRICK
N. SMITH, KEVIN COSTNER &
RABOBANK, N.A.

CIVIL ACTION

NO. 10-4609

SECT. "F" (1)
JUDGE MARTIN L.C. FELDMAN

MAGISTRATE JUDGE SALLY
SHUSHAN

PRE-TRIAL ORDER

1. Date of the Pretrial Conference:

A pretrial conference was held in this matter on April 12, 2012 at 1:30 p.m.

2. Appearances of Counsel:

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3. Description of the Parties:

Plaintiffs:

Spyridon Contogouris is a person of the full age of majority domiciled in New Orleans, Louisiana. Contogouris was the founder and one of the original members of Ocean Therapy Solutions, LLC.

Stephen A. Baldwin is a person of the full age of majority domiciled in the State of New York. Baldwin was one of the original members of Ocean Therapy Solutions, LLC.

Defendants/Plaintiffs-in-Counterclaim:

Kevin M. Costner: Mr. Costner is an individual who resides and is domiciled in the State of California.

Patrick N. Smith: Mr. Smith is an individual of full age and majority and a citizen of the State of California.

Pacific West Resources, LLC ("Pacific West"): Pacific West is a limited liability company organized under the laws of the State of California.

4. Jurisdiction:

Jurisdiction is uncontested. Plaintiffs' Rule 10b-5 claims fall under the federal question jurisdiction provided by 28 U.S.C. §1331. Alternatively, as there is complete diversity between plaintiffs and defendants, jurisdiction arises under 28 U.S.C. §1332, as the matter in controversy exceeds \$75,000.00 exclusive of interest and costs.

Counterclaim by Kevin M. Costner:

1. Costner has asserted a counterclaim against Plaintiffs for breach of the Transfer, Withdrawal, Release and Indemnity Agreement ("Transfer Agreement"). Costner alleges that by executing the Transfer Agreement, Plaintiffs waived any claims that they may have against Costner that are related to the sale of Plaintiffs' interests in OTS. By asserting claims in this case that were previously waived, Plaintiffs breached the Transfer Agreement and are liable to Costner for all damages that he has sustained as a result of the breach. The jurisdiction of this Court for Costner's counterclaim is based upon diversity of citizenship under 28 U.S.C. § 1332.
2. Costner alleges damages in excess of \$75,000, exclusive of interest and costs.
3. The Court has personal jurisdiction over Contogouris as a counterclaim-defendant because he resides in Louisiana and he committed acts giving rise to the counterclaims in Louisiana (*i.e.* he filed this lawsuit against Costner). This Court has personal jurisdiction over Baldwin because he filed this lawsuit against Costner and otherwise established contacts with Louisiana making the exercise of personal jurisdiction proper.
4. Venue is proper in this district because Contogouris and Baldwin initiated this case in this district. Moreover, a substantial part of the events giving rise to Costner's counterclaims occurred in this district.

Counterclaim by Patrick N. Smith:

1. Smith has asserted a counterclaim against Plaintiffs for breach of the Transfer, Withdrawal, Release and Indemnity Agreement ("Transfer Agreement"). Smith alleges that by executing the Transfer Agreement, Plaintiffs waived any claims they may have against Smith that are related to the sale of Plaintiffs' interests in

OTS. By asserting claims in this case that were previously waived, Plaintiffs breached the Transfer Agreement and are liable to Smith for all damages that he has sustained as a result of the breach. This Court has jurisdiction over Patrick Smith's counterclaim pursuant to 28 U.S.C. § 1332 in that the claim is between citizens of different states.

2. The amount in controversy at the time of filing exceeded \$75,000.00, exclusive of interest and costs
3. The Court has personal jurisdiction over Contogouris because he resides in Louisiana and he committed acts giving rise to the counterclaims in Louisiana (*i.e.* he filed this lawsuit against Smith.) This Court has personal jurisdiction over Baldwin because he filed this lawsuit against Smith and otherwise established contacts with Louisiana making the exercise of personal jurisdiction proper.
4. Venue is proper in this judicial district because Contogouris and Baldwin initiated this case in this district. Moreover, a substantial part of the events giving rise to Smith's counterclaims occurred in this district.

Counterclaim by Pacific West

1. Pacific West has asserted a counterclaim against plaintiffs for breach of the Transfer, Withdrawal, Release and Indemnity Agreement (“Transfer Agreement”). Pacific West alleges that by executing the Transfer Agreement, plaintiffs waived any claims that they may have against Pacific West that are related to the sale of plaintiffs’ interests in OTS. By asserting claims in this case that were previously waived, plaintiffs breached the Transfer Agreement and are liable to Pacific West for all damages that it has sustained as a result of the breach.
2. This Court has jurisdiction over Pacific West’s counterclaim pursuant to 28 U.S.C. § 1332 in that the claim is between citizens of different states and the amount in controversy is greater than \$75,000, exclusive of interest and costs.
3. This Court has personal jurisdiction over Contogouris as a counterclaim defendant because he resides in Louisiana and the acts giving rise to the counterclaim occurred in Louisiana. This Court has personal jurisdiction over Baldwin because he filed this lawsuit against Pacific West and otherwise established contacts with Louisiana making the exercise of personal jurisdiction proper.
4. Venue is proper in this judicial district because Contogouris and Baldwin initiated this case in this district. Moreover, a substantial part of the events giving rise to Pacific West’s counterclaims occurred in this district.

5. Motions Pending and Contemplated:

A. For Plaintiffs:

1. Plaintiffs may file a motion in limine to exclude mention of Contogouris' 2006 arrest and subsequent internet reports that wrongly portrayed his dealings with financial management companies. Plaintiffs also may file a motion in limine to exclude Stephen Baldwin's bankruptcy filing and related pleadings.

2. Plaintiffs have also filed a motion to amend the scheduling order to provide for a jury trial. This motion is pending.

3. Plaintiffs have also filed a Motion to Review Magistrate Judge Shushan's March 27, 2012 Order. This motion is pending.

4. Plaintiffs intend to file a Motion to Review Magistrate Judge Shushan's April 2, 2012 Order.

B. For Defendants:

1. Defendants' Motion to Revise Interlocutory Order (Rec. Doc. 450) is pending. In their motion, Defendants request that the Court consider new evidence consisting of John Houghtaling's deposition testimony and reconsider factual errors made in the Court's ruling on Defendants' motions for summary judgment. Defendants request that the Court revise its previous order denying summary judgment and grant summary judgment for the defendants.

2. Defendants anticipate several prospective motions in limine, including but not limited to the following:

- (a) Motion to preclude testimony, documents or argument about joint defense agreement.
- (b) Motion to preclude testimony, documents or argument regarding duress.
- (c) Motion to preclude testimony, documents or argument on disputes between and among members of OTS, WestPac or members of the members of those entities that occurred after June 18, 2010.
- (d) Motion to enforce the March 22, 2010 cut-off established by Magistrate Shushan.
- (e) Motion to preclude testimony documents or arguments pertaining to an actual or an alleged dispute between OTS, Blue Planet Solutions, and any actual or prospective member or investor arising after June 18, 2010.
- (f) Motion to preclude testimony, documents or arguments regarding actual or alleged disputes between OTS and any other entity regarding compliance with contracts between OTS and that party after June 18, 2010.

- (g) Motion to preclude questions that ask for the disclosure of attorney-client privilege communications.
- (h) Motion to preclude argument or evidence regarding alleged harms to OTS.
- (i) Motion to exclude evidence of alleged bad acts pursuant to Rules 401, 403 and 404 of the Federal Rules of Evidence.
- (j) Motion in limine to exclude reference to criminal conduct, including but not limited to reference to or use of the phrase "bank fraud"
- (k) Motion in limine to exclude reference to prior bad acts.

3. Costner intends to file a Second Motion for Contempt and Sanctions and for further compliance with Court Order

6. Summary of Material Facts Claimed by the Parties:

A. For Plaintiffs:

In the mid-1990s, actor Kevin Costner and his brother Dan developed an oil and water separation system based on a centrifuge technology acquired from the U.S. Department of Energy. They started a company known as "C.I.N.C." to manufacture and market these systems to clean up oil spills and for other uses. Spyridon Contogouris, a financial analyst and entrepreneur, became acquainted with Kevin Costner and was asked to market these separation systems to his contacts in Houston and Greek shipping interests. The venture was largely unsuccessful, and Kevin Costner lost in excess of \$20 million. In approximately 2003, he sold C.I.N.C. and the rights to the technology to a C.I.N.C. employee, Bret Sheldon. Prior to Sheldon acquiring the company, it did succeed in making a large sale procured from a customer (Hanover Compressor) who was solicited by Contogouris.

Costner met Patrick Smith, a real estate developer, in Aspen, Colorado. Smith, who was in financial difficulty due to foreclosures on several of his developments, approached Costner about revisiting use of the centrifuge technology. Costner agreed, provided he would not have to invest funds in the venture. In April, 2010, Costner and Smith formed WestPac Resources, LLC, which then began to explore refining the technology by adding a filtration or membrane system to enhance oil recovery with scientists at UCLA, including Dr. Eric Hoek. WestPac was owned 40% by Costner, 40% by Smith, with the remaining 20% held by Bryan Bates, Ozzie Johnston, Justin Maxwell, and Smith's son, Jason. These four young men worked as independent contractors of Smith in his real estate ventures.

On April 20, 2010, the drilling rig DEEPWATER HORIZON exploded in the Gulf of Mexico, which in turn caused a significant oil leak 5,000 feet below the surface of the Gulf. The well was owned by British Petroleum, although initial reports downplayed the significance of the spill, Contogouris learned that this was a serious situation. He reached out to Costner's friend, Tim Hocter, to have Costner become involved in marketing the centrifuge technology to BP. Costner initially refused and did not return Contogouris's phone calls.

Unable to reach Costner, Contogouris began talks with Sheldon of C.I.N.C. to obtain marketing rights to the centrifuges for use in the Gulf of Mexico. Coincidentally, Contogouris' long-time friend, actor Stephen Baldwin, had agreed to come to New Orleans to meet with a local attorney and investor, John Houghtaling, about a proposed movie project. Baldwin invited Contogouris to attend the initial meeting about production of the movie, tentatively titled "Water Moon". This meeting occurred on May 3, 2010 at the Rib Room in the Omni Royal Orleans Hotel in the French Quarter. Present at the meeting were Houghtaling, Contogouris, Baldwin, Contogouris' lawyer, Timothy Madden, and Franco Valobra, a local jeweler and long-time friend of Houghtaling.

The topic of discussion at this meeting quickly shifted away from "Water Moon" to the BP oil spill, which by that time had become international news. Contogouris suggested that a more appropriate subject for a movie was the spill itself. He also informed those present of his efforts to obtain rights to market the C.I.N.C. centrifuges. Houghtaling expressed an immediate interest in becoming part of this effort, as he believed his political contacts could assist in obtaining an audience with BP. He also informed the group that his partner in the movie venture, Frank Levy, a local businessman, could also assist based on his experience in the oil industry. A joint venture, which document was drafted by Houghtaling at the offices of Gauthier, Houghtaling, & Williams, was born, which also immediately thereafter involved Levy and those present at the Rib Room meeting, to market centrifuges to BP.

As media uproar over the spill increased, Costner became more interested in becoming involved. After he learned that C.I.N.C. had tentatively agreed to give Contogouris and the joint venture, d/b/a Ocean Therapy Solutions, an exclusive marketing agreement, he asked Smith to reach out to the joint venture about becoming involved. On May 12, Costner, Smith, and his lawyer, Dan Grigsby of Beverly Hills, California, flew to New Orleans by private jet to meet with Ocean Therapy representatives. During meetings on May 12 and 13, Costner agreed to become involved as a media spokesperson in exchange for a 20% equity interest in the venture and a 15% royalty on orders obtained from BP. He chose to hold this equity and royalty position in WestPac Resources. Ocean Therapy Solutions, LLC was formed as a Louisiana limited company on May 13. The initial members were: (a) Spyridon Contogouris (28%), (b) Stephen Baldwin (10%), (c) John Houghtaling, 21.5%, (d) Westpac Resources, 20%, (e) Frank Levy, through L&L Properties, 15.5%, and (f) Franco Valobra, 5%. On that same day, C.I.N.C. signed an exclusive marketing agreement for the Gulf of Mexico with OTS. During these May 12 or 13 meetings, Costner told those present, including Contogouris, that both Grigsby and Smith had the authority to speak for him.

Consultants and contractors were engaged to deploy the machines for demonstrations, including D&L Salvage and Dave Roberts, an oil service engineer from Houston, Texas. Initial demonstrations were held on Lake Pontchartrain in mid-May, 2010. Houghtaling, Contogouris and Baldwin's prior efforts to have Louisiana officials, including Billy Nungesser and Buddy Caldwell, approach BP about considering the machine, bore fruit. On May 18, 2010, Doug Suttles, a BP vice-president and the unified commander in charge of BP's efforts to control the spill, agreed to meet by phone with OTS representatives. Costner, Smith & Houghtaling represented OTS on this call. Immediately thereafter, Houghtaling, Contogouris and Baldwin

had departed for France to market both the movie and the centrifuge technology (to Seakeepers, an international environmental organization) at the Cannes Film Festival. During this May 18, 2010 conference, Costner introduced BP to his vision for the wide-spread use of the technology. BP agreed during this meeting to test the units in shallow water and pay for the test period work for possible use in dealing with the Macondo spill. Importantly, in this first phase of the relationship, BP was being billed through the test period and given trade credit by an intermediate service and barge contractor, D&L Salvage. BP envisioned a "shallow water" and a "deep water" application of the centrifuges, and the initial tests focused on use of the machines near the shoreline on barges. Later tests were to involve testing aboard larger vessels in open waters. All tests were agreed to be paid for by BP.

On May 19, the day following the call, unbeknownst to Contogouris, Baldwin, and the other members of OTS, WestPac Resources, through Pat Smith, initiated efforts to obtain an ownership position in C.I.N.C. and to obtain world-wide marketing rights from C.I.N.C. for the machines. Costner, by his own admission, was dissatisfied with his ownership position in OTS. He felt that he deserved more than his 8% share (net via his Westpac holding and exclusive of his royalty), observing that Baldwin and the jeweler Valobra, who had no experience in this field, owned almost as much or more than he did in the venture.

On May 21, 2010, WestPac sent an unsolicited invoice to OTS which was directed to John Houghtaling. This invoice required OTS to not only repay WestPac's business expenses, but also to pay its personnel, including Smith and Hoek, \$600 per hour, 84 hours per week. Other personnel were billed at lesser amounts ranging between \$270 and \$180 per hour. Houghtaling and Smith secretly agreed that OTS would pay WestPac and Houghtaling's law firm for the time of their personnel at rates ranging between \$650 and \$120 per hour. Costner's time was to be billed at \$600 and \$650 per hour. A second invoice was sent by WestPac to OTS on June 1, and a third invoice on June 17. These invoices totaled some \$1.8 million. Houghtaling submitted his firm's invoice on June 17 for in excess of \$463,000. Although OTS ultimately paid these invoices on June 24, WestPac, Costner and OTS' accountant Louis Alvarez has described these charges as for the most part illegitimate. When filing the company's tax returns, Alvarez disallowed these expenses, reclassified them as distributions, and/or sought to recover them from Westpac or Smith. Baldwin and Contogouris were never informed of this arrangement, and were told they would not be compensated for their time.

As preparations for testing continued, on May 22, BP again agreed to meet by phone with BP. This call was attended by Suttles and his deputy, Richard Morrison, and a BP attorney, Karen Westall; only Smith and Costner attended for OTS. Morrison's meeting notes reflect that Costner discussed the need for \$50 million in initial financing to OTS, and ongoing financing to OTS. However, Morrison does not recall any specific request from OTS to advance funds. Suttles recalls that the need for BP to advance money to OTS was certainly discussed, but he does not recall when or precisely what was discussed.

During this time period, Smith also approached an acquaintance, Dallas business man Ted Skokos, about becoming an investor in OTS. Smith did not disclose these overtures to Contogouris or Baldwin. Skokos was approached about becoming a part owner of OTS in exchange for cash and a loan to the company.

On May 27, 2010, Smith prepared a draft letter to Richard Morrison outlining the parameters of a proposed agreement between BP and OTS. In this letter, which was not sent, Smith indicated that he and Costner had spoken with Doug Suttles about BP advancing capital to OTS to support the acquisition of machines and the deployment of the equipment. He disclosed that he had discussed this arrangement with Doug Suttles, who was receptive to it. On June 2, Smith sent this letter to his fellow members in WestPac and Houghtaling. He deliberately did not send it to Contogouris or Baldwin. Discussions regarding an advance were never disclosed to Contogouris or Baldwin.

Also, on May 27, dissension began to arise within the membership of OTS. Levy and Houghtaling had a falling out over the financing of the movie project, and Levy filed suit against Houghtaling and Baldwin in Jefferson Parish, Louisiana, seeking to revoke his commitment to finance the movie project. Houghtaling did not disclose this suit to Baldwin. Houghtaling and Levy agreed that Levy would be released from his obligation to finance the movie, in exchange for which Houghtaling would be given Levy's 15.5% interest in OTS. This transfer required the consent of 60% of the members of OTS. WestPac, through Smith, agreed to the transfer because it secretly agreed with Houghtaling that the Levy shares would be divided between itself and Houghtaling. WestPac would receive 8%, while Houghtaling would obtain 7.5%. This agreement was not disclosed to Contogouris or Baldwin. On June 4, the transfer agreement between Levy and Houghtaling was signed, nominally assigning Levy's 15.5% interest to Houghtaling.

This dissension increased on the evening of May 28. Smith and Costner convened a conference call between the members of OTS to discuss a "cash call" to the members of OTS. Contogouris did not dispute that some funds were needed, but disputed the need for a multi-million infusion of capital. During the call, Contogouris asked what the money would be used for, and no specific response was given, with Costner stating "what the money will be used for cannot be answered at this time because the situation was fluid." Costner advocated for the cash call despite his knowledge that he had secretly agreed with Smith that he would never have to invest any money in the company. On May 29, a proposed cash call was sent by Smith's assistant Bates calling for a \$3 million cash call to be made to WestPac's bank account on June 2. The proposed call threatened non-contributing members with dilution. Houghtaling immediately assented to the cash call. On May 29, Houghtaling's interest, when coupled with West Pac's interest and Valobra's interest only amounted to 47.5%. However, on June 2, when Houghtaling obtained Frank Levy's 15.5%, the West Pac-Houghtaling-Valobra voting block had the necessary 60% super majority to approve the cash call. By June 2, Houghtaling's assent effectively meant that it would be approved by the necessary 60% supermajority required by the OTS operating agreement. This is because Houghtaling controlled Valobra's vote, and when Houghtaling obtained the Levy shares, WestPac, Houghtaling and Valobra controlled 62% of the company. Once that supermajority was obtained, WestPac, Houghtaling and Valobra became the "most favored members" within the company. Valobra has testified that he would agree to any company action that Houghtaling was in favor of. The true purpose of the cash call is now apparent. The monies were to be used to pay the inflated hourly fees, and unrelated corporate and personal expenses being charged by Houghtaling, Smith, Costner and Westpac ("the favored members") which accountant Alvarez has characterized as illegitimate. Via this fraud, the

avored members were able to create the illusion necessary to squeeze out the "unfavored members", Contogouris and Baldwin. Smith and Houghtaling advocated for the cash call despite being aware of this.

Contogouris sensed that he was being set-up to be crammed down so Costner could bully his way to gaining more interest in the venture. He also did not personally have the funds necessary to meet the \$1.18 million portion of the cash call being allocated to himself and Baldwin. Baldwin did not have the money himself, as he had recently come out of bankruptcy. To meet the proposed cash call, Contogouris would have to borrow monies from his brother, or from business associates. He also feared that if subsequent cash calls were made, he would be unable to meet those and would be diluted by his partners in a cram down and receive nothing even if a contract with BP could be obtained given that at the time of the cash call and through June 11th, Costner and Smith maintained the need to finance operations and manufacturing of the machines. Both Smith and Costner pushed for a cash call all the way up until plaintiffs agreed to sell their interest on June 11, 2010. Contogouris later learned that he had correctly sensed that Costner and Smith were trying to oust him, a fact confirmed by a June 2 text in which Smith told Costner "good news, we have Spiro outvoted." Discussions began between Smith and Contogouris under which one would buy the other out. Contogouris' fears were reinforced when he was told by Sheldon during a June 4 visit to the CINC factory that Smith and Costner were secretly negotiating to obtain an ownership interest in and a worldwide marketing agreement with CINC.

By June 6, the initial problems encountered during shallow water testing were overcome, and the machines "passed". Contogouris had been shielded from some of the information about the progress of testing, as WestPac's consultant, Hoek, had refused to share details of the testing with Contogouris. This was significant, as the initial problems related to the "peanut butter" consistency of the oil near shore, together with its accumulation of hydrogen sulfide gas. These problems would not be encountered in deep water. Suttles believed after the shallow water tests were passed that the machines would pass the offshore tests.

On that same day, a "kiss and make up" meeting was arranged by Houghtaling at the Windor Court Hotel between Smith and Contogouris. The meeting went badly and turned into a shouting match. Smith demanded that Contogouris make an offer for Smith's interest, and that Smith could either "take" the offer or "pay" Contogouris and Baldwin at the same price. Contogouris felt he only had \$1 million available from business associates, and offered this amount. Smith rejected it, and indicated he would buy plaintiffs' interest on a pro-rata basis for \$1.9 million. Smith had already arranged with Ted Skokos to provide this money.

On June 7, Houghtaling invited Suttles and Morrison to his New Orleans apartment for a dinner with Costner, Smith and others. This so called "letter of agreement" dinner was attended by Suttles, Morrison, Houghtaling, Costner, Smith, Costner's daughter, and Justin Maxwell, a marketer employed by WestPac. Contogouris was excluded from the meeting by Houghtaling due to fear that unfounded allegations made against him in the past, which at the time were still present on a slanderous website, would risk BP shying away from an order. The web site has since been shut down by a court order and labelled a "libel factory" by the Court. Although BP did not sign a contract at this meeting, it is evident that Suttles verbally committed to place an

order. Suttles has testified that although he does not recall the words used, he believes from his tone that evening that OTS would have taken his words as the equivalent of placing an order. It is clear from subsequent statements made by the defendants that they believed Suttles had placed or would be placing an order. On June 8, Maxwell texted his co-worker, Johnston, that BP had just placed an order for 32 units. On June 9, Costner testified before Congress that an initial order had been placed. On June 10, Houghtaling and Smith told both Fox News and CNN that an order for 32 units had been placed by BP. Houghtaling told WWL Radio on June 10 that BP had placed an order for 32 units during this meeting. Costner told ABC News on June 12 that Suttles had placed an order for 32 units, which must have occurred on June 7 since Costner had no contact with Suttles between June 7 and June 18.

Contogouris was ignorant of these media comments. He was told on the morning of June 8 at the Loew's Hotel in New Orleans by Costner, Smith and Maxwell that there was "no deal" with BP. He did hear Costner's comment to Congress about an initial order, and called Costner's lawyer, Grigsby, on June 9 to inquire about them. Grigsby told him that there was "no deal."

During this same June 8, 9, 10 and 11 time frame, Smith and Costner and WestPac conducted clandestine negotiations with various interested parties. On June 8, they secured a 20% ownership interest in CINC and worldwide distribution rights. Sheldon reluctantly signed this agreement when he was told by Smith and Costner that Costner would withdraw his support for the equipment unless this was agreed to. Smith, Costner and Houghtaling agreed how the Contogouris, Baldwin and Levy shares would be divided between themselves. WestPac would receive a 50% ownership in the company; Houghtaling would give up 8% of the Levy shares, and retain a 29% ownership to be held by his company, Houghtaling Enterprises; Valobra would give up 1% for Costner's continued involvement; and Smith would hold and ultimately transfer 17% for and to Ted Skokos. This was memorialized in an amendment to the OTS operating agreement dated June 14, which would become effective on the June 18 transfer of the Contogouris-Baldwin interest. Smith finalized discussions with Skokos. On June 9, he texted Skokos that BP had placed a "50MM PO" or purchase order. On June 10, he told Skokos to wire \$3 million to Smith's own company, WestPac Development. \$1.7 million was allocated to acquire a 17% interest in OTS, \$255,000 was for a "cash call" which was a sham and never occurred, and \$1.045 million was a loan from Skokos' charitable foundation to OTS. He told Skokos that if the cash call was not met, Skokos would get more shares. Skokos' wired the money to WestPac Development's account at Rabobank on June 10. Smith did not disclose the receipt of this money to Contogouris or Baldwin or that an investor had infused cash making the cash call unnecessary. An agreement was also reached to form a joint venture with Edison Chouest Offshore called Offshore Management Group which would receive a 15% project management fee from BP. OTS and Chouest would share the profits from this joint venture. OTS' share ultimately exceeded \$2.4 million.

Smith, Costner and Houghtaling took actions indicating that they expected to receive money from BP. During the week of June 7, Smith and his son, Jason, took steps to open an unauthorized bank account with Rabobank in California where the BP funds would be deposited. After a banker with the Rabobank branch near their offices in downtown Santa Barbara refused to open the account, they arranged with the San Luis Obispo branch, where Smith regularly banked, to open the account. Smith and Costner had agreed they needed control of the BP

money, and therefore would establish a bank account in California and instruct BP to put the money in that account rather than the authorized OTS bank account in Louisiana. During the week of June 21, Houghtaling discovered that the BP money had been diverted, confronted Smith, and Smith told him "you caught me." Houghtaling began to spend the money before it was received. He agreed with Smith that Smith would purchase a mansion located at 4717 St. Charles Avenue for Houghtaling in Smith's name, and later transfer the home to Houghtaling when the BP money was received. This agreement was made between June 8 and June 10, 2010. Smith had his assistants, including Bates and Maxwell, make inquiries of the real estate agent, Eleanor Farnsworth. They arranged for a showing of the home, which Smith purchase on June 23 for \$5.4 million. He assigned the contract to Houghtaling on July 11.

Smith also placed an order with CINC on June 10 for the first 10 of the 32 units to be leased to BP.

On June 8, Contogouris flew to Los Angeles to meet with Grigsby to finalize the transfer of plaintiffs' interest. Unbeknownst to Contogouris or Baldwin, Grigsby had been instructed to prepare an agreement between OTS and BP. Grigsby forwarded the initial draft of the agreement to Smith, Costner, and Maxwell on June 10. This draft agreement called for an \$18,201,600 deposit within 3 business days. Neither the agreement or the advanced deposit were ever disclosed to Contogouris or Baldwin. On June 10, Smith told Contogouris that the purchase price would have to be paid in two installments because Smith's funds were tied up in a divorce and would not be freed up for 7 days. Contogouris agreed that Smith would make a 10% deposit on June 11, with the balance due within 7 days. Contogouris and Baldwin signed transfer agreements calling for them to transfer their interest to "Smith or his designee" on June 11. The actual transfer would not occur until the final payments were made on or prior to June 18.

On Sunday, June 13, BP advised OTS that the machines had passed the deep water test. Contogouris and Baldwin were not told that the machines had passed. On June 14, Smith sent an e-mail to BP's Morrison indicating the tests were passed, and enclosed the agreement drafted by Grigsby on June 10, which included the \$18 million advance. On June 14, BP made minor changes to the agreement, but left the payment terms intact. On June 15, Suttles signed the agreement. On June 16, BP advised Smith that it was wiring the \$18 million advance to the unauthorized and clandestinely set up illegal OTS account at Rabobank in California. Smith immediately emailed Contogouris that "I have the money" to close. Smith, Costner and Westpac did not disclose to plaintiffs the terms of the contract, nor that it called for an \$18 million deposit which would obviate the need for a cash call.

On June 18, plaintiffs signed the assignment of their interests to Smith or his designee. Although Smith was ostensibly acquiring these shares for himself or his designee, he used OTS money to make the \$1.71 million final payment due plaintiffs. He did this by unilaterally wiring WestPac Development \$1.25 million from the OTS Rabobank account which had been funded by the \$18 million BP deposit/advance. The source of the funds to buy plaintiffs' interest was never disclosed to them, and OTS funds were secretly and improperly converted to effect the purchase.

Thereafter, OTS proceeded to fulfill the BP agreement, and between June, 2010 and February, 2011, was paid over \$71 million. Over \$30 million in distributions were made to the members of OTS. Between July and December, 2010, Smith misappropriated over \$4 million in funds from OTS, WestPac Resources, and Ted Skokos. He stole the \$1.045 million loan made by Smith's foundation, pocketed Skokos' \$255,000 sham cash call, and made millions of dollars in unauthorized distributions and false expense payments to himself or his companies from the unauthorized and illegally set up OTS Rabobank account. He used OTS' money to fund a new Costner-Smith venture, Blue Planet Solutions. He authorized a loan from OTS for \$1.25 million to one Michel Moreno, which Moreno used in part to fund his \$14 million buy out of Houghtaling's 29% interest in OTS. Rod Lake, Costner's cousin by marriage, was brought in to run the company, and effect a merger between OTS and Blue Planet. Lake discovered Smith's fraud, which was documented by accountants Alvarez and Shelley. Smith was ousted from the company, and although the settlement agreement called for Smith to receive \$1 million, he in fact paid Costner-Lake some \$3 million in exchange for a release. As part of the settlement, Costner, Smith, and Westpac entered into a joint defense agreement obligating OTS to defend and indemnify them against the allegations of this suit.

Plaintiffs contend that the action of defendants constituted a violation of Rule 10b-5 of the Securities and Exchange Commission. In order to sustain a claim under Rule 10(b)(5), plaintiffs must show that (1) a material misrepresentation or omission by the defendant; (2) scienter on the part of the defendant; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the representation or omission; (5) economic loss; and (6) loss causation in connection with the sale of a security. Plaintiffs allege that the acts, misrepresentations and omissions of material fact described above satisfy the requirements for a Rule 10b-5 claim. In connection with reliance upon a misrepresentation, plaintiffs allege that they would not have sold had they known: (a) the proposed cash call was a sham; (b) BP looked favorably on giving an advance; (c) Skokos had infused capital into the company; (d) defendants had agreed to pay themselves \$600 per hour; (d) defendants had agreed to divide their shares and the Levy shares; (e) BP's Suttles indicated at the June 7 meeting that BP would place an order; (f) a contract calling for an \$18 million deposit had been prepared; (g) an unauthorized and illegal bank account would be formed and OTS' money was used to acquire their interest; (h) an agreement to form a joint venture with Edison Chouest had been agreed to; and (i) Smith had placed an order with CINC for the first 10 units. Moreover, they would not have signed the actual transfers on June 18 had they been told that BP had signed a contract calling for an \$18 million deposit, and that the deposit had in fact already been paid. Plaintiffs further allege that their limited company interests constituted a security because Costner, by his own admission, was indispensable in gaining access to BP and in securing a contract with BP. Plaintiffs were dependent upon Costner's unique position to market the units to BP.

Plaintiffs further contend that the actions of the defendants constituted fraud which voids the June 11 transfer agreement. They are entitled to a rescission of the sale, and to be placed in the same position through damages that they would have been in had they not been misled. They also claim that rescission is appropriate because they were operating under errors of fact due to the concealment of defendants.

Plaintiffs itemize their damages as follows:

(i)	Distributions:	\$	11,721,428
(ii)	Hourly payments:		403,200
(iii)	Cash remaining in OTS		1,282,265
(iv)	Cash remaining in OMG		180,224
(v)	Non-cash assets owned by OTS		3,037,943
	LESS CASH PAID		(1,900,000)
	TOTAL	\$	<u>14,725,060.00</u>

In addition, plaintiffs contend they are also entitled to other damages due to the misappropriation of monies by defendants from OTS in an amount to be shown at trial. These consist of plaintiffs' share of monies used by OTS to pay debts of Blue Planet Solutions, including monies used to repay an Italian investor, Gian Angelo Perucci, whose money was improperly diverted by Smith to buy-out Houghtaling, which is estimated at some \$2 million; rebates due from contractor CCS, which are estimated at \$2 million; and monies misappropriated by Smith, which are estimated at a minimum \$3 million.

B. For Defendants:

Claimed by Costner

Plaintiffs' claims are based on events following the oil spill resulting from the April 20, 2010 Deep Water Horizon explosion ("Spill"). Over a decade before the Spill, Costner formed a corporation through which he invested time and money to develop oil and water separation technology that could be used to clean oil spills. Costner eventually sold the company to Brett Sheldon, another employee of the company. However, Costner maintained an interest in environmental cleaning technology. In early 2010, Costner met Patrick Smith ("Smith"), who had invested in membrane technology for environmental applications. Costner and Smith, with several other individuals, formed WestPac Resources, L.L.C. ("WestPac"), a Delaware limited liability company. Among other things, WestPac worked to combine the membrane technology with the centrifuge separators to enhance the effectiveness of the centrifuge separators in oil spill clean ups.

After the Spill, Spyridon Contogouris, Stephen Baldwin, and three other people formed a joint venture to explore the possibility of working on the Spill clean up. Ocean Therapy Solutions, LLC ("OTS") was later formed. The Operating Agreement of OTS states that OTS is formed for the purpose of forming United Centrifuge of Louisiana, L.L.C. ("UCLA, L.L.C."). The operating agreement of UCLA, L.L.C. provides that it was formed to market centrifuge separators and membrane technology to assist in oil spill clean ups.

On or about March 13, 2010, OTS signed an agreement with C.I.N.C. whereby OTS obtained the right to market and lease oil and water centrifuge separators to British Petroleum ("BP") in connection with the Deepwater Horizon oil spill. Also on May 13, 2010, {N0577087 -}

the Operating Agreement of OTS was executed. The initial OTS members in the Operating Agreement were Contogouris (28%); Baldwin (10%); L&L Properties, LLC (15.5%), John Houghtaling (21.5%), Franco Valobra (5%) and WestPac (20%). Costner and Smith were each 40% members of WestPac. The OTS Operating Agreement provided for management by the members with decisions to be approved by a vote of 60% of the membership interests. Costner owned no interest in OTS except by virtue of his ownership in Westpac. Smith was a fellow member of Westpac and was not authorized to speak for Costner. Contrary to Plaintiffs' contentions, Costner did not inform them that Smith spoke for Costner.

On or about May 18, 2010, BP agreed to test the centrifuge separators manufactured by C.I.N.C. to determine whether it would use them in its efforts to clean up the Spill. The centrifuge separators had not been used in a large scale oil spill clean-up and BP officials wanted to determine whether the equipment would work and could be effectively deployed to assist in the clean-up. The tests were not all successful and extended for several weeks. On the evening of June 7, Costner, Smith, and John Houghtaling, among others, met with Doug Suttles, Chief Operating Officer of BP Exploration & Production Company and Richard Morrison, the Vice President of BP's Gulf of Mexico Operations. At the meeting, the representatives of OTS presented a proposed letter of intent to Morrison and Suttles. Prior to the meeting, Contogouris had helped draft the proposed letter of intent that was to be presented to BP, although he left before the BP representatives arrived. Although Morrison and Suttles both received the draft letter of intent at the end of dinner, they did not review it that evening. The next day, Morrison reviewed the letter of intent and, with Karen Westall, BP's in-house counsel, worked on a counter-draft proposal which was sent to OTS on the afternoon of June 8. The letter of intent was not signed by Suttles until June 9, 2010. The letter of intent not only stated that it was "nonbinding," but also included a requirement that the centrifuge separator units perform to BP's satisfaction in continued, future testing.

Plaintiffs aver that on June 8, the morning after the meeting with Suttles, in a brief encounter in the Loew's Hotel lobby, "Contogouris asked Costner 'Do we have a deal?' Costner replied that there was no deal, only a non-binding letter of intent." Contogouris has also testified that Costner said that he was "hopeful" that BP would enter a binding contract with OTS. Costner does not recall any discussion with Contogouris on June 8. But assuming *arguendo* that Contogouris's descriptions are correct, the alleged statement was true. Smith also told Contogouris that there was "no deal" but that "they [BP] were for it." Contogouris did not ask for details about the letter of intent because he was not even curious about its terms. He had already decided that he wanted out of OTS.

Indeed, by May 31, 2010 (21-days after OTS was organized), Contogouris and Baldwin had already decided to terminate their involvement with OTS. Among other things, Contogouris and Baldwin disagreed with the proposed cash call for OTS, even though Contogouris agreed that a cash call, at some level, was appropriate. Costner did not agree with the initial cash call proposed and no cash call was approved by the members. Contogouris did not trust the other members of OTS, did not like the way that they did business, and did not want to remain a member of OTS. Baldwin felt the same way and relied on Contogouris' advice that he sell his OTS interests.

On June 2, 2010, Contogouris told Houghtaling that he was starting a new oil skimmer boat business and that he was sending a "shotgun agreement" to Smith -- proposing that either WestPac purchase Contogouris' and Baldwin's OTS interests or that Contogouris would buy out WestPac's OTS interests. That very day, Contogouris's attorneys forwarded to Pat Smith the "shotgun agreement" drafted by Contogouris' attorneys. Contogouris did not send a copy of the "shotgun agreement" to Costner. Contogouris caused the June 2 draft agreement to be withdrawn, but at a June 6, 2010 meeting with Smith and Houghtaling, Contogouris resurrected the "shotgun agreement" idea and proposed to buy out WestPac's 20% interest for \$1,000,000. Using Contogouris' million dollar figure, Smith extrapolated and countered that Smith would purchase Plaintiffs' interests for \$500,000 and \$1.4 million. Contogouris and Baldwin accepted Smith's counteroffer.

Costner did not attend the June 6, 2010 meeting at which Contogouris agreed to sell his OTS interests. Not only did Costner not know that Plaintiffs were negotiating to sell their OTS interests, he was surprised and offended by the idea that Contogouris and Baldwin would walk away from OTS with almost \$2 million in cash despite having invested no money in the company, and at a time when a contract with BP was uncertain to materialize. Costner told Smith that he would not participate in the purchase of Plaintiffs' interests.

When Contogouris informed Houghtaling of the plan to send a shotgun agreement to Smith, Houghtaling tried to convince Contogouris not to sell their interests. he told them that he believed that BP would enter into a contract with OTS and that their interests would be worth 10 times the price at which they were selling to Smith. Contogouris responded that he evaluated companies for a living and that he would make more money selling, starting his own company and collecting commissions than he would by remaining a member of OTS. Consistent with his stated plans for a new business, Contogouris started soliciting contracts with other entities, including C.I.N.C.

Between June 7 and June 11, 2010, Contogouris and Smith -- personally and through their counsel -- exchanged drafts of the Transfer Agreements whereby Plaintiffs would sell their OTS interests. Despite this communication, after the morning of June 8 Contogouris never again asked Smith or Costner about the status of the negotiations with BP. While the initial drafts of the Transfer Agreement indicated WestPac Resources as the purchaser of Plaintiffs' interests, the final version identified Smith or his designee as the purchaser. Neither the drafts nor the final Transfer Agreement identified Costner as the purchaser of Plaintiffs' interests.

During the course of the negotiations, Contogouris noted his objections to the cash calls that were proposed by certain members of OTS, the transfer of the interests of L&L Properties, L.L.C. to John Houghtaling and WestPac's negotiations with C.I.N.C. for a separate contract for the marketing of C.I.N.C. centrifuge separators.

On June 11, 2010, Contogouris and Baldwin executed the Transfer Agreement, by which they were bound to sell their OTS interests to Patrick Smith for \$1.4 million and \$.5 million, respectively. That same day, WestPac Development -- a company controlled by Smith - - wired Plaintiffs \$140,000 and \$50,000 representing ten percent of their respective negotiated

sales prices under the terms of the Transfer Agreement. Smith agreed to pay the balance of the purchase price by June 18, 2010 at which time the sale of the Plaintiffs' interests would be closed.

By June 14, BP's "blue water" tests of the separators showed positive results, and Smith forwarded a draft lease agreement to BP. The June 14 draft lease agreement was the first time that OTS requested a deposit from BP -- three days after Plaintiffs had signed the Transfer Agreement which bound the sale of their interests.

On June 15, 2010, BP and OTS executed the formal lease agreement for 32 of the separators. Costner was not involved in the contract negotiations with BP, and he did not know about an advance deposit until June 15 or 16 when he was told that BP had signed the contract, including an advance deposit.

On June 15, Suttles publicly announced that BP had ordered 32 separators from OTS. Contogouris knew about the deal. In addition to public announcements and news coverage, Contogouris received up-to-the-minute communications from Dave Roberts, a third party who was involved in BP's testing of OTS's centrifuges. Contogouris sent Roberts an email on June 16 asking, "how did it go? did they really get this \$100M order?" Mr. Roberts responded that the order from BP to OTS was for "32 machines for 100 days minimum." Hours later on that same day, Contogouris emailed attorney Dan Grigsby -- who was helping Smith finalize the transfer documents -- soliciting an additional \$290,000 payment prior to closing the sale. In that email Contogouris stated:

... I wish you the best - it looks like Kevin will now get back his money, which is what I wanted in the first place if you remember. He might want to show some appreciation and reconsider thanking me by getting me back the mealy [sic] \$290,000 I lost. \$24million [sic] for \$290,000 sounds fair.

Accordingly, Contogouris actually knew before finalizing his sale that a BP/OTS deal had been made and that it was for a substantial amount of money.

On June 18, 2010, WestPac Development wired Baldwin and Contogouris the respective \$450,000 and \$1,260,000 balances of their sales prices. Plaintiffs voluntarily executed the final Assignments and closing documents on June 18. Before the closing date, Contogouris never spoke to Smith about withdrawing from the purchase of his and Baldwin's OTS shares. Plaintiffs' acceptance of the final payment and execution of the assignment constitutes a binding ratification.

Costner made no statements to Plaintiffs in connection with the negotiations and confection of the sale of their interests in OTS. Costner was not a purchaser of Plaintiffs' interests and has never owned an interest in OTS except indirectly through his interest in WestPac. Costner made no statement to either plaintiff that was false and neither plaintiff relied upon any statement by Costner to their detriment.

By the terms of the Transfer Agreement, Plaintiffs released, waived and discharged any claims that they may have against OTS, the remaining members of OTS, and the

{N0577087 -}

employees, agents, members, officers, directors, successors, and assigns of those remaining members. Because Costner was a member of WestPac (now known as Pacific West Resources, L.L.C.), which is a member of OTS, any claims that Plaintiffs may have against Costner were released. The release provisions in the Transfer Agreement state as follows:

10. As of the Closing, Contogouris releases, waives, and forever discharges each of the Remaining Members and any of their heirs, administrators, executors, employees, agents, servants, members, managers, officers, directors, successors, assigns and attorneys (collectively the "Releases") from any and all Claims that Contogouris now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of This Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements, entered into by or on behalf of OTS), (b) the Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture and (c) any and all claims Contogouris has or may have against OTS, WestPac or any of its members or managers, including but not limited to, Kevin Costner, for reimbursement of any past commissions and/or expenses.

11. As of the Closing, Baldwin releases, waives, and forever discharges each of the Remaining Members and each of the Releases from any and all Claims that Baldwin now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of this Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements entered into by or on behalf of OTS), and (b) the Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture.

[Rec. Doc. 167-2 at ¶¶ 10, 11].

The release was effective as of the closing of the sale on June 18, 2010.

On December 27, 2011, Plaintiffs filed a Motion for Partial Summary Judgment seeking dismissal of Defendants' Counterclaims. [Rec. Doc. 167]. On February 7, 2010, this Court denied Plaintiffs' Motion for Partial Summary Judgment, concluding that the release provisions in the Transfer Agreement "make clear that claims related to contracts, agreements or arrangements entered into by OTS will be released from liability." This Court went on to state:

This plainly covers the purchase BP made from OTS, which qualifies as an arrangement entered into by OTS, as well as a contract. The plaintiffs' claims relate directly to this arrangement: they are all grounded on the assertion that defendants had misled them about the BP purchase as well as the source of the money used in the transaction, and caused them to sell their interests while

possessing inaccurate information. Moreover, the scope of the release provision is broad: no claims relating to such arrangements are allowed. Far from allowing plaintiffs' claims, the release provisions found in the Agreement bar them.

[Rec. Doc. 203].

Costner fully adopts the Summary of Material Facts submitted by Pacific West Resources. Costner disputes the accuracy of the Summary of Material Facts submitted by Plaintiffs.

Claimed by Pacific West:

a. Overview

The evidence has affirmatively disproven the plaintiffs' fraud and error claims, so the plaintiffs impermissibly try to re-cast their meritless allegations. No defendant misled them about the prospects for a contract between OTS and BP. They knew, on June 7, that BP's most senior executives were "for" executing a letter of intent to lease dozens of centrifuges. Around the same time, OTS' CEO, John Houghtaling, heard that the plaintiffs were poised to sell their membership interests to Patrick Smith. He literally begged them not to do so and estimated that – if BP came through – their interests would be worth up to ten times what Mr. Smith would be paying. Mr. Contogouris responded that he "value[s] companies for a living" and predicted that he could make more money as an outside sales agent for OTS.

The facts do not show any ignorance of a possible BP deal by the plaintiffs. Instead, the plaintiffs decided to sell as a result of *extant, known business disputes* with others within OTS. Mr. Contogouris threatened to sue over a departing member's interest, balked at a proposed cash call that he called a "transparent cram down," and feared that in the future his interest in a successful OTS would be diluted by business partners he did not trust. But the plaintiffs know that they cannot pursue those claims, *because they released them* in the Transfer Agreement. After all, if the plaintiffs believed that they had been duped in June 2010, they wouldn't have proceeded to closing and then waited until December 2010 to sue. This is especially true after they came to believe – before the closing – that an interest *smaller* than Mr. Contogouris' might be worth *many times* the price he had agreed to accept. The fraud and error claims are, to use the language of employment law, a pretext to get around the release.

The plaintiffs have asserted claims that they knowingly waived, and defending against their shifting allegations has cost Pacific West dearly. Pacific West is entitled to judgment on its counterclaim for breach of contract. The direct, foreseeable consequence of the plaintiffs' breach is measured by the costs to defend this case.

b. Differences in business philosophy motivated the plaintiffs to part ways with the defendants; the proposed cash call.

As of late May or early June 2010, relations among OTS' members (and *their* members) soured, due, in part, to differences in business philosophy. Mr. Contogouris favored a more low-

{N0577087 -}

key approach to BP, eschewing media pressure and focusing on long-term success. He claims that the defendants and others favored a one-time “quick kill,” which he disliked. Mr. Contogouris made the first move. On June 2, 2010, he submitted a buy-out proposal to Patrick Smith and, after a few days, *instead* agreed to accept \$1.4 million from Smith for Contogouris’ 28% interest in OTS. He also negotiated a proportionate \$500,000 sales price from Smith for his friend, Mr. Baldwin, whose stake in the company was 10%. Both plaintiffs enjoyed the assistance of legal counsel in these negotiations – the law firm King, Krebs & Jurgens.

Around the same time, Messrs. Houghtaling and Smith proposed that the members inject capital into OTS, which had never been funded. They initially proposed \$3 million *in toto*, but after Mr. Contogouris objected, dropped that proposal to \$1 million. Mr. Contogouris thought that was still too much, and he instead proposed a lesser, but-unquantified cash call. Under the OTS operating agreement, however, as a member-managed company, decisions required the concurrence of the owners of at least 60% of the membership interests. That threshold was never reached in the context of a proposed capital infusion. Still, Mr. Contogouris regarded the cash-call proposals as a “*transparent* cram down.” *He did not believe the justifications for raising cash. He did not see any invoices. And he did not draw any inference from the proposals about the state of negotiations with BP.* Instead, he thought that others simply wanted him out of the company.

c. The June 7 dinner and the letter of intent.

OTS was formed specifically to market clean-up technology to BP in the wake of the Deepwater Horizon oil spill. On June 7, 2010, the company took a major step forward in achieving its goals. Doug Suttles was BP’s COO – the BP executive responsible for marshaling assets to combat the oil spill. He agreed to attend a dinner meeting with OTS on June 7, 2010 at Houghtaling’s home to discuss using OTS’ centrifuge technology. Mr. Contogouris, who kept Mr. Baldwin apprised of business developments, knew of the meeting. In fact, he huddled with Messrs. Houghtaling and Smith on the afternoon of the dinner. While there, Mr. Contogouris helped draft the non-binding letter of intent that would be given to Mr. Suttles that evening; he knew it did not contain an advance deposit. He also knew that OTS would be making a big “ask” of BP – anywhere between 50 and 150 centrifuge units. The draft letter of intent called for a day rate of \$15,800 per unit, in addition to other fees, meaning that a 90-day lease of 50 units (the *lowest* number OTS was considering) would bring over \$70 million of gross revenue to OTS. Mr. Contogouris did not stay for the dinner, however. He agreed that he should leave rather than have to explain to BP his federal criminal indictment for wire fraud (even though the charges had been dismissed).

Around this time, the plaintiffs told John Houghtaling that they planned to sell their interests to Patrick Smith. Mr. Houghtaling literally begged the plaintiffs not to sell, told them that he expected BP to contract with OTS, and estimated that their interests in OTS could be worth *ten times* the price that they planned to accept. The plaintiffs rejected Mr. Houghtaling’s advice. They did not want to remain in business with Mr. Smith. Mr. Contogouris, in particular, stated that he expected to make more money as an outside sales agent for OTS earning a 5% commission on gross sales.

The parties have deposed Mr. Suttles and his chief deputy, Richard Morrison, about the June 7 dinner and the discussion. These BP witnesses – along with the defendants Messrs. Costner and Smith – agreed that the meeting went well. BP received (but did not commit to) a non-binding letter of intent calling for the lease of 50 centrifuges, and it wanted the technology to work. The letter of intent said nothing about the timing of payments terms or advances, however, and BP did nothing at the dinner to suggest that any possible contract in the future would include an advance.

Mr. Contogouris briefly met with Patrick Smith the next morning at the Loews Hotel. He asked how the dinner meeting went: “Do we have a deal?” He learned that while there was “no deal,” BP had been given a draft, non-binding letter of intent. And “they [Messrs. Suttles and Morrison] were for it.” But Mr. Smith believed – and so informed Mr. Contogouris – that “media pressure” would be needed to motivate BP to follow through. Mr. Contogouris did not ask about any of the terms of the draft letter of intent that BP was “for.” He testified, literally, that he was not curious about them. Instead, he promptly arranged to have his lawyers send the latest draft of the buy-out agreement for his and Mr. Baldwin’s membership interests to Mr. Smith’s counsel.

Later that day, June 8, Richard Morrison considered the number of centrifuges that BP might be able to use in its spill response, and he shared his recommendation with Doug Suttles. Doug Suttles then sent a marked-up draft of the letter of intent to OTS. BP reduced the number of units from 50 to 32, added a “hold point” (or contingency) for future deep-water testing, and expressly noted (after in-house counsel’s review) that the letter of intent was non-binding. OTS accepted the changes on June 8, and the parties signed the instrument on June 9. Though the plaintiffs have alleged otherwise, *the letter of intent made no provision for any advance or deposit to OTS*. Nothing in the document would have made OTS “self-funding.” BP witnesses have confirmed, moreover, that (1) BP and OTS did not modify the letter of intent thereafter, and (2) the parties had no oral agreements relative to the lease of the 32 centrifuges. Thus, with respect to the relationship between BP and OTS, as of June 11 – the date the Transfer Agreement for the sale by Contogouris and Baldwin of their membership interests in OTS to Mr. Smith was signed – only one contract existed: the June 9 non-binding letter of intent.

- d. The two-stage Transfer Agreement: a June 11 signing and deposit, and a June 18 closing and final payment.

On June 11, 2010, Messrs. Contogouris and Baldwin signed the Transfer Agreement by which they agreed to sell, and Patrick Smith agreed to buy, their membership interests in OTS. Under the Transfer Agreement they agreed to sell their 28% and 10% interests to Mr. Smith for, respectively, \$1.4 million and \$500,000. The parties agreed to a two-stage process. Upon signing of the Transfer Agreement, the plaintiffs each received by wire 10% of the negotiated purchase price. One week later, on June 18, each would receive the balance of the payments and execute formal assignments of their interests to Mr. Smith. Mr. Smith sent all of the payments from the account of non-party WestPac Development, LLC (*not* WestPac Resources, LLC). The parties executed the Transfer Agreement. Smith paid. And Contogouris and Baldwin accepted the initial 10% consideration and proceeded to closing as agreed. Mr. Smith subsequently assigned a 17% interest in OTS to a third party investor, Ted Skokos; and with the withdrawal of

the plaintiffs and one other original member, all of the remaining members adjusted their ownership percentages in OTS.

- e. After successful deep-water testing, BP executed a binding contract to lease 32 centrifuges from OTS.

Encouraging results from BP's deep-water testing of the centrifuge technology motivated OTS to send a draft contract to BP on June 14. This is the first time BP saw the draft. The basic terms remained the same as expressed in the letter of intent: 32 units, a lease of at least 90 days, and a day rate of \$15,800 per unit. OTS' June 14 draft, however, asked BP to pay upon execution 40% of the lease payments. The recipient of the draft, BP's Richard Morrison, confirmed that BP had not agreed to that proposed term before receiving the proposed draft agreement on June 14. BP nevertheless eventually agreed to the accelerated payment, as it had done for other contractors. It knew that if the centrifuges were to play a role cleaning up the Gulf, they had to be deployed right away. On June 15, BP's COO, Mr. Suttles, signed the contract, and for the first time, BP agreed to make an initial \$18.2 million payment to OTS.

OTS, for its part, had to scramble to obtain a sufficient number of centrifuge units so that it could perform the contract. Its inventory was lean, consisting largely of a handful of used machines. The sole U.S. manufacturer – CINC Industries, Inc. – wanted a \$1.25 million deposit before it would place a large order for parts with its own suppliers. As of June 16, however, OTS still had no money. To expedite the order, Mr. Smith caused non-party WestPac Development, LLC to send CINC \$1.25 million (which WestPac Development, LLC had in turn borrowed – without Pacific West – from an entity controlled by Ted Skokos). On June 18, OTS received the wire of the initial deposit from BP and promptly repaid WestPac Development's short-term loan without interest. It is *undisputed* that through June 18 – the day on which the plaintiffs *formally assigned their interests to Smith* – OTS made no other payments, to anyone, for any reason.

- f. Before the closing, the plaintiffs learned that OTS' hopes for a contract with BP had been realized; they asked no questions and proceeded to closing.

On June 18, the plaintiffs completed the transactions called for in the June 11 Transfer Agreement, signed additional documents confirming the transfer of their equity interests to Mr. Smith and accepted the remaining 90% of the cash consideration. The assignment provided:

Spyridon C. Contogouris [Stephen A. Baldwin] ("**Seller**") hereby assigns and transfers one hundred percent (100%) of Seller's twenty-eight percent (28%) [ten percent (10%)] limited liability company ("OTS"), to Patrick N. Smith, of his designee ("**Buyer**"). Buyer hereby accepts such assignment and transfer. The Assignment and Assumption is effective immediately. The assignment and Assumption of the Membership Interest provided for herein is made in accordance with and is subject to the terms and provisions contained in that certain Transfer, Withdrawal,

Release and Indemnity Agreement between Buyer and Seller
executed by the parties on June 11, 2010.

As of the closing, the plaintiffs understood that:

- BP agreed to lease 32 centrifuges from OTS for a minimum of 100 days.
- The contract would generate tens of millions of dollars for OTS.
- The plaintiffs would not be receiving any of that revenue.
- Mr. Houghtaling had done a back-of-the-napkin valuation of OTS and arrived at a \$300 million figure. Mr. Contogouris calculated that Mr. Costner's indirect 8% interest in OTS (through Pacific West) could be worth \$24 million. In contrast, Mr. Contogouris knew that he was about to convey his 28% interest in OTS for \$1.4 million.
- Mr. Houghtaling had previously told the plaintiffs that if BP contracted with OTS, which he expected, their interests could be worth up to *ten times* what Mr. Smith was offering them.
- Others might wonder – after the announcement of the BP/OTS contract – whether the plaintiffs had made a bad business deal and question their business acumen.

If the past is any guide, the plaintiffs will contend that they did not know *when* BP would pay for the units it leased. There are three factual responses to that contention. First, the plaintiffs knew pre-closing that BP had executed a binding contract with OTS and would be paying millions of dollars to that company. They also knew that they didn't have a copy of the BP/OTS contract or know the details of BP's payment terms, whether monthly, upon delivery of the units, or otherwise, nor did they ever ask for a copy of the contract. If the *timing* of the payments (or any other contract term) was important to them, they could have asked. They did not do so and proceeded to closing the sale of their interests in OTS without a word of complaint. Second, on the matter of BP's willingness to pay OTS a portion of the lease-rental payments upon signing, Mr. Contogouris has admitted that such details were *not material* to him. He testified to his belief that if OTS could make a deal with BP, financing would take care of itself: "There was *never* concern on my behalf that if BP agreed to a contract to deploy the machines, that we would have any issue financing them." John Houghtaling testified that Mr. Contogouris was always confident that BP would pay an advance as part of a future contract. And third, BP had not agreed to pay any front-end payment until June 15 – four days *after* the plaintiffs bound themselves to sell. Even if material, a post-June 11 business development could not vitiate the plaintiffs' consent to the Transfer Agreements.

- g. The plaintiffs are liable for breach of contract; they asserted released claims and are liable for Pacific West's defense costs.

The Court is familiar with the release of Pacific West and others included in the Transfer Agreement. It has already ruled that the language of the release bars the plaintiffs' claims. The fraud and error claims are a baseless pretext to avoid the release. The plaintiffs' assertion of those claims, despite releasing "known or unknown," "suspected and unsuspected" claims, was a breach of contract. Pacific West seeks at trial a determination that the plaintiffs are guilty of breach and are liable to Pacific West for defense costs in an amount to be established with the Magistrate Judge.

Claimed by Patrick Smith

Patrick Smith adopts the Summary(s) of Material Facts submitted by Kevin Costner and Pacific West.

7. Single Listing of Uncontested Material Facts:

- (a) Spyridon Contogouris is an individual domiciled in New Orleans, Louisiana.
- (b) Stephen A. Baldwin is an individual domiciled in the State of New York.
- (c) Patrick Smith is an individual domiciled in Santa Barbara, California.
- (d) Kevin M. Costner is an individual domiciled in Santa Barbara, California.
- (e) WestPac Resources, LLC is a Delaware limited liability company which originally had an office in Santa Barbara, California and whose office has recently moved to San Jose, California.
- (f) Up until April, 2011, WestPac Resources' members were, by percentage, the following: Kevin M. Costner, 40%; Patrick Smith, 40%, Jason Smith, 5%, Justin Maxwell, 5%, Bryan Bates, 5%, and Ozzie Johnston, 5%.
- (g) On April 20, 2010, the drilling rig DEEPWATER HORIZON burned and sank, which in turn caused an oil well lying on the floor of the Gulf of Mexico, to leak.
- (h) British Petroleum ("BP") was designated by the appropriate governmental agencies as the "responsible party" for the spill under the Oil Pollution Act of 1990.
- (i) Ocean Therapy Solutions, LLC is a Louisiana limited liability company which was formed on May 10, 2010.
- (j) The initial members of Ocean Therapy Solutions, LLC ("OTS") were the following in the following percentages: Spyridon Contogouris, 28%; Stephen A. Baldwin, 10%, John W. Houghtaling, 21.5%; L&L Properties, 15.5%, WestPac Resources, 20%; and Franco Valobra, 5%.

(k) On May 13, 2010, OTS and C.I.N.C. Industries, which manufactured the separator units, entered into an exclusive marketing agreement under which OTS had the exclusive rights to market these centrifuge units to customers in the Gulf of Mexico for five years.

(l) Doug Suttles, head of BP's Gulf of Mexico unit, was designated by BP as its senior official in charge of responding to the DEEPWATER HORIZON spill.

(m) One of Suttles's deputies in connection with dealing with the spill was Richard Morrison, a BP vice-president.

(n) During the May 18, 2010 phone call, BP agreed to test the units for application in connection with the clean-up.

(o) L&L Properties X was a legal entity owned by Frank Levy, an individual domiciled in New Orleans, Louisiana.

(p) Frank Levy, along with John Houghtaling, Stephen Baldwin and an individual named Hugh Sanderford had agreed to become involved in a movie project prior to the formation of OTS.

(q) On May 27, 2010, Levy filed suit in Jefferson Parish, Louisiana against Houghtaling and Stephen Baldwin.

(r) On June 4, 2010, Levy and Houghtaling signed an agreement transferring L&L Properties' interest in OTS to Houghtaling.

(s) The original operating agreement of OTS, which was in force between May 13, 2010 and June 14, 2010, required that 60% of the ownership approve certain corporate actions.

(t) On May 29, 2010, at Patrick Smith's direction, Bryan Bates of Westpac Resources sent two proposed cash calls to John Houghtaling and Spyridon Contogouris.

(u) One of the May 29, 2010 proposed cash calls sent by Bates asked the members of OTS to contribute their pro-rata share of \$3 million to OTS by sending funds to the offices of West Pac Resources on or prior to June 2, 2010.

(v) On June 7, 2010, a dinner was held at Houghtaling's apartment in New Orleans that was attended by BP and OTS representatives.

(w) Present for BP at the June 7, 2010 dinner were Doug Suttles and Richard Morrison.

(x) Present for OTS were Kevin Costner, Patrick Smith and John Houghtaling. Others present included Annie Costner and Justin Maxwell.

(y) On June 8, 2010, Contogouris met with Patrick Smith and Justin Maxwell in the lobby of the Loew's Hotel in New Orleans.

(z) Ted Skokos is a business man domiciled in Dallas, Texas.

(aa) Beginning in late May, 2010, Patrick Smith approached Ted Skokos about becoming involved with OTS.

(bb) On June 10, 2010, Ted Skokos, at Patrick Smith's request, wire transferred \$3 million in two wires to the account of Westpac Development.

(cc) Part of the money wired by Skokos was to obtain a 17% interest in OTS, while part of it was a loan being made by Skokos' charitable foundation.

(dd) On June 11, 2010, plaintiffs signed a Transfer Agreement which purported to transfer their collective 38% interest in OTS to Patrick Smith or his designee subject to the terms contained in the agreement.

(ee) Contogouris has a finance degree, has been self-employed for much of his life and marketed the separators in the 1990s and early 2000s.

(ff) Contogouris contacted C.I.N.C., the manufacturer of the separators, and negotiated a contract between C.I.N.C. and OTS. It was Contogouris' idea to involve Costner to act as OTS's spokesperson because he thought that Costner would help "jump the queue" with BP.

(gg) When a cash call to fund the ongoing operations of OTS was proposed, Contogouris disagreed with other members about the amount of capital to be contributed.

(hh) Contogouris personally participated in drafting and editing the Transfer Agreement.

(ii) On June 14, Smith forwarded to BP a draft lease contract.

(jj) BP attorney Karen Westall worked on revisions to the draft OTS/BP contract. The contract was approved and signed by Doug Suttles on June 15, 2010.

(kk) Plaintiffs filed their complaint on December 22, 2010 and their First Amended Complaint on March 4, 2011.

- (ll) Ocean Therapy Solutions ("OTS") was formed in May 2010. Under the Operating Agreement, the members were Spyridon Contogouris (28%), John Houghtaling (21.5%), L&L Properties (15.5%), WestPac Resources, L.L.C. (20%), Stephen Baldwin (10%) and Franco Valobra (5%).
- (mm) At that time the members of WestPac Resources L.L.C. ("WestPac") were: Kevin Costner (40%), Patrick Smith (40%), Bryan Bates (5%), Justin Maxwell (5%), Jason Smith (5%), and Ozzie Johnston (5%).
- (nn) Contogouris has a finance degree, has been self-employed for much of his life and marketed the separators in the late 1990s and early 2000's.
- (oo) Contogouris contacted C.I.N.C., the manufacturer of the separators, and negotiated a contract between C.I.N.C. and OTS. It was Contogouris' idea to involve Costner to act as OTS's spokesperson because he thought that Costner would help "jump the queue" with BP.
- (pp) When a cash call to fund the ongoing operations of OTS was proposed, Contogouris disagreed with other members about the amount of capital to be contributed.
- (qq) Contogouris personally participated in drafting and editing the Transfer Agreement.
- (rr) On June 14, Smith forwarded to BP a draft, lease contract.
- (ss) BP attorney Karen Westall worked on revisions to the draft OTS/BP contract. The contract was approved and signed by Doug Suttles on June 15, 2010.
- (tt) Plaintiffs filed their complaint on December 22, 2010 and their First Amended Complaint on March 4, 2011.

8. Single Listing of Contested Issues of Fact:

1. What discussions took place during a May 18, 2010 telephone conference between BP and representatives of OTS?
2. Did WestPac Resources approach CINC Industries to obtain a superior agreement to that obtained by OTS on May 13, 2010?
3. Did Kevin Costner represent that Patrick Smith and attorney Dan Grigsby spoke for him on connection with his business dealings with OTS?
4. What was discussed during a May 22, 2010 telephone conference between BP and OTS representatives?

5. Whether the possibility of an advance payment by BP to OTS was discussed during the May 22, 2010 telephone conference?
6. Whether the possibility of BP making a deposit or advancing funds to BP was ever discussed with BP prior to June 14, 2010?
7. Was there an agreement reached between WestPac Resources and John Houghtaling that the 15.5% interest in OTS held by L&L Properties would be divided between them prior to June 11, 2010?
8. Whether prior to June 11, 2010, an agreement was reached between John Houghtaling and WestPac Resources that OTS would pay WestPac Resources for the services of its personnel at rates ranging as high as \$650.00 per hour for Patrick Smith and Kevin Costner?
9. Whether prior to June 11, 2010, an agreement was reached between John Houghtaling and WestPac Resources that OTS would pay for the services of personnel employed by the law firm of Gauthier, Houghtaling & Williams at rates up to \$600 per hour for the time of John Houghtaling?
10. Whether agreements were reached between John Houghtaling and WestPac Resources that expenses incurred in connection with OTS would be reimbursed by OTS for those expenses prior to June 11, 2010?
11. Whether plaintiffs were ever informed of any agreement by which OTS would reimburse WestPac Resources and Gauthier, Houghtaling & Williams for the time of their personnel and/or their expenses incurred in connection with OTS?
12. Whether Patrick Smith converted monies intended to be a cash contribution and a loan to OTS made by Skokos to his personal use?
13. Whether Patrick Smith was in financial difficulty during May, June, July, August, September, October, November and December 2010?
14. Whether OTS' funds were the source of the monies used by WestPac Development to pay for the acquisition of plaintiffs' interest in OTS on June 11 and June 18, 2010?
15. What were the purposes and uses of the \$3 million contribution proposed in a May, 29, 2010 proposed cash call issued to the members of OTS?
16. Whether the true purpose of the May 29, 2010 proposed cash call, and subsequent discussions about the need for a cash call, were intended by defendants as a means of driving plaintiffs out of the company?
17. Whether the true purpose of the May 29, 2010 proposed cash call was to obtain monies to fund a secret agreement between WestPac Resources and John Houghtaling that the

time of WestPac Resources' personnel and Houghtaling's personnel would be paid for by OTS at rates of up to \$600 per hour, 84 per week?

18. Whether Costner, Houghtaling and Smith wanted plaintiffs out of the company?
19. Whether financial gain was the motivation for Costner, Smith and WestPac Resources wanting plaintiffs out of the company?
20. Whether it was ever disclosed by defendants to plaintiffs that Ted Skokos was paying \$100,000 per point for an interest in the company, while plaintiffs were only being offered \$50,000 per point?
21. What were the reasons why plaintiffs elected to sell, and were they motivated by the fear that their interest would be diluted or eliminated through an unnecessary cash call issued by the company?
22. Whether WestPac, Costner, and Smith secretly agreed to create a bank account in California in the name of OTS that was not authorized by a company resolution in order to obtain control of monies expected to be paid by BP?
23. Whether Smith and/or his assistant Bates instructed BP to wire an \$18,201,600 advance deposit to a Rabobank account in California that was not authorized by the members of OTS?
24. Whether in opening the Rabobank account, Smith and/or his assistant Bates made misrepresentations to the bank associated with their authority to act on behalf of OTS and OTS' s state of organization, among other misrepresentations?
25. Whether Smith, Costner, and/or Westpac disclosed to anyone that they were opening an account for OTS in California?
26. Whether the charges listed on invoices 2010-05, 2010-06, and 2010-07 submitted by WestPac Resources to OTS, and paid by OTS, aggregating some \$1.828 million, were legitimate or illegitimate?
27. Whether the \$465,000 in charges and expenses submitted by Gauthier, Houghtaling & Williams to OTS and paid by OTS were legitimate or illegitimate?
28. Whether an agreement was reached between Houghtaling and Smith that Houghtaling would assist Houghtaling in acquiring the home located at 4717 St. Charles Avenue in exchange for Houghtaling's assistance in driving plaintiffs out of OTS?
29. Whether Smith, Costner and Maxwell were truthful when they allegedly told Contogouris on the morning of June 8 that "no deal" had been reached with BP during a dinner meeting held the night before?

30. Whether Maxwell was truthful when he texted his co-worker Ozzie Johnston on the morning of June 8, 2010 that BP had just placed an order for 32 units?
31. Whether Costner was truthful when he told Congress in sworn testimony on June 9, 2010 that BP had placed an initial order with OTS?
32. Why Houghtaling and Smith did not contradict the statement of interviewer Steve Doocy on the June 10, 2010 Fox & Friends morning show that BP had placed an order for 32 units?
33. Why Houghtaling and Smith did not contradict the statement of interviewer Don Lemon on CNN's noon show on June 10, 2010 to the effect that BP had placed an order for 32 units?
34. Whether Houghtaling was truthful when he told WWL Radio on the afternoon of June 10, 2010 that Doug Suttles had placed an order for 32 units with OTS earlier in the week before Kevin Costner testified before Congress?
35. Whether Costner was truthful on June 12, 2010 in an interview with ABC News when he told ABC's Sam Champion that BP had placed an order for 32 units?
36. Whether defendants failed to disclose material facts about their discussions with BP, including its willingness to make an advance and the likelihood of BP placing an order?
37. Whether Patrick Smith misappropriated monies from OTS for his own use?
38. Whether Patrick Smith charged OTS for and was paid expenses not incurred by himself and/or Westpac?
39. Whether Pat Smith made unauthorized distributions to himself from WestPac Resources?
40. Whether Patrick Smith was a thief as alleged by Rod Lake, current CEO of OTS, and by Ted Skokos?
41. Whether Patrick Smith was forced out of the company because he stole money, forged documents, misstated expenses, and lied to every member and consultant of OTS as alleged by Rod Lake?
42. Whether OTS' funds were used to fund operations of other entities associated with Smith and Costner, including Blue Planet Solutions?
43. Whether any OTS' monies were used to fund the \$6 million cash and \$8 million earn out components of the agreement of Michael Moreno to acquire John Houghtaling's 29% interest in OTS?

44. Whether Dan Grigsby told Contogouris on June 9, 2010 that there was no deal with BP?
45. Whether defendants and their agents failed to disclose to plaintiffs that as early as June 10, 2010, a proposed contract had been drafted with BP that called for an \$18,201,600 deposit?
46. Who were the ultimate buyers of plaintiffs' interest in OTS?
47. Whether defendants had agreed in advance that the Contogouris-Baldwin interests would be split between them, with WestPac Resources, Smith, and Costner receiving 21% of those shares for no money?
48. Whether defendants, or any of them, knew or believed that an agreement with BP was likely or would occur on or prior to June 11, 2010, and whether they failed to disclose that to plaintiffs?
49. Whether after June 11, 2010, defendants or any of them disclosed to plaintiffs that BP had wired \$18,201,600 to OTS on June 17, 2010, or provided plaintiffs with a copy of the BP agreement prior to the time plaintiffs' assigned their interest on June 18, 2010?
50. Whether OTS, through Smith, placed an order for the first 10 of the 32 units to be leased to BP with CINC on June 10, 2010?
51. Whether defendants disclosed to plaintiffs that an order had been placed with the manufacturer, CINC, on June 10, 2010?
52. Whether Westpac Development had any monies with which to acquire plaintiffs' interest in OTS?
53. Whether defendants, or any of them, disclosed to plaintiffs the source of the monies used to acquire their interest in OTS?
54. Whether there is causal connection between any misrepresentations or omissions of material fact by defendants and plaintiffs' sale of their interest in OTS?
55. Whether plaintiffs were dependent on the efforts of others to make OTS a success?
56. The extent to which Kevin Costner was indispensable in obtaining access and ultimately a contract with BP?
57. Did plaintiffs rely on any misrepresentation of defendants, or omission of material fact by defendants, in agreeing to sell their interest in the company?

58. Whether OTS had agreed with Edison Chouest to form a joint venture with the company to provide project management services in connection with the deployment of the separation systems?
59. Whether plaintiffs failed to disclose the potential of a joint venture with Edison Chouest to plaintiffs?
60. Whether defendants entered into a joint defense agreement concerning this case after Costner and WestPac Resources learned that Smith had misappropriated monies?
61. Whether OTS has agreed to defend and indemnify defendants in connection with this case?
62. Whether defendants acted with scienter in connection with the acquisition of plaintiffs' interest in OTS?
63. The amount of economic loss, if any, sustained by plaintiffs;
64. Whether plaintiffs were acting under an error of fact sufficient to invalidate their consent to the June 11, 2010 transfer agreement?
65. Whether the actions of defendants, and their alleged misrepresentations and omissions of material fact, are sufficient to constitute fraud that would void plaintiffs' consent to the June 11, 2010 transfer agreement?
66. Whether Ocean Therapy Solutions, LLC was formed to market oil and water separation devices to British Petroleum and potentially other customers.
67. Whether the \$3 million wired on June 10, 2010 by Ted Skokos to WestPac Development consisted of: (i) \$1.7 million to obtain a 17% interest in OTS; (ii) a \$255,000 cash contribution or "cash call" to the company; and (iii) \$1.045 million being loaned to OTS?
68. Whether on May 18, 2010, Suttles spoke by phone with Kevin Costner about the possibility of using the separators in cleaning up the DEEPWATER HORIZON spill.
69. Whether a dispute arose between Levy and Houghtaling about the agreement to make the movie.
70. Whether Levy and Houghtaling agreed that in exchange for the transfer of L&L Properties 15.5% interest in OTS, Levy would dismiss the lawsuit and be released from all obligations related to the movie or OTS.
71. Whether on June 6, 2010, the separator machines passed the shallow water portion of the tests being conducted by BP.

72. Whether Spyridon Contogouris was told to leave by John Houghtaling prior to the arrival of the BP representatives at the June 7 meeting.

73. Whether during that June 8 breakfast, both Smith and Maxwell told Contogouris that the dinner meeting the night before with BP had not resulted in a "deal" between BP and OTS.

74. Whether on June 8, 2010, Westpac Resources entered into a marketing agreement with CINC under which, if all terms of the agreement were complied with, Westpac Resources would obtain a 20% ownership interest in CINC Industries and would obtain worldwide distribution rights for the separators outside of the Gulf of Mexico.

75. Whether neither Skokos' identity or the fact he wired money to WestPac Development was disclosed to plaintiffs.

76. Whether on June 14, 2010, the First Amendment to the OTS Operating Agreement became effective.

77. Whether by this amendment, the ownership of OTS was to be changed effective with the closing on plaintiffs' sale of their interest in the company to Patrick Smith or his designee.

78. Whether the first amendment to the operating agreement changed the ownership of OTS to the following percentages: WestPac Resources, 50%; John Houghtaling, 29%; Patrick Smith, 17%; and Franco Valobra, 4%.

79. Whether on June 23, 2010, Patrick Smith signed a contract to purchase a home located at 4717 St. Charles Avenue for \$5.4 million.

80. Whether on July 11, 2010, Patrick Smith assigned the purchase contract for 4717 St. Charles Avenue to John Houghtaling.

81. Whether Patrick Smith resigned all positions with OTS effective January 7, 2011.

82. Whether the Operating Agreement of OTS states that the purpose of OTS is "to invest in and own a Louisiana limited liability company named United Centrifuge of Louisiana, L.L.C. and to engage in any other lawful activity for which limited liability companies may be formed under L.L.C. law."

83. Whether United Centrifuge of Louisiana, L.L.C. was formed on May 13, 2010 with a membership of OTS and WestPac Resources, L.L.C.

84. Whether the stated purpose, in part, of UCLA, L.L.C. was to market, sell and/or license C.I.N.C. V-series centrifuge devices.

85. Whether Baldwin has owned at least two companies, excluding his interests in OTS. Baldwin actively participated in marketing OTS and the Separators as well as shooting a documentary about the Spill called "The Will to Drill."

86. Baldwin believes that his own celebrity status "opened doors" for OTS with Louisiana politicians, including Billy Nungesser and Bobby Jindal, with whom Baldwin discussed OTS. Baldwin believes that his visit with Nungesser was one of the "catalysts" for Nungesser's introduction letter to BP.

87. Whether during that May 22 telephone call, OTS did not discuss BP advancing any start up funds to OTS.

88. Whether Contogouris proposed that OTS's members approve a cash call based on certain costs and invoices owed to C.I.N.C. but did not quantify the amount of the cash call.

89. Whether on June 3, 2010, Contogouris emailed Smith stating that the cash call amounted to "transparent cram down behavior." Contogouris believed the cash call was "fake" and a "transparent attempt to cram down [himself] and Mr. Baldwin and dilute [them]." Baldwin agreed.

90. Whether under the terms of the OTS Operating Agreement, a supermajority of 60% of the membership interest was required for approval of the cash call. No cash call was approved by the OTS membership.

91. Whether on June 2, 2010, Contogouris told Houghtaling that he was starting a new oil skimmer boat business and that he was sending a "shotgun agreement" to Smith -- proposing that either WestPac purchase Contogouris' and Baldwin's OTS interests or that Contogouris would buy out WestPac's OTS interests.

92. Whether also on June 2, 2010, Contogouris forwarded Pat Smith the "shotgun agreement" drafted by Contogouris' attorneys.

93. Whether at a June 6, 2010 meeting with Smith, Contogouris proposed to buy out WestPac's 20% interest for \$1,000,000. Using Contogouris' million dollar figure, Smith extrapolated and countered that Smith would purchase Plaintiffs' collective 38% interests for \$1.9 million. Contogouris and Baldwin accepted Smith's counteroffer.

94. Whether Costner did not participate in the June 6, 2010 meeting and did not know that the plaintiffs were negotiating with Smith for the sale of their interests until he was told that the plaintiffs had already agreed to sell their interests.

95. Whether when he learned of the agreement between Contogouris, Baldwin and Smith, Costner told Smith that he was not in favor of the purchase because the Plaintiffs would walk away from OTS with \$1.9 million in cash despite not having contributed to OTS, and there was no assurance that BP would contract with OTS. Smith decided to go forward with the purchase, and Costner did not contribute to Smith's purchase of Plaintiffs' OTS interests.

96. Whether John Houghtaling, the former CEO of OTS, implored Plaintiffs to not sell their interests in OTS. He estimated that, if Plaintiffs retained their interests, they would be worth up to ten times what Smith offered to pay for them.

97. Whether Houghtaling contacted Contogouris's brother, Chris Contogouris, and asked him to advise Contogouris that his decision to sell his interest in OTS was a bad financial move.

98. Whether Houghtaling told Plaintiffs before they signed the Transfer Agreement on June 11 that he expected BP to execute a binding contract with OTS.

99. Whether Contogouris came up with the idea to propose that BP would pay OTS an advance that it could use to purchase the necessary equipment.

100. Whether on the evening of June 7, 2010, BP representatives Doug Suttles and Richard Morrison met with Costner, Smith, and John Houghtaling, among others.

101. Whether immediately before the June 7 meeting occurred, Contogouris reviewed and helped draft a letter of intent that was to be presented to BP at the dinner.

102. Whether Contogouris did not attend the meeting in order to avoid questions about a previous federal indictment against him that had been dismissed. Contogouris did not object to leaving before the meeting with BP's representative.

103. Whether the BP representatives did not review the letter at the dinner.

104. Whether Morrison confirmed that Suttles did not order 32 separators from OTS at that dinner meeting.

105. Whether Morrison reviewed the letter of intent on June 8 and reduced the number of separators from the 50 proposed by OTS to 32. Later on June 8, Suttles submitted a redline version of the letter of intent reflecting the revisions that BP be willing to approve. OTS accepted BP's version of the letter of intent.

106. Whether the letter of intent was not signed until June 9, 2010. The letter of intent not only stated that it was "nonbinding" but it also included a requirement that the centrifuge separator units perform to BP's satisfaction in continued, future testing. The letter of intent did not provide for any advance payment of costs by BP.

107. Whether Westall reviewed the letter of intent to ensure that it was, in fact, non-binding.

108. Whether Contogouris never asked how many separators were designated in the letter of intent because he was not even curious about its terms.

109. Whether Contogouris had no discussions with Costner regarding the proposed deal with BP after June 8, 2010.

110. Whether Plaintiffs' legal counsel, Timothy Madden and Monica Manzella, actively participated in negotiating the terms of the Transfer Agreement between Smith and Plaintiffs.

111. Whether the first drafts of the Transfer Agreement were prepared by Contogouris and his counsel.

112. Whether Contogouris acknowledged the release language in the Transfer Agreement and, at one point, proposed a separate "release" between himself and Smith.

113. Whether before closing on the Transfer Agreement, Contogouris threatened to file a lawsuit against OTS and its remaining members stemming from previous membership transfers from L&L Properties to Houghtaling, the proposed "fraudulent" cash call, and other operations of OTS.

114. Whether on June 11, 2010, Contogouris and Baldwin executed the Transfer Agreement, agreeing to sell their OTS interests to Smith for \$1.4 million and \$.5 million, respectively. The same day, Plaintiffs' received a 10% down payment from Smith for their interests. The Transfer Agreement required that the sale close by June 18 at which time Plaintiffs would be paid the remaining 90% of the purchase price.

115. Whether there was no discussion of an advance deposit from BP to OTS until after Smith forwarded the June 14 contract.

116. Whether BP and OTS had no other oral or written agreements besides the agreement signed by Doug Suttles on June 15, 2010.

117. Whether on June 15, Contogouris' brother emailed Contogouris a link to the ABC News interview with Costner in which Costner discussed the separators and talks with BP.

118. Whether Contogouris heard portions of Costner's testimony to Congress. Contogouris sent an e-mail saying that he hopes Kevin makes money.

119. Whether in addition to the public announcements and news coverage, Contogouris knew about the alleged order between OTS and BP because he asked Dave Roberts by email on June 16 "how did it go? did they really get this \$100M order?" Mr. Roberts responded that the order from BP to OTS was for "32 machines for 100 days minimum."

120. Whether hours later on that same day, Contogouris emailed attorney Dan Grigsby -- who was helping Smith finalize the transfer documents -- soliciting an additional \$290,000 payment prior to closing the sale. In that email Contogouris stated:

... I wish you the best - it looks like Kevin will now get back his money, which is what I wanted in the first place if you remember. He might want to show some appreciation and reconsider thanking me by getting me back the mealy [sic] \$290,000 I lost. \$24million [sic] for \$290,000 sounds fair.

121. Whether on June 18, 2010, WestPac Development wired Plaintiffs \$450,000 and \$1,260,000 to pay the respective balances of the almost \$2 million total purchase price and executed the final Assignments and closing documents.

122. Whether Costner had no communications with Contogouris and Baldwin about the prospective sale of their interests in OTS.

123. Whether before the closing date of the Transfer Agreement, Contogouris never spoke to Smith about withdrawing from the proposed purchase of his and Baldwin's OTS shares.

124. Whether since transfers of membership interests need to be approved by sixty percent of OTS's memberships, the transfer was approved by all members. In addition, OTS provided a release as well.

125. Whether the release provisions in the Transfer Agreement state as follows:

10. As of the Closing, Contogouris releases, waives, and forever discharges each of the Remaining Members and any of their heirs, administrators, executors, employees, agents, servants, members, managers, officers, directors, successors, assigns and attorneys (collectively the "Releases") from any and all Claims that Contogouris now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of This Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements, entered into by or on behalf of OTS), (b) the Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture and (c) any and all claims Contogouris has or may have against OTS, WestPac or any of its members or managers, including but not limited to, Kevin Costner, for reimbursement of any past commissions and/or expenses.

11. As of the Closing, Baldwin releases, waives, and forever discharges each of the Remaining Members and each of the Releases from any and all Claims that Baldwin now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of this Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements entered into by or on behalf of OTS), and (b) the Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture.

126. Whether by Order dated February 7, 2012, this Court held that the above release provisions bar the claims asserted by Plaintiffs in this case. [Rec. Doc. 203].

127. Whether the Operating Agreement of OTS states that the purpose of OTS is "to invest in and own a Louisiana limited liability company named United Centrifuge of Louisiana, L.L.C. and to engage in any other lawful activity for which limited liability companies may be formed under L.L.C. law."

128. Whether United Centrifuge of Louisiana, L.L.C. was formed on May 13, 2010 with a membership of OTS and WestPac Resources, L.L.C.

129. Whether the stated purpose, in part, of UCLA, L.L.C. was to market, sell and/or license C.I.N.C. V-series centrifuge devices.

130. Whether Baldwin has owned at least two companies, excluding his interests in OTS.

131. Whether Baldwin actively participated in marketing OTS and the Separators as well as shooting a documentary about the Spill called "The Will to Drill."

132. Whether Baldwin believes that his own celebrity status "opened doors" for OTS with Louisiana politicians, including Billy Nungesser and Bobby Jindal, with whom Baldwin discussed OTS.

133. Whether Baldwin believes that his visit with Nungesser was one of the "catalysts" for Nungesser's introduction letter to BP.

134. Whether, during a May 22 telephone call, OTS discussed BP advancing start-up funds to OTS.

135. Whether Contogouris proposed that OTS's members approve a cash call based on certain costs and invoices owed to C.I.N.C. but did not quantify the amount of the cash call.

136. Whether On June 3, 2010, Contogouris emailed Smith stating that the cash call amounted to "transparent cram down behavior."

137. Whether Contogouris has contended the cash call was "fake" and a "transparent attempt to cram down [himself] and Mr. Baldwin and dilute [them]" and whether Baldwin agreed.

138. Under the terms of the OTS Operating Agreement, was a supermajority of 60% of the membership interest required for approval of the cash call?

139. Whether a cash call was approved by the OTS membership prior to June 18, 2010.

140. Whether on June 2, 2010, Contogouris told Houghtaling that he was starting a new oil skimmer boat business and that he was sending a "shotgun agreement" to Smith -- proposing that either WestPac purchase Contogouris' and Baldwin's OTS interests or that Contogouris would buy out WestPac's OTS interests.

141. Whether on June 2, 2010, Contogouris forwarded Pat Smith a "shotgun agreement" drafted by Contogouris' attorneys.

142. Whether on or about June 4, 2010 Contogouris met with Brett Sheldon of C.I.N.C. and asked that C.I.N.C. contract with Contogouris to market the centrifuge equipment.

143. Whether, at a June 6, 2010 meeting with Smith, Contogouris proposed to buy out WestPac's 20% interest for \$1,000,000.

144. Whether, using Contogouris' million dollar figure, Smith extrapolated and countered that Smith would purchase Plaintiffs' collective 38% interests for \$1.9 million. Contogouris and Baldwin accepted Smith's counteroffer.

145. Whether Costner participated in the June 6, 2010 meeting and whether Costner knew that the plaintiffs were negotiating with Smith for the sale of their interests before he was told that the plaintiffs had already agreed to sell their interests.

146. When upon learning of the oral agreement between Contogouris, Baldwin and Smith, Costner told Smith that he was not in favor of the purchase because the Plaintiffs would walk away from OTS with \$1.9 million in cash despite not having contributed to OTS, and there was no assurance that BP would contract with OTS?

147. Whether Smith decided to go forward with the purchase, and whether Costner contributed to Smith's purchase of Plaintiffs' OTS interests.

148. Whether John Houghtaling, the former CEO of OTS, implored Plaintiffs to not sell their interests in OTS.

149. Whether Houghtaling estimated that, if Plaintiffs retained their interests, they would be worth up to ten times what Smith offered to pay for them.

150. Whether Houghtaling contacted Contogouris's brother, Chris Contogouris, and asked him to advise Contogouris that his decision to sell his interest in OTS was a bad financial move.

151. Whether Houghtaling told Plaintiffs before they signed the Transfer Agreement on June 11 that he expected BP to execute a binding contract with OTS.

152. Whether Contogouris came up with the idea to propose that BP would pay OTS an advance that it could use to purchase the necessary equipment.

153. On the evening of June 7, 2010, did BP representatives Doug Suttles and Richard Morrison meet with Costner, Smith, and John Houghtaling, among others?
154. Immediately before the June 7 meeting occurred, did Contogouris review and help draft a letter of intent that was to be presented to BP at the dinner?
155. Whether Contogouris did not attend the meeting in order to avoid questions about a previous federal indictment against him that had been dismissed.
156. Whether Contogouris objected to leaving before the meeting with BP's representative.
157. Whether the BP representatives reviewed the letter at the dinner.
158. Whether Suttles ordered 32 separators from OTS at that dinner meeting.
159. Whether Morrison reviewed the letter of intent on June 8 and reduced the number of separators from the 50 proposed by OTS to 32.
160. Later on June 8, did Suttles submitted a redline version of the letter of intent reflecting the revisions that BP be willing to approve?
161. Whether OTS accepted BP's version of the letter of intent.
162. Whether the letter of intent not only stated that it was "nonbinding" but also included a requirement that the centrifuge separator units perform to BP's satisfaction in continued, future testing.
163. Whether the letter of intent provided for any advance payment of costs by BP.
164. Whether Westall reviewed the letter of intent to ensure that it was, in fact, non-binding.
165. Whether Contogouris ever asked how many separators were designated in the letter of intent.
166. Whether Contogouris was even curious about the terms of the letter of intent.
167. Whether Contogouris had any discussions with Smith regarding the proposed deal with BP after June 8, 2010.
168. Whether Plaintiffs and their legal counsel, Timothy Madden and Monica Manzella, actively participated in negotiating the terms of the Transfer Agreement between Smith and Plaintiffs.
169. Whether the first drafts of the Transfer Agreement were prepared by Contogouris and his counsel.

170. Whether Contogouris acknowledged the release language in the Transfer Agreement and, at one point, proposed a separate "release" between himself and Smith.
171. Whether, before closing on the Transfer Agreement, Contogouris made complaints against OTS and its remaining members stemming from previous membership transfers from L&L Properties to Houghtaling, the proposed "fraudulent" cash call, negotiations with C.I.N.C. and other activities of OTS members.
172. Whether, on June 11, 2010, Contogouris and Baldwin executed the Transfer Agreement, agreeing to sell their OTS interests to Smith for \$1.4 million and \$.5 million, respectively.
173. Whether, on June 11, 2010, Plaintiffs' received a 10% down payment for their interests.
174. Whether the Transfer Agreement required that the sale close by June 18 at which time Plaintiffs would be paid the remaining 90% of the purchase price.
175. Whether there was any discussion of an advance deposit from BP to OTS until after Smith forwarded the June 14 contract.
176. BP and OTS had no other oral or written agreements besides the agreement signed by Doug Suttles on June 15, 2010.
177. Whether, on June 15, Contogouris' brother emailed Contogouris a link to the ABC News interview with Costner in which Costner discussed the separators and talks with BP.
178. Whether Contogouris heard portions of Costner's testimony to Congress.
179. Whether Contogouris sent an e-mail saying that he hopes Kevin makes money.
180. Whether, in addition to the public announcements and news coverage, Contogouris knew about the alleged order between OTS and BP because he asked Dave Roberts by email on June 16 "how did it go? did they really get this \$100M order?"
181. Whether Mr. Roberts responded to Contogouris that the order from BP to OTS was for "32 machines for 100 days minimum."
182. Whether, hours later on that same day, Contogouris emailed attorney Dan Grigsby -- who was helping Smith finalize the transfer documents -- soliciting an additional \$290,000 payment prior to closing the sale and stating:

... I wish you the best - it looks like kevin will now get back his money, which is what I wanted in the first place if you

remember. He might want to show some appreciation and reconsider thanking me by getting me back the mealy [sic] \$290,000 I lost. \$24million [sic] for \$290,000 sounds fair.

183. Whether, on June 18, 2010, WestPac Development wired Plaintiffs \$450,000 and \$1,260,000 to pay the respective balances of the almost \$2 million total purchase price and executed the final Assignments and closing documents.
184. Whether Costner had any communications with Contogouris and Baldwin about the prospective sale of their interests in OTS.
185. Whether, before the closing date of the Transfer Agreement, Contogouris ever spoke to Smith about withdrawing from the proposed purchase of his and Baldwin's OTS shares.
186. Whether the release provisions in the Transfer Agreement state as follows:

10. As of the Closing, Contogouris releases, waives, and forever discharges each of the Remaining Members and any of their heirs, administrators, executors, employees, agents, servants, members, managers, officers, directors, successors, assigns and attorneys (collectively the "Releases") from any and all Claims that Contogouris now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of This Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements, entered into by or on behalf of OTS), (b) the Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture and (c) any and all claims Contogouris has or may have against OTS, WestPac or any of its members or managers, including but not limited to, Kevin Costner, for reimbursement of any past commissions and/or expenses.

11. As of the Closing, Baldwin releases, waives, and forever discharges each of the Remaining Members and each of the Releases from any and all Claims that Baldwin now has or has ever had against the Remaining Members and any of the Releases arising out of any matter, cause, or event occurring on or prior to the date of this Agreement, which Claims relate to or are in connection with (a) the organization and operation of OTS (including without limitation, the OTS Articles of Organization and the Operating Agreement and all contracts, agreements, or arrangements entered into by or on behalf of OTS), and (b) the

Proposed Joint Venture and any actions taken, negotiations held, or proposals made with respect to the Proposed Joint Venture.

[Rec. Doc. 167-2 at ¶¶ 10, 11].

187. Whether, by Order dated February 7, 2012, this Court held that the above release provisions bar the claims asserted by Plaintiffs in this case. [Rec. Doc. 203].
188. How much entrepreneurial and managerial influence did Costner exert in OTS relative to Contogouris and Baldwin?
189. Whether Costner told Contogouris that there was "no deal" with BP when they allegedly spoke at the Loews Hotel on June 8, 2010.
190. Whether Dan Grigsby told Contogouris that there was no deal with BP when they allegedly spoke on the phone on June 9, 2010.
191. Whether in connection with the sale of their interests, Plaintiffs relied upon any statement by Costner that was false; and if so, whether the statement was material; presented with scienter and reasonably relied upon by Plaintiffs.
192. When did OTS reach a binding agreement with BP?
193. When did Plaintiffs discover that OTS had reached a deal with BP?
194. When did OTS first propose to BP that BP make an advance deposit on its lease of centrifuges from OTS?
195. When did BP first indicate that it would make an advance deposit on its lease of centrifuges from OTS?
196. Were Plaintiffs induced to sell their interests in OTS by fraud?
197. Were Plaintiffs induced to sell their interests in OTS by error?
198. Were Plaintiffs induced to sell their interests in OTS by duress?
199. Did the respective defendants act with scienter in connection with the purchase of Plaintiffs' interests in OTS?
200. Would Plaintiffs have refused to close the sale of their interests in OTS if they had known about the BP advance deposit?
201. Would Plaintiffs have refused to close the sale of the their interests in OTS if they had known that the BP advance deposit was delivered to an account at Rabobank?
202. Did Plaintiffs perform sufficient due diligence on the value of their interests in OTS before agreeing to sell their interests in OTS?

203. Were Costner's statements to Congress and to Sam Champion false? If so, (a) did Plaintiffs reasonably rely upon the statements to their detriment in the sale of their interests in OTS; (b) were the statements made with scienter; and (c) did Plaintiffs exercise due diligence?
204. Does Houghtaling's and Smith's purchase of a house on St. Charles Avenue after the OTS/BP agreement was executed indicate their certainty about the deal before it was executed?
205. Whether Costner was a purchaser of Plaintiffs' interests in OTS?
206. Whether Smith acted as Costner's agent in conducting the business of OTS?
207. Whether Smith acted as Costner's agent in the purchase of Plaintiffs' interests in OTS?
208. Did Smith, Costner and Houghtaling ever receive hourly wages for their work on behalf of OTS? And if so, were the payments made after Plaintiffs sold their interests in OTS?
209. Were hourly wage payments to Costner and Houghtaling, if any, later reclassified as, and offset against, distributions from OTS?
210. To what extent the plaintiffs invested money in OTS?
211. To what extent plaintiffs provided financial support or tangible and definable consideration to OTS?
212. To what extent plaintiffs contributed their efforts to OTS's business?
213. To what extent plaintiffs were able to exercise managerial powers related to the affairs of OTS?
214. To what extent any of the defendants contributed essential managerial efforts to OTS?
215. Whether Mr. Costner's "celebrity status" constituted an essential managerial effort?
216. To what extent plaintiffs were aware of OTS's business model of requiring advances from customers to fund acquisition of the centrifuge units from CINC?
217. To what extent OTS' known business model put the plaintiffs on notice that any contract with BP would require an advance deposit?

218. To what extent the existence or nonexistence of an advance deposit in the BP contract was material when Mr. Contogouris believed that if BP executed a contract, then funding would take care of itself?
219. Whether the idea to ask BP for an advance deposit was Mr. Contogouris'?
220. Whether plaintiffs were confident that, if BP entered into an agreement with OTS, BP would agree to an advance deposit?
221. Whether OTS ever issued a "cash call" by the necessary super-majority?
222. Whether plaintiffs believed statements by the other members of OTS that the expenses related to OTS justified a need for a large "cash call"?
223. Whether the plaintiffs believed that any proposed "cash call" was necessary?
224. Whether Costner approved the proposed "cash call."
225. Whether any proposal for a "cash call" misled the plaintiffs?
226. Whether Mr. Contogouris himself proposed a "cash call"?
227. To what extent the plaintiffs understood that OTS' proposed letter of intent would ask for BP to commit to lease between 50 and 150 centrifuge units?
228. To what extent plaintiffs should have inquired about the terms of the letter of intent when they were told about it on the morning of June 8, 2010, or thereafter?
229. To what extent were the plaintiffs aware of the contents of the letter of intent?
230. To what extent Mr. Contogouris himself drafted the terms of the letter of intent?
231. Whether the terms of the letter of intent were material to plaintiffs' decision to sell their interest when they knew that the letter of intent existed but did not inquire about its terms?
232. Whether the defendants omitted any material fact in connection with the status of negotiation with BP when (a) on the morning of June 8, 2010, Mr. Contogouris was told that BP was "for it" and (b) Mr. Baldwin was told that a deal with BP was "imminent" before he agreed to sell his interest in OTS?
233. Whether the letter of intent with BP was binding?

234. Whether the letter of intent with BP contained any reference to an advance deposit?
235. To what extent plaintiffs knew about the content of the letter of intent when they agreed to sell their interests in OTS?
236. Whether the plaintiffs were aware that there was a separate agreement between Pacific West and C.I.N.C. Industries at the time they agreed to sell their interest in OTS?
237. To what extent the plaintiffs sold their interests in OTS because of philosophical differences in marketing of the technology and/or management of the business?
238. What were the plaintiffs' real reasons for selling their interests in OTS?
239. To what extent plaintiffs believed that other members of OTS planned to use media pressure in connection with their marketing efforts with BP and to what extent that strategy influenced plaintiffs' decision to sell their interests in OTS?
240. Whether John Houghtaling told the plaintiffs not to sell their interests in OTS?
241. To what extent any of the defendants misled or deceived the plaintiffs about the status of negotiations with BP or any other matter?
242. To what extent it was John Houghtaling's responsibility to update the plaintiffs on the status of negotiations with BP?
243. Whether Mr. Houghtaling told the plaintiffs that he expected a deal between OTS and BP to be executed?
244. To what extent the plaintiffs were aware of the value of the company at the time they transferred their interest in OTS?
245. To what extent plaintiffs were aware of the facts and circumstances surrounding the transfer of Frank Levy's interest in OTS at the time of entering into the Transfer, Withdrawal, Release and Indemnity Agreement and the Assignment and Assumption of Ownership Interest?
246. Whether BP agreed to any contract for the lease or sale of centrifuge units from OTS before completion of blue-water tests of the centrifuge units?
247. Whether BP received a copy of the draft agreement prior to June 14, 2010?

248. Whether the plaintiffs knew about Mr. Costner's Good Morning America interview published on June 14, 2010 at the time they transferred their interests in OTS?
249. Whether BP agreed to lease centrifuge units from OTS prior to June 15, 2010?
250. Whether BP entered into any oral agreements with OTS prior to Plaintiffs' sale of their interests in OTS.
251. Whether – by June 16, 2010 – plaintiffs knew all material details of BP's June 15, 2010 agreement to lease centrifuge units from OTS?
252. Whether OTS made any distributions to any member on or prior to June 18, 2010?
253. Whether OTS reimbursed any of its members for the members' expenses prior to June 18, 2010?
254. To what extent the plaintiffs knew – at the time they transferred their interests in OTS on June 18, 2010 – that the value of the company was greater than they had thought on June 11, 2010?
255. To what extent the plaintiffs knew – at the time they transferred their interests in OTS on June 18, 2010 – that OTS had a contract with BP that would generate tens of millions of dollars?
256. To what extent the timing of the payments from BP would have been material to plaintiffs' decision to sell their interests in OTS when – at the time they transferred their interests in OTS on June 18, 2010 – they knew that OTS had a contract with BP that would generate tens of millions of dollars but they did not ask about the terms of payment?
257. To what extent the plaintiffs believed that they could invest the money that they received for their interests in OTS in more profitable enterprises?
258. Whether Ted Skokos or his foundation injected any money into OTS prior to the plaintiffs' transfer of their interests in OTS?
259. Whether any money used to purchase the plaintiffs interests in OTS was from a distribution from OTS to any of its members?
260. The extent of Costner's knowledge and participation in the negotiation and purchase of the Plaintiffs' interests in OTS.
261. To what extent any of the defendants knew or should have known that any information not known to the plaintiffs on June 11, 2010, would have been material to their decision to sell their interest in OTS?

262. Whether the plaintiffs breached the Transfer Agreement and damaged the defendants by filing this suit?
263. Whether either Plaintiff has admitted that the sale of their interest was not the result of fraud or error and the claims asserted are without merit.
264. BP agreed to test the centrifuges before deciding whether it would use them in the oil spill clean-up because the separators previously had not been used in large clean up operations.
265. On May 22, 2010, Douglas Suttles, Chief Operating Officer of BP Exploration & Production Company, Richard Morrison, the Vice President of BP's Gulf of Mexico Operations, and Karen Westall, in-house counsel for BP, participated in a telephone call with Costner and Smith.
266. The letter of intent between OTS and BP was not signed until June 9, 2010.
267. Contogouris had no discussions with Costner regarding the proposed deal with BP after June 8, 2010.
268. Baldwin also disputed the validity of the cash call, believed that both Smith and Houghtaling were liars, and wanted out of the company because of their conduct.
269. Since transfers of membership interests need to be approved by sixty percent of OTS's memberships, the transfer was approved by all members. In addition, OTS provided a release as well.
270. Whether Plaintiffs would have sold their interest in OTS had they known: (a) the proposed cash call was a sham; (b) BP looked favorably on giving an advance; (c) Skokos had infused capital into the company; (d) defendants had agreed to pay themselves \$600 per hour; (e) defendants had agreed to divide their shares and the Levy shares; (f) BP's Suttles indicated at the June 7 meeting that BP would place an order; (g) a contract calling for an \$18 million deposit had been prepared; (h) an unauthorized and illegal bank account would be formed and OTS' money was used to acquire their interest; (i) an agreement to form a joint venture with Edison Chouest had been agreed to; and (j) Smith had placed an order with CINC for the first 10 units.

9. Single Listing of Contested Issues of Law:

1. Whether plaintiffs can carry their burden of establishing the elements of a cause of action under Rule 10b-5, which include: (i) a material misrepresentation or omission by the defendant; (ii) scienter on the part of the defendant; (iii) a connection between the

misrepresentation or omission and the purchase or sale of a security; (iv) reliance upon the representation or omission; (v) economic loss; and (vi) loss causation in connection with the sale of a security?

2. Whether plaintiffs' interest in Ocean Therapy Solutions is a "security" under Rule 10b-5?

3. Whether under the terms of the June 11, 2010 Transfer Agreement, plaintiffs had the right to withdraw prior to the closing on June 18, 2010?

4. Whether the allegations made here fall within the release and indemnity language of the Transfer Agreement (already decided by the Court - mentioned solely to preserve appellate rights, if necessary)

5. Whether under the Transfer Agreement, plaintiffs can be held liable for defense costs and attorneys' fees for a breach thereof?

6. Whether causes of action for rescission are available against Kevin Costner and WestPac Resources as the sale of plaintiffs' interest was nominally to Patrick Smith or his designee?

7. Whether the transfer agreements may be avoided on grounds of fraud?

8. Whether the transfer agreements may be avoided on grounds of error?

9. Whether the opening of the Rabobank account was authorized by OTS?

10. Whether evidence regarding Patrick Smith's alleged conversion of funds, overstatement of expenses, and expulsion from the company is relevant and admissible?

11. Whether Contogouris' prior arrest in 2006 in New York is admissible given that all charges were voluntarily dismissed?

12. All those implicit in the summary of material fact by the parties.

13. BP agreed to test the centrifuges before deciding whether it would use them in the oil spill clean-up because the separators previously had not been used in large clean up operations.

14. On May 22, 2010, Douglas Suttles, Chief Operating Officer of BP Exploration & Production Company, Richard Morrison, the Vice President of BP's Gulf of Mexico Operations, and Karen Westall, in-house counsel for BP, participated in a telephone call with Costner and Smith.

15. Baldwin also disputed the validity of the cash call, believed that both Smith and Houghtaling were liars, and wanted out of the company because of their conduct.
16. Whether Plaintiffs' interests in OTS were "investment contracts" and therefore "securities" under the Securities and Exchange Act of 1934, 15 U.S.C. § 78c(a)(10).

17. Whether Costner, who was not a member or officer of OTS, owed a fiduciary duty that required him to report to Plaintiffs about the negotiations with BP.
18. Whether Costner can be held liable for securities fraud based on the alleged representations of others.
19. Whether Costner can be liable for Plaintiffs' sale of their interests in OTS when Costner has never owned an interest in OTS except by virtue of his interest in WestPac.
20. Whether Plaintiffs have an actionable claim for rescission against Costner.
21. Whether Plaintiffs' consent to the Transfer Agreement was vitiated by fraud.
22. Whether Plaintiffs' consent to the Transfer Agreement was vitiated by error.
23. Whether Plaintiffs' claims against the defendants were waived by Plaintiffs' execution of the Transfer Agreement.
24. Whether Plaintiffs can maintain a claim for rescission when OTS's membership and operations have changed materially after Plaintiffs sold their OTS interests.
25. Whether Plaintiffs' evidence addresses the elements of damages for fraud in the sale of securities.
26. Whether Defendants are entitled to recover attorney's fees, costs and other damages for Plaintiffs' breach of the Release of claims in the Transfer Agreement.
27. Whether a person who receives a secondary benefit from a transaction, such as a subsequent transferee, is potentially liable for an alleged misstatement or omission in the underlying transaction?
28. Whether Pacific West is liable for ultimately acquiring a portion of the plaintiffs' interests even if Patrick Smith contributed them to Pacific West after purchasing them in his individual capacity?
29. Whether the measure of damages under Rule 10b-5 is out of pocket-loss measured by the difference between the price paid and the actual value?
30. Whether the plaintiffs can establish an actual value for their interests in OTS?

31. Whether the plaintiffs are required to tender back the funds they received before pursuing their error claim?
32. Whether the plaintiffs confirmed or ratified the June 11, 2010 Transfer Agreements when they signed documents to finalize the transaction on June 18, 2010, executed the assignment of their respective interests and accepted the remainder of the purchase price?
33. Whether a person can be held liable for aiding or abetting, or conspiring in connection with, alleged securities fraud?
34. Whether a person can be held liable for conspiracy to breach a contract.
35. Whether the plaintiffs can inject new legal theories into the case through the pretrial order, or otherwise?
36. Whether the Transfer Agreement that the plaintiffs signed bars the plaintiffs' claims of fraud and error?
37. Whether the plaintiffs have breached the Transfer Agreement's release provisions by suing on released claims?
38. But for a vice of consent, were the plaintiffs bound to sell on June 11, 2010 after they signed the Transfer Agreements?
39. Whether an LLC is required to distribute cash to its members?
40. Whether an LLC can distribute cash to its members if to do so would render the LLC insolvent?
41. Whether a member of an LLC owns the LLC's property or money?
42. Whether the plaintiffs lack standing to pursue any alleged harms to Ocean Therapy Solutions, LLC?
43. Whether Patrick Smith had the legal authority to bind Pacific West to purchase the plaintiffs interests for \$1.9 million, even if he intended to do so (which is denied)?
44. Whether Pacific West can be held liable for any misstatement or omission made by Patrick Smith, in connection with the Transfer Agreement?
45. Whether any events after June 18, 2010 – the day the plaintiffs finalized the sale of their interests – have any bearing on their claims of fraud and error in the transaction?
46. Whether the plaintiffs can meet their “difficult burden” of showing that, in spite of being fellow LLC members in OTS, they were so dependent on

some unique managerial or entrepreneurial ability of Kevin Costner that they could not exercise meaningful LLC powers?

47. Whether any alleged oral contract between OTS and BP could exist if all alleged witnesses to it have denied its existence?
48. Whether certain persons' calling for a vote for a "cash call," when the operating agreement required a 60 percent approval prior to one existing, is itself a cash call?

10. Exhibits:

A) For Plaintiffs without objection:

1. 1. Operating Agreement of Westpac Resources (Costner 63-81)
2. 3. Letter of Intent May 5, 2010 between CINC and OTS joint venture (SCC245-49)
4. 6. May10, 2010 Articles of Organization of OTS (NP1561-65)
5. 8. Records produced by Windsor Court Hotel re date of stays of witnesses Costner, Smith, Hoek, Annie Costner, Johnston
6. 9. May 13, 2010 licensing agreement between CINC and OTS (NP1266-1271)
7. 10. May 13, 2010 Operating Agreement of OTS (NP1537-42)
8. 12. May 16, 2010 e mail from Houghtaling to Costner re discussion with BP general counsel (Costner 161)
9. 14. May 18, 2010 press release from OTS re BP agreed to test units (MM 13)
10. 15. May 18-19, 2010 resolution of OTS authorizing Houghtaling to conduct business affairs of the company (NP1566-68)
12. 17. Notes of May 18, 2010 telephone conference produced by BP (SPY 1047-51)
13. 19. May 19, 2010 e mail from Smith to Shelton re worldwide rights for West Pac Resources (CINC 138)
15. 22. Note produced by BP re hydraulic vs. electrical (SPY 1091-93)
16. 23. Note produced by BP for May 21, 2010 (SPY 1098-1103)
17. 24. Notes of May 21 or 22, 2010 teleconference produced by BP (SPY754-757 – and pages preceding to identify date of meeting)

20. 27. E mail from Houghtaling to Smith dated May 21, 2010 discussing WestPac invoice 2010-05 (NP138)
22. 29. E mail from Smith to Karen Westall re meeting tomorrow with Doug Suttles dated May 21, 2010 (Costner 569)
23. 34. May 27, 2010 draft letter from Smith to Morrison outlining proposal to BP and discussing BP's advance of capital to OTS (Smith 329)
24. 37. May 29, 2010 email from Bates to Smith, Contogouris, Houghtaling re \$3 million cash call (Costner 167-68; SCC 1685-89)
25. 38. May 29, 2010 email from John Houghtaling assenting to capital call (SCC 1415)
26. 40. E mail from Contogouris of May 29, 2010 objecting to capital call (SC 1387)
29. 45. All text messages between Costner and Smith produced by Costner, including June 2 text indicating "good news, we have Spiro outvoted" (Costner 941 et seq.)
30. 49. June 2, 2010 email from Smith to Houghtaling and Costner, copies to Bates, Maxwell, Johnston and Jason Smith enclosing May 27, 2010 draft letter to Richard Morrison discussing BP advancing capital (Costner 738-40; Pac West 286-88)
31. 51. June 3, 2010 email from Houghtaling to Smith re do not respond to Contogouris (NP 149)
33. 54. June 4, 2010 Transfer and Withdrawal Agreement re Levy interest (NP1580-88)
34. 56. June 4, 2010 email from Bates to Smith re two versions of a cash call – 30 vs. 37% for Houghtaling and 20 vs. 27% for WestPac (Smith 179-81)
35. 58. June 6, 2010 email from Melissa Pierce to Dan Grigsby inquiring about Section 12 of Levy Transfer Agreement
36. 59. Text messages between Skokos and Pat Smith from June 6-11, 2010, including entry from June 6 re passed all the tests from BP and did the cash call (SK1112-21)
37. 60. June 6, 2010 email from Houghtaling to Mouton re passed all brown water tests (MM281)
38. 61. Notes produced by BP re June 7, 2010 meeting (SPY 896-97)
39. 62. June 8, 2010 email from Houghtaling to Bret Shelton re got letter of intent (CINC 103; NP34)
42. 66. June 8, 2010 agreement between CINC and WestPac Resources for world wide rights (CINC 01-02)

43. 69. June 9, 2010 email exchange between Houghtaling and Contogouris re deal struck between Westpac and CINC (NP308)
44. 70. Email transmitting letter of intent from Doug Suttles (SPY 32-34)
45. 71. June 9, 2010 letter of intent from BP (SPY 388-89)
50. 77. Contogouris to Grigsby June 9, 2010 re need for more time to raise money (Smith 315)
51. 80. Houghtaling to Shelton re Contogouris no authority to act for OTS June 10, 2010 (NP306)
52. 81. E mail of June 10, 2010 from Shelton to Jouandot enclosing invoice for initial 10 of the V20s to be leased to BP (NP425 et seq.)
53. 82. Spreadsheet of payments made to CINC by OTS (Shelton deposition exhibit)
54. 83. June 10, 2010 email from Houghtaling to Shelton re need 32 units immediately (CINC 117)
55. 84. CINC invoice for first 10 units (OTS 339-40; NP 1279)
58. 87. Bates email to Smith, Maxwell re cash call details of June 10, 2010 (Smith 297)
59. 88. E mail from Grigsby to Smith and Maxwell re first draft of BP agreement including \$18,201,600 deposit (Smith 222-225)
60. 89. June 11, 2010 email from Grigsby to Houghtaling and Smith also sending first draft of BP agreement (NP 2795-97)
62. 91. Shelton email for first 10 V20s (Smith Ex. 264) and requesting deposit
63. 94. June 10, 2010 email from Skokos to Pat Smith enclosing wire transfer confirmation on the \$3 million wire (Smith 298)
71. 103. E mail from Houghtaling to Grigsby re strongly suggest you take Contogouris offer and I'll chip in (Costner 329)
73. 105. June 11, 2010 effective date of BP agreement with OTS (NP1296-99)
74. 106. Transfer agreement re Contogouris shares (NP 1589-97) June 11, 2010
75. 107. Bank Account Records for OTS at Rabobank for 6/16/10 - 1/10/11

76. 108. Signed agreement with BP (OTS 318-22)
77. 109. June 12, 2010 email from Houghtaling to Shelton re need 32 machines immediately (NP 13)
78. 110. June 11, 2010 effective date of management agreement between Offshore Management Group and OTS (SPY468-82; OMG 70-77)
79. 113. E mail from Smith to Costner enclosing draft of agreement with BP dated June 14, 2010 (Costner 175)
82. 116. Smith reply to Jouandot email "right on" (NP 367)
83. 118. June 14, 2010 email from Grigsby to Smith and Houghtaling re restructuring of OTS and Houghtaling acquiring an interest in CINC (NP 438 et seq.)
85. 120. E mail from Smith to Grigsby of June 14, 2010 re 50/29/17/4 split (NP 439)
87. 122. E mail from Morrison to Smith of June 14 re good results in the field (SPY 53)
88. 123. Smith email to Suttles, Morrison re waiting to send you formal agreement and enclosing same (SPY 53 et seq.)
90. 125. Houghtaling email to Suttles and copy to Costner – need gas in the tank to move on Obama (Costner 259; Costner 719)
96. 131. June 15, 2010 email from Morrison to Smith enclosing executed BP contract (NP 42)
97. 132. E mail from Smith to Jouandot requesting EIN for OTS (NP 361)
98. 133. E mail from Jouandot to Smith of June 15 enclosing EIN with copy to Bates (NP406)
99. 135. E mail from Jouandot to Bates of June 15 re only authorized account for OTS (NP 420)
100. 136. E mail from Smith to Grigsby, Costner, Houghtaling, Maxwell, Bates, Jason Smith enclosing signed BP contract (Pac West 27-31)
101. 137. First Amendment to Operating Agreement of OTS (NP 1234-36)
102. 140. E mail from Smith to Costner and Houghtaling re he paid \$160 Million to Deutsche Bank (Costner 170)

- 105. 144. June 15, 2010 text from Suttles to Costner re has just signed the agreement (Costner 925 et seq)
- 106. 146. June 16, 2010 email from Bates to Jouandot requesting Operating Agreement of OTS (NP 405)
- 107. 147. E mail from Smith to Contogouris of June 16, 2010 re "has the cash" (SCC 658)
- 109. 149. E mail from Morrison to Bates, Smith indicating wire is on its way dated June 16, 2010 (SPY 42)
- 110. 150. Bates email of June 16, 2010 to Morrison with wire transfer information (SPY 42-43)
- 111. 151. Smith email to Morrison of June 16, 2010 re "you made my day" (SPY 235)
- 114. 155. June 17, 2010 invoice 2010-07 from Westpac to OTS for \$1.828 million (NP1280)
- 116. 158. June 18, 2010 assignment of membership interests (Costner 100-101; Costner 390-91)
- 161. 262. 6/3/10 email Pierce to Smith (NP149-150)
- 173. 282. Color brochure of V10 unit (Costner 556)
- 175. 285. Photos of centrifuge unit (OMG 202-216)
- 176. 286. Dismissal of charges against Contogouris (SCC950)
- 177. 290. Occan Therapy Brochure (SCC 286-89)
- 181. 295. All text messages between Pac West personnel (PacWest 997-1032)
- 182. 296. 6/10/10 press release (Dep. Ex. 81)
- 188. 302. June 15, 2010 email from Costner to Smith (Costner 63)
- 199. 304. Email from Roberts to Spyro re: Value of Services/costs for your Proposed True-up (DR 001801-001802)
- 205. 310. Email from Roberts to Smith, Houghtaling, Spyro re: Update (DR 000137)
- 218. 323. Rabobank Confirmation of Transaction Notice June 17, 2010 (OTS 00428)
- 226. 331. Email from Houghtaling to Costner (Costner 000638)

233. 338. Email from Grigsby to Madden and Manzella re: Transfer Agreement (NP 000412)
251. 356. Correspondence from Frank Levy to Michael Riess (NP 001581-1588)
252. 357. Email from Spyro to Smith, Houghtaling and Jouandot re: Value of Services/costs for our Proposed True-up (NP 000389-000390)
257. 362. Email from Roberts to Smith re: ECO and IIOS (Smith-00509)
258. 363. Email from Smith to Morrison and Houghtaling re: Blue Water Test (Costner 000449-000451)
261. 366. Operating Agreement of Ocean Therapy Solutions, L.L.C. dated May 13, 2010 (NP 001537 – NP 001542)
262. 367. E mail from Melissa to Grigsby enclosing copy of Transfer, Withdrawal, Release and Indemnity Agreement (Smith 00174 – Smith 00178)
263. 368. Transfer, Withdrawal, Release and Indemnity Agreement (Smith 00006 – Smith 00011)
264. 369. Assignment executed by Contogouris
265. 370. E mail from Grigsby to Houghtaling re buyout of Spyro and Stephen (Smith 00738)
269. 374. E mail from Houghtaling to Sherman re: CINC Centrifuge Agreement (NP 002796 – NP 0002797)
270. 375. E mail from Grigsby to Smith re: Agreement between OTS and BP (Smith 00222 – Smith 00225)
274. 379. Email from Grigsby to Westall re: Contract comments (BP 00000013 – 14)
275. 380. Email from Smith to Houghtaling re: draft proposal (Costner 000738 – Costner 000740)
276. 381. Transfer, Withdrawal Release and Indemnity Agreement (Smith 00090 – Smith 00097)
277. 382. Assignment and Assumption of Membership Interest (Smith 00027 – Smith 00028)
278. 383. Assignment executed by Stephen Baldwin
279. 384. Assignment executed by Spyro Contogouris

- 282. 387. Email from Houghtaling to Grigsby re: As to sales representation (Costner 000359 – Costner 000360)
- 289. 394. WestPac-CINC Agreement(CINC 001 – CINC 002)
- 294. 399. Kevin Costner Expense Reimbursement (AS 3836 – AS 3837)
- 299. 404. Rabobank Bank Statement for Ocean Therapy Solution 06-16-10 thru 06-30-10 (Smith 00852)
- 301. 406. Rabobank Bank Statement for WestPac Development 05-28-10 thru 06-30-10 (Smith 00781 – Smith 00784)
- 313. 418. WestPac Development re: Wire Instructions for Spyro and Baldwin (Smith 00787 – Smith 00788)
- 318. 423. WestPac Development Company Reconciliation Detail(Smith 00848)
- 319. 424. Correspondence to WestPac Resources from Ocean Therapy Solutions dated May 20, 2010 (SCC 001419)
- 320. 425. Ocean Therapy Solutions, LLC re: Wire Instructions for \$1,250,000.00 (OTS 000424)
- 321. 426. Text Message from Pat Smith (Skokos 01113- 01114)
- 322. 427. Rabobank Bank Statement for Ocean Therapy Solution 06-16-10 thru 06-30-10 (MOR 00092)
- 323. 428. Rabobank Confirmation of Transaction Notice dated June 10, 2010 (Costner 000061)
- 324. 429. Rabobank Bank Statement for Ocean Therapy Solution 06-16-10 thru 06-30-10 (NP 001273)
- 325. 430. Rabobank Bank Confirmation of Transaction Notice dated June 18, 2010 (Smith 00110)
- 326. 431. Rabobank Bank Confirmation of Transaction Notice dated June 16, 2010 (Smith 00598)
- 327. 432. Rabobank Bank Confirmation of Transaction Notice dated June 15, 2010 (Smith 00597)
- 332. 437. Rabobank Bank Statement for Ocean Therapy Solution 06-16-10 thru 06-30-10 (MOR 00092)

333. 438. Ocean Therapy Solutions Check Register 01-01-10 thru 07-16-10 (NP 001679)
334. 439. Ocean Therapy Solutions Transaction Detail 06-17-10 thru 07-07-10 (NP 001683)
337. 442. Rabobank Bank Statement for Ocean Therapy Solution 07-30-10 thru 08-31-10 (NP 001666 – NP 001667)
341. 446. WestPac Development Company Check Register 05-01-10 thru 01-12-11 (AS 2309)

For Plaintiffs with objection:

3. 4. May 9, 2010 email exchange between Costner and Smith re boys in NO (Costner 623-624) (Defendants object on the basis of incomplete; need Costner 624)
11. 16. May 18, 2010 e mail from Smith to Bret Shelton re got contract from BP (CINC 101) (Defendants objection on the grounds of irrelevant and misleading)
14. 21. May 20, 2010 email from Ozzie Johnston to Melissa Pierce forwarding banking resolution (NP744) (Defendants object on the grounds of irrelevant and incomplete)
18. 25. Westpac Resources invoice 2010-05 dated May 21, 2010 (NP 1257) (Defendants object on the grounds of irrelevant and prejudicial)
19. 26. E mail from Bates to Houghtaling and Smith forwarding invoice 2010-05 on May 21, 2010 (Pac West 275-276) (Defendants object on the grounds of irrelevant and prejudicial)
21. 28. Exhibits to the report of Ken Boudreaux and John Page (Defendants object pending authentication at upcoming deposition)
27. 42. First e mail mentioning Ted Skokos dated May 31, 2010 from Smith to Maxwell (SK 40) (Defendants object as irrelevant)
28. 43. Westpac Invoice 2010-06 dated June 1, 2010 (NP 1258) (Defendants object on the grounds of irrelevant and prejudicial)
32. 52. Proposed cash call prepared by Contogouris and forwarded on June 3 (SCC 100) (Defendants object on the basis of incomplete; need SCC 99)
40. 63. June 8, 2010 email from Suttles to Houghtaling and Smith re meeting of last night (NP 529) (Defendants object on the basis of incomplete; need NP 530-531)
41. 64. Houghtaling reply to Suttles email (SPY 123) (Defendants object on the basis of incomplete; need SPY-124)

46. 73. Text messages between Contogouris and Houghtaling produced by Contogouris (Defendants object to any text messages after June 18, 2010 as irrelevant, prejudicial, hearsay and possibly inadmissible character evidence)
47. 74. Transcript of Kevin Costner June 9, 2010 testimony before Congress (Defendants object on the basis of not authenticated, hearsay)
48. 75. Videotape of Costner testimony before Congress June 9, 2010 (Defendants object on the basis of not authenticated, hearsay)
49. 76. E mail from Contogouris to Grigsby re just heard Kevin testify (Costner 323; Smith 291 and SCC 1452) (Defendants object on the basis of incomplete; need Costner 320, 321 and 322 to complete email string; need SCC 1453 to go with 1452)
56. 85. Westpac Development bank account records at Rabobank for the period 5/28/10 to 3/20/11 (Defendants object to relevance of any bank statements after June 2010)
57. 86. E mail from Grigsby to Smith re "this guy starting to bug me" (SCC 485)
61. 90. June 10, 2010 voice mail from Grigsby to Smith re going nuts and summarizing negotiations with Spiro (Smith 262) (Defendants object on the grounds of irrelevant, prejudicial and attorney-client privileged document already subject to claw-back)
64. 95. Tape of Houghtaling and Smith appearance on Fox and Friends, June 10, 2010 (Defendants object as not authenticated, hearsay)
65. 96. Tape of Houghtaling and Smith appearance of CNN June 10, 2010 (Defendants object as not authenticated, hearsay)
66. 97. Audio tape of interview given by Houghtaling to WWL radio (Defendants object as hearsay)
67. 98. June 11, 2010 1:47 a.m. posting on WWL web site by Jay Vise re BP placed an order and agreed to finance (Defendants object as hearsay)
68. 99. June 12 transcript of interview between Costner and Sam Champion of ABC News posted on ABC web site on June 14, 2010 (Defendants object as not authenticated, hearsay, exhibit state it is incomplete)
69. 100. Raw production video tape unedited of Costner interview given to Sam Champion of ABC News on June 12 (Defendants object not authenticated)
70. 101. Affidavit of ABC News Producer attesting to date of Costner interview (Defendants object as hearsay)

72. 104. E mail from Stengel to John Houghtaling re congratulations and hope you get a jet sent on June 11, 2010 (NP329-30) (Defendants object; appears to refer to incorrect Bates numbers)
80. 114. June 14, 2010 email from Smith to Jouandot, Houghtaling re expecting signed BP contract in a few minutes (NP 364) (Defendants object as incomplete; need NB 365)
81. 115. E mail from Jouandot to Smith re let's get 40% in the bank dated June 14, 2010 (NP 363)(Defendants object not authenticated, irrelevant and prejudicial)
84. 119. E mail from Grigsby to Dave Sherman requesting preparation of a revised operating agreement dividing ownership 50/29/17/4 within OTS (Costner 353) (Defendants object as irrelevant)
86. 121. Letter agreement of June 14, 2010 between Houghtaling and Westpac re split of shares and ownership in CINC (NP 1230-31) (Defendants object as irrelevant)
89. 124. Text of formal agreement sent to Suttles on June 14 (SPY 162-65) (Defendants object as incomplete; need SPY 161)
91. 126. July 11, 2010 email from Houghtaling to Farnsworth re assignment of 4717 St. Charles contract (NP 2849) (Defendants object as irrelevant)
92. 127. June 23, 2010 purchase agreement for 4717 St. Charles (Farnsworth deposition exhibit) (Defendants object as irrelevant)
93. 128. July 11, 2010 assignment of purchase contract for 4717 St. Charles (Farnsworth deposition exhibit) (Defendants object as irrelevant)
94. 129. Letters of ability to pay by Pat Smith for 4717 St. Charles submitted by Tuttle and Rabobank (Farnsworth deposition exhibit) (Defendants object as irrelevant)
95. 130. Closing statement for 4717 St. Charles (Farnsworth deposition exhibit) (Defendants object as irrelevant)
103. 141. Century National Bank records of OTS for January to March, 2011(Defendants object as irrelevant; no Bates number provided)
104. 142. West Pac Resources bank account records for 5/28/10 to 3/20/11 (Defendants object to relevance to WestPac Resources bank records after June 2010)
108. 148. First invoice from Gauthier firm of June 16, 2010 asking for OTS to pay \$465,000 to the firm (NP190-93; NP1190-93) (Defendants object as irrelevant)
112. 152. Smith email to Contogouris re I'm good to go I have the cash (Costner 337) (Defendants object as incomplete; need Costner 336)

113. 154. June 17, 2010 email from Jouandot to Smith saying expecting the money at FNBC and still not received (NP 430) (Defendants object as irrelevant)
115. 157. E mail from Bates to Skokos enclosing promissory note from OTS to his foundation of June 17, 2010 (SK 78-86) (Defendants object as irrelevant)
117. 162. E mail from Eleanor Farnsworth to John Emmett of October 5, 2011 re first date showed property at 4717 St. Charles to John Houghtaling (Defendants object as irrelevant)
118. 163. June 24 email from Bates to Jouandot re two wires being sent to Houghtaling (NP 2581-82) (Defendants object as irrelevant)
119. 165. June 30, 2010 Houghtaling Enterprises statement showing deposit of \$580,000 from OTS (NP 1599-1601) (Defendants object as irrelevant)
120. 168. July 2, 2010 proposed agreement between CCS and OTS (OMG 174-76) (Defendants object as not authenticated) (Defendants object as irrelevant)
121. 169. July 8, 2010 email from Jouandot to Bates that \$1.119 million payment to Westpac not authorized (NP2550-52) (Defendants object as irrelevant)
122. 170. July 11, 2010 e mail string between Smith and Houghtaling re 4717 St. Charles, Levy shares, other issues (NP 2774-93) (Defendants object as irrelevant)
123. 171. July 12, 2010 letter of intent between CCS and OTS (OMG 328-30; OMG 336-38) (Defendants object as irrelevant)
124. 172. City National Bank Records of Westpac Resources from May 1, 2010 to March 31, 2011
125. 174. July 17, 2010 email from Houghtaling to Smith and Costner re unauthorized bank account at Rabobank (NP 3085)
126. 175. July 19, 2010 letter from Houghtaling to Suttles re only authorized bank account (SPY 39-41)
127. 178. E mail from Valobra to Lake re lack of transparency (MOR 3814) (Defendants object as irrelevant, prejudicial)
128. 179. July 23, 2010 letter from Houghtaling to Rabobank re unauthorized account (NP1166; NP 1172-73) (Defendants object as irrelevant, prejudicial)
129. 188. Transfer Agreement between Houghtaling and Moreno of July 30, 2010 (Defendants object as irrelevant)

130. 194. Blue Planet Solutions Balance sheet of August 9, 2010 suggesting it took OTS funds (MOR 2129) (Defendants object as irrelevant)
131. 197. Jouandot email to Contogouris re note to be paid in full tomorrow (NP2538) dated August 15, 2010 (Defendants object as irrelevant, prejudicial)
132. 198. August 16, 2010 Moreno guaranty to Perucci (MOR 18) (Defendants object as irrelevant, prejudicial)
133. 199. August 16, 2010 email from Winston to Blanchard re terms of deal with Perucci (MOR 19) (Defendants object as irrelevant, prejudicial)
134. 201. OTS invoices 110-135 to OMG (Defendants object as irrelevant, no Bates number provided)
135. 204. All invoices issued by the Gauthier firm to OTS (Defendants object as irrelevant)
136. 205. General Ledgers of OTS (Defendants object as irrelevant, no Bates number provided)
137. 210. September 16, 2010 email and new substitute note to Skokos showing that Westpac Development is the borrower (SK 110-13) (Defendants object as irrelevant)
138. 211. Suit against Pat Smith and Related Companies (Miami Dolphins owner) (SCC 790-800) (Defendants object as irrelevant, prejudicial)
139. 212. September 20, 2010 email from Houghtaling to Contogouris re "we've known Smith is a crook for some time" (SCC 0804) (Defendants object as irrelevant, prejudicial)
140. 213. September 20, 2010 email from Houghtaling to Lake and Moreno re Pat lied about the bank suit (MOR 3958) (Defendants object as irrelevant, prejudicial)
141. 218. September 28, 2010 profit and loss statement of OTS (NP1613) (Defendants object as irrelevant)
142. 223. E mail from Moreno to Smith re going radio silent on John September 29, 2010 (MOR 4400) (Defendants object as irrelevant, prejudicial)
143. 226. General Ledger of West Pac Resources for October 1, 2010 (PAC West 1074-93) (Defendants object to any entry or indication concerning any post-June 18, 2010 is irrelevant)
227. 227. October 5, 2010 email from Houghtaling to Baldwin re Spiro was right about Kevin and Pat (NP 2491-94) (Defendants object as irrelevant, prejudicial)
144. 233. November 17, 2010 email from Morcno enclosing BP retainer agreement with Gauthier firm (NP2434) (Defendants object as irrelevant)

145. 234. December 14-17, 2010 email string re departure of Moreno from OTS and scheme cooked up by Moreno and Smith to use Perucci money and borrow \$1.25 million from OTS for Moreno to pay Houghtaling's \$14 million buy out (MOR 3287-3300) (Defendants object as irrelevant, prejudicial and inadmissible evidence)
146. 236. December 23, 2010 email from Grigsby to Skokos re Pat Smith fraud (SK123) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
147. 237. December 23, 2010 email from Skokos to Grigsby re wire sent (SK124) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
148. 238. December 23, 2010 email from Grigsby to Skokos re details of fraud (SK125) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
149. 239. December 23, 2010 email from Skokos to Costner (SK127) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
150. 240. December 23, 2010 email from Skokos to Faulkner re no one told of Skokos' loan to OTS and Smith pocketed it (MOR 3931) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
151. 242. Skokos email to Grigsby re switch of notes (SK200) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
152. 243. Skokos December 29, 2010 email to Smith re \$15 million distribution and his demands (SK 206-07) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
153. 245. December 30, 2010 email Skokos to Smith the theft (SK210) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
154. 246. Grigsby email of December 30 re Skokos threatened criminal action (SK252) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
155. 251. January 7, 2011 resignation from Smith (SK304) (Defendants object as irrelevant)
156. 252. January 7, 2011 resolution authorizing creation of City National Bank account for OTS (MOR 86-87) (Defendants object as irrelevant)
157. 254. January 13, 2011 letter from Grigsby to Margaret George re refusal to share information re Pat Smith fraud (SK 310) (Defendants object as irrelevant, prejudicial)

158. 259. February 12, 2011 email from Smith to Grigsby re fry and grill Pat meeting (SK353-54) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
159. 260. February 14, 2011 email from Lake to Smith re his forged documents, unfounded checks and lies (SK 355) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
160. 261. 5/9/10 email Costner to Smith (Costner 623-624)(Defendants object as duplicate)
161. 262. 6/3/10 email Pierce to Smith (NP149-150) (Defendants object as irrelevant)
162. 263. 6/17/10 application to California Secretary of State (Rabo 71) (Defendants object as irrelevant)
163. 264. Hypo Real Estate v. Smith (Ex. 200) (Defendants object as irrelevant, prejudicial)
164. 265. ABC News Transcript (Ex. 209) (Defendants object as not authenticated hearsay)
165. 266. Morrison email to Suttles re contract date (BP 1638-1639) (Defendants object as not authenticated hearsay, misleading author unknown)
166. 267. Fitzgerald to Allen letter (BP 1346-1347) (Defendants object as not authenticated hearsay, misleading author unknown)
167. 268. March 19, 2011 draft letter from Skokos to Smith (SK390) (Defendants object as irrelevant, prejudicial)
168. 270. Settlement Agreement with Pat Smith by OTS (SK673-713) (Defendants object as irrelevant)
169. 271. May 22, 2011 email from Houghtaling to Lake re use of \$700,000 of OTS money by Blue Planet (SK766-67) (Defendants object as irrelevant, hearsay)
170. 273. June 8, 2011 email from Valobra to Houghtaling (NP540-41)(Defendants object as irrelevant and beyond relevant dates established by Magistrate Shushan)
171. 276. June 15, 2011 email from Houghtaling re miscalculation of royalty payments to Costner, Smith (SK932-934) (Defendants object as irrelevant and beyond relevant dates established by Magistrate Shushan)
172. 278. July 7, 2011 email from Valobra re Houghtaling correct about royalty (SK999-1008) (Defendants object as irrelevant)
174. 284. Houghtaling Ledger showing payments made to him by OTS or to buy him out (NP1616) (Defendants object as incorrect Bates number, hearsay)

178. 292. January 5, 2011 email from CCS re payments made to it (Defendants object as irrelevant)
179. 293. January 16, 2011 email from Costner to Valobra (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
180. 294. 6/15 email Smith to Jouandot re agreement to pay \$600 per hour (NP362) (Defendants object as irrelevant)
183. 297. Rabobank account opening documents (Defendants object as irrelevant)
184. 298. 3/19/11 email Lake to Skokos (SK391) (Defendants object as irrelevant, prejudicial)
185. 299. July 2, 2010 email between Houghtaling, Smith, Valobra, Costner (NP2377) (Defendants object as irrelevant)
186. 300. July 21, 2010 email between Valobra, Costner, etc. (NP2378-79) (Defendants object as irrelevant)
187. 301. July 23, 2010 email between Pierce, Houghtaling and Jaundot (NP 2380) (Defendants object as irrelevant)
189. 303. February 15, 2011 email from Margaret George (Smith 1074) (Defendants object as irrelevant)
190. 304. Blue Planet Subscription documents (Smith 1087-97) (Defendants object as irrelevant)
191. 305. Any document produced in discovery (Defendants object does not sufficiently identify and exhibit)
192. 297. Any document subsequently produced in discovery. (Defendants object does not sufficiently identify and exhibit)
193. 298. Any deposition exhibit. (Defendants object does not sufficiently identify and exhibit)
194. 299. Any and all exhibits listed by any other party. (Defendants object to the extent that exhibit listed by other party may be subject to objection)
195. 300. November 29, 2010 email from Rod Lake to Patrick Smith, Smith 2257 (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
196. 301. Real Estate Agreement Prudential Gardner and Eleanor Farnsworth (Defendants object as irrelevant)

197. 302. Assignment of Louisiana Residential Agreement between Pat Smith and George Villere (Defendants object as irrelevant)
198. 303. Correspondence to Bret Sheldon from Pat Smith dated May 19, 2012 re: Initial Proposal (Defendants object- no Bates number)
200. 305. Business Entity Detail for Ocean Therapy Solutions (RABO000159) (Defendants object as irrelevant)
201. 306. Email from Shelley to M. George re: Westpac (AS 5320 – 5323) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
202. 307. Email from Grigsby to Skokos re: Meeting Monday 3/21/11 re: OTS / Blue Planet (SKOKOS 00394-00395) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
203. 308. Beverly Hills Receipt (OTS000064) (Defendants object as irrelevant)
204. 309. Email from Costner to Fantaci, Chuck and Houghtaling re: OTS / Shaw NDA (Costner 000122) (Defendants object as irrelevant)
206. 311. Email from Smith to M. George re: WPD Expenses (OTS 000800) (Defendants object as irrelevant, not authenticated)
207. 312. Email from Grigsby to Smith re: hurry (Smith-00500) (Defendants object as irrelevant)
208. 313. Email from Smith to Grigsby, Costner, Houghtaling, Moreno, Skokos and Valobra re: Ocean Therapy Solutions (SKOKOS 00305) (Defendants object as irrelevant, prejudicial)
209. 314. Wire transfer demand by Ted Skokos (SKOKOS 00222-00226) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
210. 315. Limited Liability Company Banking Resolution between OTS and First NBC Bank (NP 001569-1572; NP 001222-1226) (Defendants object to NP 1222-26 not authenticated, irrelevant – no objection to NP 1569-72)
211. 316. Email from Grigsby to Houghtaling re: OTS (SKOKOS 00935-00938) (Defendants object as irrelevant, prejudicial, inadmissible character evidence, beyond dates established by Magistrate Judge Shushan)
212. 317. Email from Grigsby to Houghtaling re: OTS (SKOKOS 00958-00964)) (Defendants object as irrelevant, prejudicial, inadmissible character evidence, beyond dates established by Magistrate Judge Shushan)

213. 318. Email from Vangiler to Skokos re: Ted Skokos Blue Planet Solutions, Ocean Therapy Solutions (SKOKOS 00513) (Defendants object as irrelevant, prejudicial, inadmissible character evidence, beyond dates established by Magistrate Judge Shushan)
214. 319. Email from Grigsby to Faulkner re: OTS / Blue Planet / WestPac Resources (SKOKOS 00371) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
215. 320. Email from Grigsby to Faulkner re: OTS (SKOKOS 00220) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
216. 321. Email from Johnston to Smith, Houghtaling, Pierce and Mouton re: Communication stream – info@ots.org (NP 000999) (Defendants object as irrelevant, not authenticated)
217. 322. Email from Grigsby to Houghtaling re: CEO of OTS (SKOKOS 00858-00860) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
219. 324. Email from Smith to Houghtaling and Costner re: OTS Secretary of State (Costner 000751-00753) (Defendants object as irrelevant)
220. 325. Talking Points – Kevin Costner associated centrifuges (BP 1491-1492) (Defendants object as hearsay, not authenticated, misleading, author unknown)
221. 326. Email from Grigsby to Faulkner re: Resignation (AS 4751-4752) (Defendants object as irrelevant, prejudicial)
222. 327. Email from Grigsby to Faulkner re: Meeting at your office (AS 4034) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
223. 328. Email from Grigsby to Faulkner re: OTS (AS 5053-5054) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
224. 329. Email from Grigsby to Smith, Costner, Houghtaling, Moreno, Skokos and Valobra re: Ocean Therapy Solutions, LLC (MOR-02249) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
225. 330. Email from Houghtaling to Smith re: Meeting (NP 002105) (Defendants object as irrelevant hearsay, not authenticated)
227. 332. Correspondence to Moreno from Houghtaling (Smith-01155) (Defendants object as irrelevant, prejudicial)
228. 333. Email from Houghtaling to Smith, Costner and Valobra re: Corporate Meetings (Smith-01330) (Defendants object as irrelevant, prejudicial)

229. 334. Email from Smith to Houghtaling (NP 002851) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
230. 335. Email from Smith to Houghtaling, Costner, Moreno and Valobra re: bills (MOR-2136) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
231. 336. Email from Preca to Upchurch re: WestPac Resources & Ocean Therapy Solutions – Statements of Information (Smith-01291-01295) (Defendants object as irrelevant)
232. 337. Email from Smith to Jouandot re: GHW Invoice to OTS (NP 000352) (Defendants object as irrelevant)
234. 339. Email from Jouandot to Smith re: Ein# (NP 000423) (Defendants object as irrelevant)
235. 340. Email from Houghtaling to Jouandot re: Invoices for 10 ea V20's and V10 & V20 unit in LA (NP 000441) (Defendants object as irrelevant, not authenticated, misleading)
236. 341. Email from Lake to Smith re: Royalty Distributions (Smith-02151) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
237. 342. Email from Jouandot to Bates re: Invoices (NP 002653) (Defendants object as irrelevant, not authenticated)
238. 343. Email from Houghtaling to Smith re: Bank Records (NP 002836) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
239. 344. Email from Jouandot to Smith re: internet access to OTS bank account (NP 002769) (Defendants object as irrelevant)
240. 345. Email from Jouandot to Houghtaling re: OTS Ledger (NP 002685) (Defendants object as irrelevant)
241. 346. Meeting at Shelly's office (SKOKOS 00351-00352) (Defendants object as irrelevant, prejudicial, inadmissible character evidence)
242. 347. Text Messages (PacWest 1031) (Defendants object as irrelevant)
243. 348. Pat's Business Card Expenses (AS 1393 – 1401) (Defendants object as irrelevant, prejudicial)
244. 349. Ocean Therapy Solutions Reconciliation Detail (Defendants object as irrelevant, no Bates number)

245. 350. Email from Houghtaling to Spyro re: Your request for your Hotel celebrity stuff (NP 002474) (Defendants object as irrelevant, prejudicial)
246. 351. Email from Pierce to Blanchard re: wire today (NP 002432) (Defendants object as irrelevant)
247. 352. Email from Houghtaling to Spyro re: Urgent (NP 002476-002477) (Defendants object as irrelevant, prejudicial)
248. 353. Email from Houghtaling to Bates re: Rabobank Withdrawal Letter (NP 002553-002554) (Defendants object as irrelevant)
249. 354. Email from Costner to Valobra re: Ocean Therapy Solutions(Defendants object as irrelevant, prejudicial, inadmissible character evidence)
250. 355. Email from Jim Fantaci (Costner 000542-00543) (Defendants object as irrelevant)
253. 358. Email from Fantaci to Grigsby and Bates re: OTS Articles of Organization (Costner 000373-000380) (Defendants object as irrelevant)
254. 359. Email from Houghtaling to Suttles re: President's Visit (Costner 000497-000498) (Defendants object as incomplete; need Costner 495, 496)
255. 360. Email from Costner to Smith re: Westpac – UCLA project (Costner 000625-000626) (Defendants object as irrelevant)
256. 361. Email from Lake to Costner re: Immediate Strategy (Smith-02253) (Defendants object as irrelevant)
259. 364. Texts Messages between Spyro and Jon (N0495404) (Defendants object – unknown Bates number)
260. 365. Messages with Pat Smith (Costner 000941) (Defendants object as duplicate)
266. 371. Correspondence to Houghtaling from Smith effective June 14, 2010 (Smith 00493 – Smith 00494)
267. 372. First Amendment to Operating Agreement of Ocean Therapy Solutions, L.L.C. (Smith 00495 – Smith 00497) (Defendants object as irrelevant)
268. 373. Rabobank's Limited Liability Company Authorization Resolution Authorization Resolution (RABO 000170 – 000171) (Defendants object as irrelevant)
271. 376. Email from Morrison to Chandran re: Talking Points (BP 00001346) (Defendants object as hearsay, not authenticated, misleading author unknown)

272. 377. Email 6-10-10 Grigsby to Smith re: Agreement (Defendants object as irrelevant, attorney client privileged)
273. 378. Email 6-11-10 Grigsby to Smith re: Agreement(Defendants object as irrelevant, attorney client privileged)
280. 385. Correspondence to Houghtaling from Smith effective June 14, 2010 signed by Smith (Smith 00023 – Smith 00024)
281. 386. Email from Fantaci to Grigsby re: draft amendment to the OTS Operating Agreement (NP 000438 – NP 000440)
283. 388. Email from Lake to Smith and Costner re: You have 24 hours (Skokos 000355) (Defendants object as irrelevant, attorney client privileged)
284. 389. Email from Grigsby to Houghtaling re: OTS (Skokos 00973 – Skokos 000982) (Defendants object attorney-client privileged, irrelevant, prejudicial and inadmissible character evidence)
285. 390. Email from Grigsby to Faulkner re: Meeting with Rod et al (AS 4808 – AS 4810) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
286. 391. Email from Grigsby to Lake re: Resignation (AS 4750 – AS 4752) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
287. 392. Email from Grigsby to Faulkner re: OTS Settlement Agreement (Skokos 00673 – Skokos 713) (Defendants object as irrelevant)
288. 393. Skokos 315 (confidential portion of deposition) (Defendants object as attorney client privileged, irrelevant, prejudicial and inadmissible character evidence)
290. 395. Email from Grigsby to Faulkner re: Kevin Costner Check (AS 4920 – AS 4921) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
291. 396. Email from Smith to Grigsby and Moreno re: Blue Planet Solutions LLC/ Subscription Agreement (MOR 06548 – MOR 06622) (Defendants object as irrelevant)
292. 397. Email from Shelley to Costner re: Pat Smith (AS 3693) (Defendants object as irrelevant)
293. 398. Email from Shelley to Smith and Bates re: tax implications (AS 3789) (Defendants object as irrelevant)
295. 400. Email from Shelley to Alvarez re: audit meeting your offices next week (AS 0626 – AS 0627) (Defendants object as irrelevant)

296. 401. Email from Lake to Alvarez re: Ocean Therapy Solutions, Westpac Resources, Blue Planet Solutions accounting (AS 0450 – AS 0455) (Defendants object as irrelevant)
297. 402. Email from Lake to Alvarez and Shelley re: Back up given by Pat (AS 516) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
298. 403. Bill to Ocean Therapy Solutions from WestPac Resources (AS 1737 – AS 1738) (Defendants object as irrelevant)
300. 405. Email from M. George to Smith re: Legal Bills and the Water Treatment Bills to Morino and Chouset (Smith 02262 – Smith 02263) (Defendants object as irrelevant)
302. 407. Email from Lake to Smith and Costner re: You have 24 hours (Skokos 00355) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
303. 408. Rabobank's Limited Liability Company Authorization Resolution Authorization Resolution (RABO 000160 – RABO 000161) (Defendants object as irrelevant)
304. 409. Email from Shelley to Alvarez re: tax problem no way to work around (AS 704) (Defendants object as irrelevant)
305. 410. Email from Shelley to Costner re: Westpac checks (AS 3832) (Defendants object as irrelevant and beyond relevant dates by Magistrate Judge Shushan)
306. 411. Email from Lake to Shelley re: engineering mike's distribution (AS 3134) (Defendants object as irrelevant)
307. 412. Pyramid re: British Petroleum Contracts \$\$ (AS 3558 – 3559) (Defendants object as irrelevant)
308. 413. Email from Bates to Houghtaling re: WestPac Resources Invoice (PacWest 275 – PacWest 276) (Defendants object as irrelevant)
309. 414. Rabobank Account Agreement for Ocean Therapy Solutions LLC (RABO 000153 – RABO 000187) (Defendants object as irrelevant)
310. 415. Written Consent of the Members of Ocean Therapy Solutions, LLC (RABO 000276 – RABO 000277)
311. 416. Ocean Therapy Solutions, LLC State of California Application for Registration and Rabobank Statements (RABO 000070 – RABO 000118) (Defendants object as irrelevant)
312. 417. Rabobank Transfer Slips (RABO 000119 – RABO 000124) (Defendants object as irrelevant)

314. 419. Correspondence to Rabobank from Houghtaling re: releasing wire (NP 001189 – NP 001188) (Defendants object as irrelevant and hearsay)
315. 420. Rabobank Account Agreement for Ocean Therapy Solutions LLC (RABO 000153 – 000154) (Defendants object as irrelevant)
316. 421. Rabobank's Limited Liability Company Authorization Resolution (RABO 000160 - 000161) (Defendants object as irrelevant)
317. 422. Rabobank's Wire Transfer Request (RABO 000298) (Defendants object as irrelevant)
328. 433. Exhibit 122 from Lake's Deposition Missing (Defendants object as no Bates number provided, description of document is incomprehensible)
329. 434. Exhibit 123 from Lake's Deposition Missing (Defendants object as no Bates number provided, description of document is incomprehensible)
330. 435. Email from Bates to Moreno re: OTS Financial Statements (MOR 00089 – MOR 00091) (Defendants object as irrelevant)
331. 436. Exhibit 128 from Lake's Deposition Missing (Defendants object as no Bates number provided, description of document is incomprehensible)
335. 440. Aspen Team Meeting Agenda (MOR 00830 – MOR00833) (Defendants object as irrelevant)
336. 441. Email from Lake to Shelley re: CCS Payment Received (AS 3002 – AS 3003) (Defendants object as irrelevant)
338. 443. Rabobank Bank Statement for WestPac Development 04-30-10 thru 05-28-10 (Smith 00777 – Smith 00778) (Defendants object as irrelevant)
339. 444. Ocean Therapy Solutions re: Wire Instructions for \$1,000,000.00 (OTS 000425) (Defendants object as irrelevant)
340. 445. Email from Bates to M. George re: CINC Checks Today (AS 1466) (Defendants object as irrelevant)
342. 447. Email from Lake to Smith re: 80/20 investment raise with Perrucci (Smith 2268; MOR-02520; MOR-3931; OTS 000897; SKOKOS_00232-00236) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
343. 448. Email from Lake to Smith re: BPS – Private Placment Doc – Draft (Smith 2269) (Defendants object as irrelevant)

344. 449. Email from Lake to Smith re: books and records (SKOKOS 00389) (Defendants object as irrelevant, prejudicial and inadmissible character evidence)
345. 450. Email from Lake to Grigsby, Costner, Moreno, Shelley and Alvarez re: Distribution Amounts (MOR-02520) (Defendants object as attorney client privilege)
346. 451. Email from Lake to Per Hansen re: Reception at ONS (Smith 2551) (Defendants object as to relevance)
347. John Houghtaling's AT&T phone bills (NP 001502-1518) (No objection by Defendants)
348. Photographs of John Houghtaling's St. Charles Avenue house. (Defendants object as to relevance)

General Objections to Plaintiffs' Exhibits and Reservations of Rights:

Defendants reserve the right to object to any exhibit not properly authenticated and/or explained by appropriate testimony or other evidence at trial. Defendants also reserve the right to make or withdraw an objection to any of plaintiffs' exhibits in response to the Court's future rulings on evidentiary issues. Defendants also reserve the right to maintain appropriate hearsay objections depending upon the context in which the evidence is proffered. Defendants object generally to any exhibit generated or concerning any events after March 20, 2010, the relevance deadline established by Magistrate Judge Shushan (reserving the right to challenge any and all of plaintiffs' exhibits for relevance notwithstanding the date of creation or subject matter.)

Subject to the general objections and reservations of rights, defendants respond to plaintiffs' exhibit list as follows:

B) For Defendants:

Without Objection:

1. 5/4/10 Email from M. Manzella to B. Sheldon (933-934); 1/17/11 letter from T. Madden to B. Sheldon re Letter of Intent to Test.. V20 Centrifuge (935-939)
2. 5/5/10 letter from T. Madden to B. Sheldon re: Letter of Intent to Test... V20 Centrifuge executed by Contogouris and Sheldon

3. Right of First Refusal and Exclusive Licensing Agreement executed by Contogouris and Sheldon on 5/13/10
4. Articles of Organization and Initial Report of Ocean Therapy Solutions, L.L.C. filed 5/10/10
5. Operating Agreement of Ocean Therapy Solutions, L.L.C. dated 5/13/10 executed by Contogouris, Baldwin, Valobra, Houghtaling, Levy and P. Smith
6. Operating Agreement of United Centrifuge of Louisiana, L.L.C. dated 5/13/10 executed by Houghtaling and P. Smith
7. 5/14/10 email from C. Jouandot to Houghtaling, Grigsby, LeBourgeois and Contogouris attaching executed Articles of Organization of Untied Centrifuge of Louisiana, L.L.C.
8. 5/16/10 email from Houghtaling to Contogouris; cc P Smith, D Roberts re: OTS letter to BP (email string)
9. 5/17/10 email from Martin, Ottaway, van Hemmen & Dolan, Inc. to Contogouris attaching Proposal and Resumes
10. 5/25/10 email from Contogouris to M. Pierce re: investment by a Michael Crewz
11. 5/20/10 email from Bates to Roberts, Houghtaling, Mouton, Smith and Contogouris (29 pages of email; questioned about bates # 351))
12. Email string begins 5/28/10 from Houghtaling to Morrison, cc: Smith, Costner, "buddycal", Roberts, Ortemond, Contogouris re: blue water test
13. 5/29/10 email from Contogouris to Smith, Houghtaling, Jouandot with bcc to Roberts (multiple copies of same email within the 7 pages); re: cash call
14. 5/29/10 email string from Bates to Smith, Contogouris, Houghtaling re: \$3 million cash call (1-4); 5 is the agreement (not executed)
15. 5/29/10 email string from Bates to Contogouris, Houghtaling and Smith re: \$1 million cash call; with non executed agreement
16. 6/1/10 email from Smith to Houghtaling, Contogouris and Costner re: money
17. 6/2/10 email string from Houghtaling to Contogouris, cc: Baldwin re: Urgent -- need to speak with you; email string begins 5/27 re: information sent to BP
18. Purchase Agreement for Membership Interests (not executed); 206 - email from Manzella to Sherman, Fantaci, Smith

19. 5/31/10 Email from Contogouris to Smith, Houghtaling and Roberts (multiple copies)
re: OTS Update
20. 6/3/11 email from Contogouris to Melissa, Jouandot, Houghtaling, Levy, Baldwin re:
proposed revised cash call (attached)
21. 6/3/10 email from Contogouris to Smith, Houghtaling, Jouandot, Levy, bcc: Roberts re:
asking for information from Chuck
22. 6/7/10 email from M. Manzella to Fantaci, Sherman, Grigsby, cc Madden and
Contogouris re: transfer of percentage of interest from Contogouris to Westpac
23. 6/8/10 emails between Contogouris and Grigsby, cc Smith re: release and indemnity
24. 6/8/10 emails between Grigsby and Contogouris, cc Smith re; release and indemnity
25. 6/8/10 emails regarding wire transfer instructions
26. 6/8/10 emails between Grigsby, Manzella, Contogouris, Madden, Smith and
Houghtaling re: revised transfer of interest - Contogouris to WestPac, Baldwin to
Houghtaling
27. 6/9/10 continuation of emails between Grigsby, Contogouris, Smith rc: revisions to
draft agreement
28. 6/10/10 continuation of emails between Grigsby, Contogouris, Smith re: Transfer
Agreement
29. 6/10/10 series of emails between Contogouris and Bates, cc Smith re: wire transfer and
Transfer Agreement
30. 6/10/10 continuation of emails re: wire transfer and agreement
31. 6/10/10 continuation of emails re: wire transfer; non-executed LLC Membership
Interest and Indemnity Agreement
32. 6/11/11 - executed Transfer, Withdrawal, Release and Indemnity Agreement
33. 6/18/10 email from Madden to Grigsby attaching executed Assignment and
Assumption of Membership
34. 6/9/10 email from Contogouris to Houghtaling rc: agreement being with westpac and
not OTS
35. "All (Redacted) Text Messages: from Contogouris' cell phone. Message from 6/5/10
36. "Texts Between Spyro and Jon" looking specifically at 1872, 12/14/10

37. 5/7/10: Executed Joint Venture Agreement by Houghtaling, Valobra, Motwani, Contogouris, Baldwin, Pandit (documentary)
38. 5/4/10: Executed Joint Venture Agreement - Contogouris, Baldwin, Houghtaling, Valobra (Louisiana Centrifuge LLC)
39. 5/7/10 - Executed Joint Venture Agreement - Houghtaling, Sanderford, Valobra, Levy, Baldwin (documentary)
40. 5/7/10 - Executed Joint Venture Agreement - Houghtaling, Valobra, Baldwin, Contogouris (Louisiana Centrifuge LLC)
41. 6/12/10 email from Houghtaling to Contogouris, cc: Baldwin re Will to Drill Documentary ("threatened to hurt and sue me")
42. Copy of lawsuit brought by Levy against The Will to Drill LLC, Houghtaling and Baldwin
43. 6/8/10 WestPac - CINC Agreement executed by Sheldon only
44. 6/8/10 email from Houghtaling to Sheldon re: letter of intent for 32 V20s
45. 6/10/10 email from Houghtaling to Spirako, cc: Sheldon et al re: Spiro having no authority to act on behalf of OTS
46. 6/10/10 email from Sheldon to Jouandot and Smith re: invoices for V20's and V10
47. 6/10/10 invoice for deposit of 10 V-20's; marked "pd 6-16"
48. 6/16/10 wire transfer for \$1,250,000 from Rabobank to CINC
49. 6/15/10 email from Maxwell to Sheldon re: Definitive agreement
50. 8/12/10 email from Houghtaling to Sheldon re: outstanding invoices
51. Spreadsheet: 32 BP V20
52. CINC Industries - Account Quick Report
53. Screen shot of cleared check of \$400,000
54. Invoices issued to OTS during 2010
55. 6/5/10 email from Spirako to Sheldon attaching Transfer, Withdrawal, Release and Indemnity Agreement (not executed)
56. 6/1/10 email from Melissa Pierce to Spirako and Karasis attaching rental agreement (two V20s)

57. 6/4/10 email from Houghtaling to CINC INC re: update
58. 11/15/11 fax to Sheldon from Larson attaching bank statements from 5/28/10 - 6/30/10 showing wire payment
59. 6/10/10 Press Release: BP To Proceed with Costner Centrifuge Devices to Cleanup Gulf Oil Spill
60. 6/2/10 email from Mouton to Houghtaling re: what was said (dealing with centrifuge)
61. 6/3/10: Update: Testing in Ocean Therapy Solutions Centrifuge Device (Houghtaling)
62. 6/7/10 email from Mouton to Houghtaling re: revised statement - his publicist needs to see this first
63. 6/8/10 email from Mouton to Houghtaling re: houma courier story - Costner machine clogs during test; scientist says it won't help
64. "Talking Points"; "Questions"
65. 329: 6/15/10 email from Mouton to Houghtaling re: first time i've seen a BP quote, albeit anonymously
330: 6/15/10 email from Mouton to Houghtaling re: bp quote
331-332: 6/15/10 emails from Mouton to Houghtaling re: two questions and interview with DC radio
66. 6/12/10: WWL.com article by Jay Wise re: Kevin Costner's anti-oil machines to be deployed
67. DJS Talking Points - ocean Therapy Solutions New Conference; Friday, June 18, 2010
68. 6/2/10 email from Smith to Houghtaling, cc: Bates, Johnston, Maxwell and J. Smith re: OTS draft proposal to go to Richard Morrison; draft is dated 5/27/10
69. Pulled from abcnew.go.com: Transcript: Kevin Costner on His New Machine to Clean Oil Spills...
70. Fully executed Letter of Intent between OTS and BP
71. 6/15/10 letter from Suttles to Smith enclosing signed copies of the Agreement between BP and OTS; fully executed Agreement
72. Text messages between Costner and Suttles from June 14 - July 19, 2010
73. 6/8/10 email from Suttles to Houghtaling, Smith, bcc: Suttles, Morrison, Aguiluz and Westall re: Letter of Intent w/ attached draft

74. Draft Letter of Intent with handwritten notes
75. 6/14/10 email from Smith to Suttles, Morrison cc: Costner, Houghtaling re: OTS Contract w/agreement attached
76. 6/14/email strong between Morrison, Smith, Suttles, Costner and Houghtaling re: OTS Contract
77. Mid State Bank & Trust, Period Ending 05/28/2010 Reconciliation Detail for Westpac Development Company, LLC
78. June 30, 2010 Rabobank statement for Westpac Development LLC
79. Mid State Bank & Trust, Period Ending 06/30/2010 Reconciliation Detail for Westpac Development Company, LLC
80. 5/29/10 \$1M Cash Call executed by WestPac
81. 6/4/10 email from Bates to Smith attaching the 2 cash calls to be sent out
82. 6/10/10 email from bates to Smith; cc: Maxwell re: Cash call
83. 6/17 OTS wire instructions for \$1,250,000.00 to be transferred from Rabobank to Westpac
84. 6/16/10 emails between Morrison and Westall, Brad, Suttles, Smith re: OTS contract and transfer of USD 18,101,600
85. 6/10/10 "Confirmation of Transaction Notice" from Rabobank of wire transfers from SKOKOS to Westpac account
86. 6/18/10 "Confirmation of Transaction Notice" from Rabobank of wire transfers from Contogouris to Westpac account
87. 6/16/10 "Confirmation of Transaction Notice" from Rabobank of wire transfer from CINC to Westpac account
88. 7/16/10 OTS Rabobank checking account register from 1/1/20 - 7/16/10
89. OTS - Transaction Detail from 6/17/10 -7/7/10
90. 8/31/10 Rabobank statement for OTS Commercial Checking Account
91. 5/22/10 email from Houghtaling to Smith re: WPR Invoice 5.21.2010
92. 6/3/10 email string from Grigsby to Maxwell, cc Smith re: Westpac / CINC Industries, Inc. - LOI

93. 9/16/10 email from Bates to SKOKOS, cc Smith, Wells attaching executed promissory note between Westpac Development and The Ted and Shannon SKOKOS Foundation
94. 5/9/10 email from Costner to Smith re: update/timeline
95. 5/13/10 fully executed Right of First Refusal and Exclusive Licensing Agreement
96. 5/13/10 fully executed Operating Agreement of Ocean Therapy Solutions, L.L.C.
97. Press Briefing: BP Approves Use of Ocean Therapy Oil Separation Device
98. 6/3/2010 email from Houghtaling to Smith re: What are we doing with the sale of the membership interest?; string
99. 6/30/2010 Rabobank statement to Smith
100. 6/15/2010 email from Smith to Jouandot and Houghtaling re: Expenses
101. 6/14/2010 email from Smith to Grigsby re binding agreement
102. 6/15/2010 email from Smith to Houghtaling, Costner re: Congratulations John...
103. 6/15/2010 email from Smith to Houghtaling and Costner re: OTS State of Louisiana
104. 6/16/2010 email string from Contogouris to Smith cc Baldwin, Grigsby, Madden re: agreement
105. 6/11/2010 fully executed Agreement Ocean Therapy Solutions, LLC and BP Exploration & Production
106. 6.15.19 email from Smith to Grigsby, Costner, Houghtaling, Johnston, Bates, Maxwell, J. Smith attaching executed copy of contract (sent by Morrison)
107. 5/22/10 email string from P. Smith to Westall re: Kevin Costner/ (note first email is from Westall to Wallace and Detloff which has been redacted)
108. 5/22 Handwritten notes "Weathered Oil"
109. 6/14/10 email string: R. Morrison to Smith, Suttles, cc Costner, Houghtaling re OTS Contract
110. Partial email from Smith to Morrison and Westall indicating he has sent his comments re the contract to Dan to review
111. 6/15/10 email from Grigsby to Westall, Morrison cc Houghtaling, Costner, Bates Smith re: contract comments
112. Redline of Agreement between Ocean Therapy Solutions, Inc. and BP

113. 5/24/10 email from Roberts to Contogouris re: sampling support
114. 5/24/10 email string from Roberts to Contogouris and Smith re: Day 1 testing follow up
115. 5/25/10 email from Smith to Roberts and Lake#268 re: john H. comment
116. 5/27/10 email string from Robert so Smith re: H2S all stop
117. 6/2/10 email string from Houghtaling to Roberts re: Wednesday update
118. 6/4/10 email from Groseth to Lanclos, Alexander, S; "potsie"; cc Arceneaux, M; "thundercranes", Brooks, Robert re: Centrifuge Test
119. 6/6/10 email from Robert so Morrison, cc: Groseth, Brooks, L. Ortemond, "lance" re: update
120. 6/7/10 email from Roberts to Contogouris re: sorry I couldn't talk ("until you are all set")
121. 6/13/10 email from Roberts to Houghtaling re: update Sunday afternoon
122. 6/13/10 email from Robert so Smith re: first report
123. 5/26/10 email from Roberts to Contogouris re: Ocean Therapy Solutions "test is off again"
124. 5/29/10 email from Contogouris to Smith, Houghtaling, Jouandot bcc: Roberts re: value of services/costs for your proposed true-up
125. 6/1/10 email from Contogouris to Roberts re: Monday call
126. 6/1/10 email from Contogouris to Smith bcc Roberts re: "it is essential u call me"
127. 6/2/10 email from Contogouris to Roberts re: agreement
128. 6/4/10 email from Contogouris to Chris Contogouris re: purchase agreement of membership interests forwarded email from Madden
129. 6/5/10 email from Roberts to Contogouris re: today
130. 6/14/10 email from Contogouris to Roberts re: conference call w/Ted Field
131. 6/14/10 email from Roberts to Contogouris re: conference call w/ Ted Field
132. 6/16/10 email from Roberts to Contogouris re: order
133. 6/4/10 C. Contogouris email to Moore cc: Spyro, Roberts re: clean up tests with BP

134. 6/25/10 email string from Roberts to Contogouris re: BP/Gulf Solution - Via Jerry & Susan Cohen
135. 6/24/10 email string from Roberts to Smith re Ocean Therapy Update
136. 5/14/10 email from Roberts to M. Roberts cc: Contogouris re: Thunder response
137. 6/3/10 email from Contogouris to Smith, Houghtaling, Jouandot, Levy re: "transparent cram down"
138. 6/12/10 email string from Roberts to "brooksto", Brian Musselman, cc: Noly Alario, Shane Bird, Todd Gentile, Carl Annessa, Morrison re: revised Ops Procedures
139. 6/12/10 email from Roberts to Smith, Houghtaling, Lake Contogouris re: energy 8001 cleared to sail!
140. 6/12/10 email from Houghtaling to Roberts re: Energy 8001 Cleared to sail
141. 7/3/10 email from Roberts to C. Contogouris, S. Contogouris re: BP "Oil Spill Death Spiral"
142. 6/5/10 email from Roberts to Smith, Leon Ortemond, Hoek re: call
143. 6/5/10 email from Roberts to Smith, Houghtaling, Contogouris, Lake re: update
144. 6/6/10 email from Roberts to Smith, Houghtaling, Lake, Contogouris re: conference call
145. 6/8/10 email from Roberts to Groseth re: thank you
146. 5/29/10 email from Contogouris to Roberts re: value of services/costs for your proposed true-up
147. Handwritten notes
148. 6/14/10 email from Smith to Suttles, Morrison, Costner and Houghtaling re: OTS Contract; attaching agreement
149. 6/9/10 email from Morrison to Smith, Suttles, Houghtaling re: Letter of Intent
150. 6/11/10 executed Agreement between OTS and BPEP
151. 2/14/1 email from George to Smith forwarding draft letter
159. 9/16/2010 email from Bates to Skokos and attachment transmitting promissory note
160. 2/12/2010 email from Grigsby to Lake cc Costner, Skokos re meeting with Rod; string
161. 6/11/2010 email string from Contogouris to Sheldon re: potential CINC contract

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162. 11/16/10 email from George to Smith re: legal bills and the water treatment bills to Moreno and Choicest (chart showing 3/1/10 - 10/31/10)
163. May 21, 2010, June 1, 2010 and June 17, 2010 bills to OTS from WestPac Resources
164. Kevin Costner Expense Reimbursement
165. 6/30/10 Rabobank statement re OTS (may be a duplicate of #92)
166. 6/4/10 email from Melissa to Grigsby sending Transfer, Withdrawal, Release and Indemnity Agreement
167. 6/17 and 6/18/10 email string, Grigsby, Houghtaling, Fanatic
168. 6/10 and 6/11/10 email string: Grigsby, Smith, Houghtaling and Sherman
169. 6/22/10 email from Morrison to Chandra
170. 5/29/10 email from Speak to Chris Contogouris
171. 5/31/10 email from S. Contogouris to Smith
172. 5/30 and 5/31/10 email string; C. Contogouris, Field, Houghtaling and Baldwin
173. 5/27, 5/30 and 6/2/10 email string, Whitney, Rido, Houghtaling and S. Contogouris
174. 6/2/10 email string; Houghtaling and C. Contogouris
175. 6/4/10 email: Madden, Smith, C. Contogouris and S. Contogouris
176. 6/3/10 email; C. Contogouris to Roberts
177. 6/5 and 6/6/10 and 2/8/11 email string: Madden, Dave, Jim, Spirako, C. Contogouris, Field and Baldwin
178. 5/31/10 email string from C. Contogouris to S. Contogouris, Houghtaling, Baldwin, Cohen, Cutrone re; article from NY Times titled BP Knew of Deepwater Horizon Safety Risks Almost a Year Ago
179. 5/29/10 email Bates to Smith re: OTS Cash call
180. 6/10/10 email string from Moore to S. Contogouris cc Overing, C. Contogouris re: oil recovery vessels
181. 6/10/10 email from C. Contogouris to Field, S. Contogouris, Baldwin re: Kevin Costner sells 32 oil spill machines to BP
182. 6/13/10 email from C. Contogouris to Field, S. Contogouris, Moore cc Overing re Feds order BP to devise quicker oil collection methods
183. 6/15/10 email from C. Contogouris to S. Contogouris cc Moore re: morning news - kevin on good morning america
184. 6/15/10 email from C. Contogouris to S. Contogouris cc Moore re: morning news - kevin on good morning america
185. 6/15/10 email from Moore to C. and S. Contogouris re: Kevin Costner
186. 6/2 and 6/10/10 email string, Harrison, Moore and S. Contogouris

- 187. 6/10/10 email string: Bergstrand and S. and C. Contogouris
- 188. 6/12/10 email Spirako to C. Contogouris, Field, and Moore; Thunder Response Group Letter of Intent Proposal to Jon
- 189. 6/2, 10, 11, 12, 14 and 15/10 messages and email; Harrison, Moore, S and C. Contogouris, Overing
- 190. 6/16/10 email string S. Contogouris to Smith
- 191. State of LA copy of Articles of Incorporation and Initial Report of Thunder Response, LLC
- 192. Operating Agreement of First Response Gulf Coast, L.L.C.
- 193. 6/14/10 email from C. Contogouris to Field
- 194. 5/29/10 email Bates to Smith re: OTS Cash call
- 195. 125: 5/27/10 email from Houghtaling to Smith, Costner re: article on nola.com
329: 6/1/10 email from Smith to Houghtaling, Costner, Lake cc: Bates, Johnston, Maxwell, Smith attaching draft proposal to go to Morrison (1259-1260)
- 196. 5/29/2010 email from Contogouris to P. Smith, Houghtaling and Jouandot re: Value of Services/costs for your Proposed True-up
- 197. 6/2/10 email strong from Houghtaling to Contogouris, cc: Baldwin re: Urgent -- need to speak with you; email string begins 5/27 re: information sent to BP
- 198. 6/14/10 email from Smith to Suttles, Morrison cc: Costner, Houghtaling re: OTS Contract w/agreement attached
- 199. 6/14/10 email from Smith to Suttles, Morrison cc: Costner, Houghtaling re: OTS Contract w/agreement attached
- 200. 6/8/10 email from Suttles to Houghtaling cc Smith, Morrison re Letter of Intent
- 201. 6/9/10 email string Grigsby to S. Contogouris attaching OTS Limited Liability Interest Sale Agreement (clean and redline)
- 202. 6/8/10 email string S. Contogouris to Smith re: Full release and indemnity

- 203. 7/12/10 email string from Roberts to Morrison
- 204. 7/1/10 email from Roberts to Morrison re hello from Greece
- 223. 5/27/10 email string from Roberts to Smith re H2S all stop
- 224. 5/25/10 email string from Smith to Roberts re: Retest Friday
- 225. 5/28/10 email from Roberts to Smith re: Boldmar request
- 226. 6/21/10 email from Roberts to Houghtaling, Hock re update

- 227. 6/21/10 email string from Roberts to Houghtaling, Hoek re update
- 228. 6/10/10 email from Roberts to Houghtaling re St. George trying to sell centrifuges in Gulf
- 230. 7/16/10 email from S. Contogouris to Roberts re skimmers and aluminum boats
- 231. 7/15/10 email from S. Contogouris to Roberts re: oil recovery vessels
- 232. 7/15/10 email string from Roberts to S. Contogouris re "The Beach Mower"
- 233. 7/14/10 email from S. Contogouris to Roberts re: skid unit
- 234. 7/15/10 email from S. Contogouris to Mazella cc Overing, Roberts re Conrad Shipyard
- 235. 7/14/10 email from S. Contogouris to Overing cc Roberts, Manzella re Hammerhead/Zamboni
- 236. 7/14/10 email string from S. Contogouris to Roberts re Skid Unit
- 237. 7/12/10 email string from Roberts to S. Contogouris re Tuesday
- 238. 7/12/10 email from Roberts to S. Contogouris re: westpac
- 239. 7/9/10 email from S. Contogouris to Roberts re Spartan
- 240. 7/7/10 email string from Robert sto S. Contogouris re Spartan/Blake Offshore
- 241. 7/5/10 email from S. Contogouris to Roberts re BP Oil Spill Death Spiral
- 242. 7/1/10 email from S. Contogouris to Roberts re: arrival Greece
- 243. 6/29/10 email from S. Contogouris to Roberts cc mark@offwallstreet.com re: Friday dinner
- 244. 6/29/10 email string from Roberts to S. Contogouris re: Thrustmaster Oil Spill Barges
- 245. 6/27/10 email string from Roberts to S. Contogouris re: hi; DR - Leon has tentative deal with/OTS that I have to be careful about
- 246. 6/16/10 email from S. Contogouris to Roberts re:- how'd it go? Did they really get 100m order?
- 247. 6/16/10 email form Roberts to S. Contogouris re: 32 machines for 100 days

248. 6/3/10 email from S. Contogouris to Smith, Houghtaling, Jouandot, Levy re: what are we doing with the sale of the membership interests?
249. 6/1/10 email string from S. Contogouris to Roberts re Monday call
250. 5/31/10 email string from S. Contogouris to Smith, Houghtaling re: Memorandum - OTS Update
251. 5/27/10 email string from Roberts to S. Contogouris re: Ocean Therapy Solutions
252. 5/17/10 email string from Roberts to S. Contogouris re Ocean Therapy Solutions
253. 5/27/10 email from Roberts to S. Contogouris re: Ocean Therapy Solutions
254. 5/26/10 email from Roberts to S. Contogouris re CINC contract
255. 5/24/10 email from Roberts to S. Contogouris re Sampling support
256. 5/24/10 email string from Roberts to S. Contogouris, Smith re: Day 1 testing followup
257. 5/20/10 email string from Roberts to S. Contogouris re 3 CINC units
258. Redline of transfer agreement changing buyer from Westpac to Smith
259. 6/7/10 email from Morrison
260. 6/8/10 email from Manzella to Grigsby cc S. Contogouris, Madden attaching revised transfer of interest agreement
261. 6/10/10 email from S. Contogouris to Grigsby, Smith, Madden, Manzella re: revised agreement in red plus comments
262. 5/10/10 email from C. Contogouris to S. Contogouris re: understandings
263. 5/17/10 email string from Vogel to C. Contogouris cc karyachts re: webisode proposal
264. 5/18/10 email from C. Contogouris to Baldwin cc; S. Contogouris re:"stephen called me"
265. 5/26/10 email from C. Contogouris to S. Contogouris re: confidential rough draft summary - without attachments or brochures - incomplete
266. 6/6/10 email from C. Contogouris to S. Contogouris, Baldwin fwd: hi ted
267. 6/6/10 email string from C. Contogouris to Field cc: S. Contogouris, Baldwin re: hi ted

268. 6/7/10 email string from C. Contogouris to S. Contogouris re: hi ted
269. 6/10/10 email from C. Contogouris to Field, S. Contogouris, Baldwin re: Kevin Costner sells 32 oil spill machines to BP
270. 6/11/11 email string from C. Contogouris to Overing cc: Moore, S. Contogouris re: oil recovery vessels
271. 6/11/10 email from C. Contogouris to S. Contogouris, Field, Baldwin, Moore re: John H. radio interview - "OTS doing 6 Million Gallons a day..."
272. 6/14/10 email from C. Contogouris to S. Contogouris attaching transcript from Costner interview; also on same page is 6/14/10 email from S. to Roberts re: setting up conference call with him and Field
273. 6/14/10 email from S. to C. Contogouris fwd 6/14/10 email from Roberts to S. Contogouris
274. 6/14/10 email from C. Contogouris to Field cc: S. , Roberts, Bergstrand re: conference call
275. 6/15/10 email string from C. Contogouris to S. Contogouris, Baldwin, Field re: Kevin Costner
276. 6/16/10 email string from S. Contogouris to C. Contogouris re: payments
277. Any exhibit listed by any other party
278. Any exhibit necessary for rebuttal
279. 6/10/10 email string from Contogouris to Smith, Houghtaling, Baldwin, Fantaci cc: Madden, Sherman re: Notice: Demand to Transfer 38% of Frak Levy shares to Contogouris and Baldwin; also attached are a non-executed LLC Membership Interest and Indemnity Agreement and a redline Transfer, Withdrawal, Release and Indemnity Agreement
280. 6/17/10 email string from Contogouris to Houghtaling re: The Movie
281. CONFIDENTIAL 8/19/2010 OTS resolution ratifying all prior Rabobank activity and the corresponding cover letter to Rabobank
282. CONFIDENTIAL 6/15/2010 Email string from Spyridon Contogouris to mark@offwallstreet.com re: work
283. CONFIDENTIAL 6/6/2010 Email string from Spyridon Contogouris to mark@offwallstreet.com re: deal

284. CONFIDENTIAL 5/15/2010 Email string from Spyridon Contogouris to Dave Roberts and mark@offwallstreet.com re: Sea Keepers
285. CONFIDENTIAL 5/18/2010 Email from mark@offwallstreet.com to Spyridon Contogouris re: work
286. CONFIDENTIAL 5/18/2010 Email string from Dave Roberts to Spyridon Contogouris mark@offwallstreet.com re: field testing of centrifuges
287. CONFIDENTIAL 6/19/2010 Email string from Spyridon Contogouris to mark@offwallstreet.com re: work
288. CONFIDENTIAL Thunder Response Group information sheet and "Items for Friday"
289. CONFIDENTIAL 5/29/2010 Email from Pat Smith to Dave Roberts, Pat Smith, John Houghtaling, Spyridon Contogouris, and "fstrcr98@aol.com" (with copy to multiple others) re: 2:00 PM Call
290. CONFIDENTIAL 5/29/2010 Email string from Dave Roberts to Pat Smith, John Houghtaling, Spyridon Contogouris, and "fstrcr98@aol.com" forwarding email re: Update on tank unloading/decon
291. CONFIDENTIAL 5/30/2010 Email from Lance Ortemond to multiple recipients re: D&L Plans for Sunday
292. CONFIDENTIAL 5/29/2010 Email from John Houghtaling to Dave Roberts (with copy to multiple others) re: Blue water test
293. 5/18/2010 OTS Resolution appointing John Houghtaling to act on behalf of OTS in connection with the Deepwater Horizon oil spill and British Petroleum
294. CONFIDENTIAL 5/20/2010 Email string from Dave Roberts to Debra Ramey (copying Tim Madden, mark@offwallstreet.com, Sarah Star and Spyridon Contogouris) re: Articles of Organization for Offshore Technology Management Company, LLC
295. CONFIDENTIAL 5/20/2010 Email string from Dave Roberts to Tim Madden (copying mark@offwallstreet.com, Sarah Star and Spyridon Contogouris) forwarding: For Discussion: Agreement between OTS and Ocean Tech Management
296. All documents produced by Jon Overing in response to the Subpoena Duces Tecum served on January 20, 2012
297. Letter from Houghtaling, dated August 13, 2010, authorizing Rabobank to send a wire to CCS
298. Letter from Ellehough, LLC, dated August 19, 2010, to Rabobank ratifying and authorizing the OTS account.

With Objection:

Plaintiffs reserve the right to object to any exhibit not properly authenticated and/or explained by appropriate testimony or other evidence at trial. Plaintiffs also reserve the right to make or withdraw an objection to any of Defendants' exhibits in response to the Court's future rulings on evidentiary issues. Plaintiffs also reserve the right to maintain appropriate hearsay objections depending upon the context in which the evidence is proffered.

Subject to the general objections and reservations of rights, defendants respond to Defendants' pre-trial witness list as follows:

152. Pleadings relating to the Bankruptcy of Stephen & Kenya Baldwin, *in globo*, No. 09-23296, U.S Bankruptcy Court, Southern District of New York (Objection by Plaintiffs on the grounds of lack of specificity and relevancy)
153. All financial documents produced by Contogouris, including those produced pursuant to Magistrate Shushan's Orders (Objection by Plaintiffs on the grounds of lack of specificity and relevancy)
154. All emails from Contogouris' AOL email account produced pursuant to Magistrate Shushan's Orders (Objection by Plaintiffs on the grounds of lack of specificity and relevancy)
155. Letter dated December 19, 2011 from Contogouris to Costner (Objection by Plaintiffs on the grounds of settlement communications and relevancy)
156. Email dated December 21, 2011 from Contogouris to Louis Alvarez (Objection by Plaintiffs on the grounds of settlement communications and relevancy)
157. Email dated December 22, 2011 from Contogouris to Franco Valobra (Objection by Plaintiffs on the grounds of settlement communications and relevancy)
158. Email dated December 31, 2011 from Contogouris to Michel Moreno (Objection by Plaintiffs on the grounds of settlement communications and relevancy)
205. 6/25/10 email from Roberts to Morrison re call (Objection on the basis of authenticity, foundation and hearsay)
206. 6/24/10 email from Morrison to Roberts (Objection on the basis of authenticity, foundation and hearsay)

207. 6/23/10 email from Roberts to Morrison re: update (Objection on the basis of authenticity, foundation and hearsay)
208. 6/24/10 email from Roberts to Erwin re update (Objection on the basis of authenticity, foundation and hearsay)
209. 6/28/10 email from Roberts to Erwin re update on project planning (Objection on the basis of authenticity, foundation and hearsay)
210. 6/22/10 email from Roberts to Morrison re OTS comments (Objection on the basis of authenticity, foundation and hearsay)
211. 6/19/10 email from Roberts to Erwin re Project Relief – Handover (Objection on the basis of authenticity, foundation and hearsay)
212. 6/16/10 email from Morrison to Roberts re deployed machines (Objection on the basis of authenticity, foundation and hearsay)
213. 6/16/10 email string from Morrison to Lance, Ortemond, Hormbeck, Annessa, Paons, Roberts, Brooks, Groseth, Musselman, Ortemond re communication re: press conference - OTS/BP (Objection on the basis of authenticity, foundation and hearsay)
214. 6/13/10 email string from Brooks to Lane, Daige, Ortemond, LeBlanc cc Groseth, Roberts, Morrison re: Hammerhead 7 E-8011 vessel preliminary integration requirements (Objection on the basis of authenticity, foundation and hearsay)
215. 6/11/10 email from Roberts to Morrison re: ECO and HOS (Objection on the basis of authenticity, foundation and hearsay)
216. 6/9/10 email from Morrison to Roberts re: call (Objection on the basis of authenticity, foundation and hearsay)
217. 6/9/10 email from Roberts to Morrison re training (Objection on the basis of authenticity, foundation and hearsay)
218. 6/7/10 email from Morrison to Musselman cc Roberts summary of costs so far (Objection on the basis of authenticity, foundation and hearsay)
219. 6/7/10 email from Groseth to thundercranes, lande et al cc; Morrison, Brooks re: thank you (Objection on the basis of authenticity, foundation and hearsay)
220. 6/8/10 email string from Brooks to tundercranes, Ortemond, Roberts, Landos, et al cc Morrison, Groseth, carrin re: Hammer Head - Questions Plan for Skimmer fleet (Objection on the basis of authenticity, foundation and hearsay)
221. 6/6/10 email from Morrison/Roberts re: CCS Report (Objection on the basis of

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authenticity, foundation and hearsay)

222. 6/2/10 email string from Roberts to Morrison re Venice test - Boats/Land logistics (Objection on the basis of authenticity, foundation and hearsay)
259. 6/7/10 email from Morrison (Objection on the basis of authenticity, foundation and hearsay)

11. List of Deposition Testimony to be Offered into Evidence:

For Plaintiffs:

Plaintiffs reserve the right to use deposition testimony as permitted by Rule 32, F.R.C.P. At this time, plaintiffs anticipate that the following deposition testimony may be offered into evidence:

1. Patrick Smith
2. Kevin Costner
3. Justin Maxwell
4. Bryan Bates
5. Doug Suttles
6. Ted Skokos
7. Terri Sablan
8. Corporate Representative of Rabobank
9. Daniel Grigsby
10. Louis Alvarez
11. Bret Sheldon
12. Rod Lake

13. Quynh Shooter

B. Deposition testimony to be presented by Defendants

Defendants intend to offer deposition testimony of the following witnesses:

1. David Roberts
2. Doug Suttles
3. Richard Morrison
4. Karen Westall
5. Bret Sheldon
6. Eric Hoek

12. List of Charts, Graphs, Models, etc.:

For Plaintiffs:

Although plaintiffs intend to use power point presentations during opening statement and closing argument, at this time they do not anticipate the use of charts, graphs, or models.

13. Witnesses:

For Plaintiffs:

WILL CALL:

In accordance with Section IX(13)(a) of the Pre-Trial Notice, the following is a good-faith list of witnesses whom Plaintiffs intend to call at trial (absent reasonable notice to opposing counsel to the contrary):

1. **Spyridon Contogouris**
15 Muirfield Place
New Orleans, LA 70131

Re: His membership in OTS; knowledge of negotiations with BP; decision to sell interest; dealings with Costner, Smith, Houghtaling; involvement in creating OTS; damages sustained; exclusion from BP meetings; cash call;

work for OTS

2. **Stephen A. Baldwin**
71 Old Mountain Road S
Grandview, NY 10960

Re: His membership in OTS; knowledge of negotiations with BP; decision to sell interest; dealings with Costner, Smith, Houghtaling; involvement in creating OTS; damages sustained; cash call; work for OTS

3. **Ken Boudreaux**
1429 Bordeaux Street
New Orleans, Louisiana

Re: Expert testimony as an economist re plaintiffs' financial losses

4. **John Page**
1315 Exposition Blvd.
New Orleans, Louisiana 70118

Re: Expert testimony as an accountant re plaintiffs' financial losses

5. **John Houghtaling**
4717 St. Charles Avenue
New Orleans, Louisiana 70115

Re: His involvement with OTS; buy out of the plaintiffs; discussions with Patrick Smith and Kevin Costner re negotiations with BP; negotiations with BP; monies he received for his interest; material facts concealed from plaintiffs; purchase of 4717 St. Charles; knowledge of negotiations with BP; reallocation of ownership from Levy and plaintiffs

6. **Bryan Bates**
4218 Fair Oaks
Menlo Park, CA 94025

Re: Financial accounting of OTS; opening of Rabobank account; transfer of monies by Patrick Smith; negotiations with BP; cash calls (by deposition if not available live)

7. **Justin Maxwell**
875 University Avenue
Palo Alto, CA 94301

Re: His involvement with Pacific West and OTS; negotiations with BP; marketing of centrifuges; progress of testing; negotiations for buy out of

plaintiffs; meeting of June 8, 2010; dinner meeting of June 7, 2010 (by deposition if not available live)

8. **Louis Alvarez**
14156 Magnolia Blvd.
Sherman Oaks, CA 91423

Re: Accounting of OTS; conversion of money by Smith; legitimacy of expenses paid by OTS; commingling of funds by OTS; monies exchanged between Smith, Costner; settlement with Pat Smith; results of investigation and audit of OTS books and records (by deposition unless available live)

9. **Doug Suttles**
4810 Hollowvine Lane
Katy, TX

Re: Negotiations between BP and OTS; order of units; (by deposition unless available live)

10. **Ted Skokos**
5121 Park Lane
Dallas, TX

Re: Investment in OTS; discussions and texts with Pat Smith; conversion of monies by Pat Smith;

11. **Dan Grigsby**
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA

Re: Negotiations with plaintiffs for sale of interest; drafting of BP contract; discussions with Contogouris re status of BP negotiations; conversion of monies by Pat Smith; Smith's departure and settlement with OTS; legal work performed for OTS, WestPac and Blue Planet Solutions (by deposition unless available live)

12. **Bret Sheldon**
2500 Arrowhead Drive
Carson City, NV 89706

Re: Contracts with OTS and WestPac; manufacture of CINC units; timing of orders placed by OTS; rebates given to WestPac; negotiation of agreement with WestPac; (by deposition unless available live)

13. **Terri Sablan (via deposition)**

Rabobank
75 Santa Rosa Street
San Luis Obispo, CA 93405

Re: Efforts to open and the opening of an account in the name of OTS at Rabobank, policies and procedures of Rabobank and relationship between OTS and Rabobank and Smith and Rabobank. Any accounts maintained by or on behalf of Smith and OTS or Smith and Westpac Resources and/or Westpac Development and transactions related to same.

14. **Quynh Shooter (via deposition)**

Rabobank
33 East Carrillo Street
Santa Barbara, CA 93101

Re: Efforts to open and the opening of an account in the name of OTS at Rabobank, policies and procedures of Rabobank and relationship between OTS and Rabobank and Smith and Rabobank. Any accounts maintained by or on behalf of Smith and OTS or Smith and Westpac Resources and/or Westpac Development and transactions related to same.

MAY CALL:

15. **Kevin M. Costner**

Santa Barbara, California

Re: Becoming a member in OTS; his contribution to obtaining a contract with BP; public statements re status of an order; negotiations with BP; opening of Rabobank account; agreements to pay wages to favored members; buy out of Contogouris and Baldwin; increase in ownership as a result of sale by plaintiffs; cash call issuance; information not relayed to plaintiffs (by deposition unless available live)

16. **Patrick Smith**

629 State Street
Santa Barbara, CA

Re: Becoming involved with OTS; negotiations with BP; negotiations with plaintiffs for buy out of their interest; dealings with Skokos re investment; conversion of money; overpayment of expenses; information not shared with plaintiffs; side agreements with John Houghtaling; issuance of cash

call; opening of Rabobank account; dealings with OMG and formation of joint venture; purchase of home at 4717 St. Charles (by deposition unless available live); re reallocation of shares

17. **Eleanor Farnsworth**

1529 Henry Clay
New Orleans, LA 70115

Re: Sale of home at 4717 St. Charles; timing of when contacted by Smith representatives about purchase; financial ability letters from Smith; assignment of home contract to Houghtaling

18. **Charles "Chuck" Jouandot**

3500 N. Hullen
Metairie, Louisiana

Re: Finances of OTS; knowledge of negotiations with BP; discussions with Houghtaling re status of deal; instructions on where funds to be deposited; knowledge of advance deposit

19. **Franco Valobra**

5878 General Haig
New Orleans, Louisiana

Re: His knowledge of dealings with OTS as a member; reallocation of shares; distributions received

20. **Rod Lake**

1643 Mulberry Lane
San Jose, CA 95125

Re: Investigation of improper dealings by Smith; knowledge of contract negotiations with BP; operations of OTS, Blue Planet Solutions, WestPac Resources, Costner-Lake; distributions paid by OTS (by deposition unless available live)

21. **Dr. Eric Hoek**

University of California Los Angeles
5732-G Boulter Hall
Los Angeles, CA 90095

Re: Testing and functioning of machines; progress of tests; refusal to share information with Contogouris (by deposition unless available live)

22. **Jay Vise**

WWL Radio

400 Poydras Street Suite 800
New Orleans, LA 70130

Re: Interview of John Houghtaling and web site posting

23. **Tommy Tucker**
WWL Radio
400 Poydras Street, Suite 800
New Orleans, LA 70130

Re: June 10, 2010 interview of John Houghtaling

24. **Mary Mouton**
3724 Camp Street
New Orleans, LA 70115

Re: role as publicist for OTS; knowledge of when deal struck with BP

25. **Frank Levy**
New Orleans, LA

Re: His membership in OTS; transfer of his interest to John Houghtaling; why he departed OTS; involvement with Will to Drill movie

26. **Ozzie Johnston**
Houston, Texas

Re: His membership in WestPac; knowledge of order being placed by BP; preparation of OTS web site; means of communicating by web site

27. **Chris Contogouris**
Los Angeles, CA

Re: Discussions with his brother, Houghtaling re: operations of OTS; re: prior dealings with Costner (by deposition unless available live)

28. **Margaret George**
San Luis Obispo, CA

Re: OTS accounting and issues with Rabobank account; legal billings submitted to OTS (by deposition unless available live)

29. **Holly Sharp**
111 Veterans Blvd., Suite 600
Metairie, LA 70005

Re: Her expert report and opinions prepared for Patrick Smith

30. **Dave Roberts**
12100 West Little York Road
Houston, Texas

Re: His role in testing and deploying the machines; discussions with
Contogouris re Smith and exiting OTS

31. **Gary Chouest**
Edison Chouest Offshore
16201 E. Main
Cut Off, LA

Re: formation of OMG; deployment of machines; timing of discussions with
OTS re deployment; negotiations between ECO and BP re centrifuge units

32. **Roger White**
Edison Chouest Offshore
16201 E. Main
Cut Off, LA

Re: formation of OMG; deployment of machines; timing of discussions with
OTS re deployment; negotiations between ECO and BP re centrifuge units

33. **Ed Dufrene**
Edison Chouest Offshore
16201 E. Main
Cut Off, LA

Re: formation of OMG; deployment of machines; timing of discussions with
OTS re deployment; negotiations between ECO and BP re centrifuge units

34. **Melissa Pierce**
3500 N. Hullen
Metairie, LA 70001

Re: her dealings with OTS and BP as John Houghtaling's assistant;
instructions from John Houghtaling and others not to share information
with plaintiffs

35. **Corporate representative of Ocean Therapy Solutions, LLC**

Re: negotiations, communications and agreements with BP; the financial
books and records of OTS; distributions and payments to members and
third parties; Pat Smith's resignation as an officer; agreements entered into

with Pat Smith concerning his withdrawal from OTS and Westpac and agreements related to defense and indemnity.

36. **Corporate representative of Westpac Resources, LLC**

Re: negotiations, communications and agreements with BP; the financial books and records of Westpac; distributions and payments to members and third parties; Pat Smith's resignation as an officer; agreements entered into with Pat Smith concerning his withdrawal from OTS and Westpac and agreements related to defense and indemnity.

37. **Susan Smith**

Re: Patrick Smith; financial position of Patrick Smith and status of divorce and separation.

38. Any witness necessary to authenticate a document.

39. Any witness listed or called by any other party.

For All Defendants:

1. Will Call List

In accordance with Section IX(13)(a) of the Pre-Trial Notice, the following is a good-faith list of witnesses whom Defendants intend to call at trial (absent reasonable notice to opposing counsel to the contrary):

1. **Spyridon C. Contogouris** will be called to testify about (a) his role in OTS; (b) the management of OTS; (c) the Transfer, Withdrawal, Release and Indemnity Agreement and the Assignment and Assumption of Ownership Interest; (d) his relationship with the other members of OTS; (e) his alleged damages; and (f) other matters addressed in the plaintiffs' amended complaint, depositions, and correspondence.
2. **Stephen M. Baldwin** will be called to testify about (a) his role in OTS; (b) the management of OTS; (c) the Transfer, Withdrawal, Release and Indemnity Agreement and the Assignment and Assumption of Ownership Interest; (d) his relationship with the other members of OTS; (e) his alleged damages; and (f) other matters addressed in the plaintiffs' amended complaint, depositions, and correspondence.

3. **David Roberts (via video deposition)** will testify about (a) testing of the centrifuge units and (b) information exchanged between and among himself, Mr. Contogouris, and others related to OTS (including testing of the centrifuge units, the BP agreement, and the value of interests in OTS).
4. **Patrick Smith** will be called to testify about (a) his role in OTS; (b) the management of OTS; (c) his communications with the plaintiffs regarding OTS; (d) his agreement to enter into the Transfer, Withdrawal, Release and Indemnity Agreement and the Assignment and Assumption of Ownership Interest; (e) testing of the centrifuge units; (f) negotiations between OTS and BP (including the June 7, 2010 dinner with Doug Suttles); (g) distributions and reimbursements to the members of OTS; and (h) other matters addressed in his deposition, answer, counter-claim, and correspondence.
5. **Kevin Costner** will be called to testify about (a) his role in OTS; (b) the management of OTS; (c) the relationships between and among OTS and the defendants in this case; (d) his knowledge of negotiations between OTS and BP (including the June 7, 2010 dinner with Doug Suttles); (e) distributions and reimbursements to the members of OTS; and (f) other matters addressed in his deposition, answer, counter-claim, and correspondence.
6. **John Houghtaling** will be called to testify about (a) his role in OTS; (b) the management of OTS; (c) his communications with the plaintiffs regarding OTS; (d) the Transfer, Withdrawal, Release and Indemnity Agreement and the Assignment and Assumption of Ownership Interest; (e) his discussions with plaintiffs not to sell their interests in OTS; (f) testing of the centrifuge units; (g) negotiations between OTS and BP (including the June 7, 2010 dinner with Doug Suttles); (h) distributions and reimbursements to the members of OTS; and (i) other matters addressed in his deposition and correspondence.
7. **Doug Suttles (via video deposition)** will testify about (a) testing of the centrifuge units and (b) negotiations between OTS and BP (including the June 7, 2010 dinner at John Houghtaling's apartment).
8. **Richard Morrison (via video deposition)** will testify about (a) testing of the centrifuge units and (b) negotiations between OTS and BP.
9. **Karen Westall (via video deposition)** will testify about negotiations between OTS and BP.

10. **Bret Sheldon** (*via video deposition*) will testify about (a) testing of the centrifuge units and (b) the relationship between CINC Industries Inc., OTS, and the parties to this litigation.

2. **May Call List**

Pacific West may call the following witnesses at trial:

1. **Bryan Bates** may be called to testify about his knowledge of (a) negotiations between OTS and BP; (b) the plaintiffs' sale of their interests in OTS; (c) distributions and reimbursements to the members of OTS; and (d) other matters addressed in his deposition and correspondence.
2. **Justin Maxwell** may be called to testify about his knowledge of (a) testing of the centrifuge units; (b) negotiations between OTS and BP (including the June 7, 2010 dinner with Doug Suttles); (c) the plaintiffs' sale of their interests in OTS; (d) distributions and reimbursements to the members of OTS; and (e) other matters addressed in his deposition and correspondence.
3. **Ozzie Johnston** may be called to testify about his knowledge of negotiations between BP and OTS.
4. **Franco Valobra** may be called to testify about (a) his ownership interest in OTS; (b) distributions and reimbursements to the members of OTS; and (c) other matters addressed in his deposition and correspondence.
5. **Rod Lake** may be called to testify about (a) the management of OTS and distributions and reimbursements to the members of OTS and (b) other matters addressed in his deposition.
6. **Scott Smith** may be called to testify regarding representations by Stephen Baldwin regarding the claims asserted in these proceedings.
7. **Eric Hoek** (*via video deposition*) may testify about testing of the centrifuge units.
8. **Louis Alvarez** may be called to testify about (a) distributions and reimbursements to the members of OTS and (b) payments made to and from OTS, Pacific West, and/or West Pac Development LLC.
9. **Mark Arceneaux** may be called to testify about (a) testing of the centrifuge units and (b) the relationship between CCS Midsteam Services LLC and OTS.

10. **Harry Lanclos** may be called to testify about (a) testing of the centrifuge units and (b) the relationship between CCS Midsteam Services LLC and OTS.
11. **Gary Chouest** may be called to testify about (a) testing of the centrifuge units and (b) the relationship between Edison Chouest Offshore, Inc., and OTS.
12. **Lance Ortemond** may be called to testify about (a) testing of the centrifuge units and (b) the relationship between D&L Salvage LLC and OTS.
13. **Leon Ortemond** may be called to testify about (a) testing of the centrifuge units and (b) the relationship between D&L Salvage LLC and OTS.
14. **Frank Levy** may be called to testify about the membership of OTS, the management of OTS and the transfer of his interests in OTS and the Will to Drill, L.L.C.
15. **Holly Sharp** may be called to testify (a) the plaintiffs' alleged damages; (b) to rebut any matter raised by plaintiffs' experts; and (c) any and all matters addressed in her March 5, 2012 expert report.
16. Any witness called by any other party.
17. Any person whom ongoing discovery (particularly Mr. Contogouris' production of documents from his "aol.com" email account – which Magistrate Judge Shushan has ordered to be produced) (a) identifies or (b) reveals to have testimony that supports any of Pacific West's claims or defenses.
18. Any person needed to authenticate any document.

14. **Jury Status:**

This is a jury case.

15. **Bifurcation:**

The issue of liability will not be tried separately from that of quantum.

16. **Any other matters:**

Attorney's Fees and Costs

Plaintiffs have pled for an award of attorney's fees in the event they prevail on their claims under the federal securities laws. Defendants have averred that they are entitled to recover attorney fees and costs if they prevail on their counterclaim. Since their entitlement to and quantum of attorney's fees and litigation costs will not be determinable until the completion of trial, the parties stipulated to defer the submission of evidence on fees and costs until after the trial, at which time they can be submitted to the court for determination.

Objections to Plaintiffs' Inserts.

Defendants object to any attempt by the plaintiffs to expand the pleadings – in particular their original and first amended complaints – through this pre-trial order or during the trial of this case. Plaintiffs have asserted *three* claims in this case: (i) federal securities fraud; (ii) fraud in connection with the Transfer Agreement, and (iii) unilateral error on their part in connection with the Transfer Agreement. Yet some of plaintiffs' inserts (including their brief summary of the case) suggest that plaintiffs may be seeking to advance arguments and/or claims that were not raised in their complaints and that suffer other defects. In particular, plaintiffs (i) have not pleaded *duress* as a basis for rescission of the Transfer Agreement; (ii) have not pleaded and have released any alleged *breach of fiduciary duty* claims in connection with the defendants' behavior while they were members of OTS; and (iii) have not pleaded and lack standing to bring any *derivative actions* on behalf of OTS and/or any *breach of fiduciary duty claims* that post-date June 18, 2010.

Defendants generally object to the plaintiffs' pre-trial inserts to the extent that they attempt to raise any of the foregoing claims. And defendants specifically (without limiting the generality of the foregoing) object to the following inserts:

- To the extent that they seek to pursue a claim of *duress*: paragraphs 15 and 17 of plaintiffs' summary of material facts and item v of the plaintiffs' statement of contested issues of facts;
- To the extent that they seek to advance *derivative actions* for which the plaintiffs lack standing: (i) paragraphs 9, 14, 21, 25, 26, and 30 of plaintiffs' summary of material facts; (ii) items 2, 8, 9 through 12, 14, 17, 22 through 27, 37 through 39, and 42 through 43 and 67 of the plaintiffs' statements of contested issues of fact; and (iii) item i of the plaintiffs' contested issues of law; and
- To the extent that they seek to advance breach of *fiduciary duty claims*: (i) paragraphs 13 through 15, 20, 26, and 30 of plaintiffs' summary of material facts; and (ii) items 2, 7 through 10, 15 through 17, 20 and 29 of the plaintiffs' statements of contested issues of fact.

Additionally, the defendants have or will file motions in *limine* to exclude improper evidence.

Plaintiffs dispute Defendants' objections to Plaintiffs' inserts.

17. Trial:

Trial will commence on the 14th day of May, 2012, at 9:00 a.m. The parties estimate that it will take ten working days to try this case.

18. Statement Regarding Preparation of Pre-Trial Order:

This pre-trial order has been formulated after conference at which counsel for the respective parties have appeared in person. Reasonable opportunity has been afforded counsel for corrections, or additions, prior to signing. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.


19. Statement Regarding Settlement:

Possibility of settlement of this case was considered.

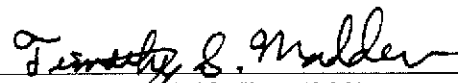
20. Signatures:


Respectfully submitted on April 10, 2012.

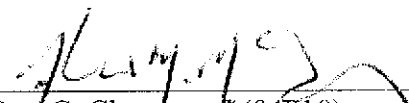
WAITS, EMMETT & POPP, L.L.C.

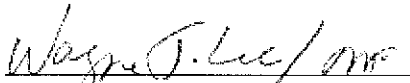

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UNITED STATES DISTRICT JUDGE