CAUSE NO. 2016-24818

SUPERIOR ENERGY SERVICES, INC., STABIL DRILL SPECIALTIES, L.L.C. Plaintiffs,	§	IN THE DISTRICT COURT OF
v.	§	HARRIS COUNTY, TEXAS
CHRISTOPHER J. RUSSO, MARTIN A. LEBLANC, ET AL. Defendants.	§	295TH JUDICIAL DISTRICT

Sheffield Defendants' Opposition to Superior Plaintiffs' Motion for Protective Order from Subpoena Issued to KPMG and Motion to Compel Production of KPMG Documents

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To the Honorable Caroline E. Baker:

Defendants Mike Sheffield, Triton Hardbanding Service, LLC, MSI Inspection Service, LLC and Maverick Rental Tools, LLC ("the Sheffield Defendants") oppose the Motion for Protective Order from Subpoena Issued to KPMG and move the Court to compel KPMG to produce the documents subpoenaed.

1. Overview

In its third amended petition, Superior seeks to destroy 29 separate defendants by holding them jointly and severally liable for $82,000,000. Superior portrays itself as wholly ignorant of eight years of conduct that Superior now labels as a scheme to "misappropriate, divert, and usurp corporate assets and corporate opportunities" by Chris Russo and Marty LeBlanc – two of its valued executives during the oil boom of 2008-2014. However, Superior says nothing about KPMG's role in auditing Superior's internal controls – that is, Superior's process to prevent asset misappropriation or at least detect it when it occurs. Yet during the eight years at issue in this case, Superior paid KPMG more than $22,000,000 for its audits.

The size and duration of the asset misappropriation that Superior alleges raises serious questions about KPMG's work. The Sheffield Defendants are aware that Superior fostered a "founder's mentality" for Stabil Drill and Superior's other subsidiaries, allowing these entities to operate as if they remained independent of a

large public company. For example, Superior acknowledges that it allowed Russo and Superior to sign off on each other's business expenses, including related-party payments to "Shorty's Outdoor Adventures," an entity that Martin LeBlanc controlled. No one at Superior had a problem with this and other related-party transactions, until the oil bubble popped.

The Sheffield Defendants will show that Superior knew, or was recklessly and/or negligently ignorant, about deficiencies and weaknesses in its internal controls. KPMG's documents will demonstrate the degree of Superior's awareness of these flaws, from which a jury may reasonably conclude that Superior ratified, waived, or otherwise bears responsibility for the asset transfers about which Superior now complains.

Superior's own contentions of ignorance place these audits at issue in this case. Superior owes duties of diligence to maintain sound internal controls under federal securities laws, including but not limited to the Foreign Corrupt Practices Act ("FCPA"). Despite its name, the FCPA applies to the domestic transactions alleged here; the FCPA imposes upon Superior, a publicly traded company, strict recordkeeping obligations intended to prevent or at least detect the kind of asset transfers about which Superior now, belatedly, complains. Moreover, by pleading the discovery rule, Superior bears a unique burden of proof of showing that it failed to discover, despite its exercise of reasonable diligence, the defendants' supposed

fraud and malfeasance. The reasonableness of Superior's diligence, if any, raises questions of fact subject to discovery, including KPMG's audits on Superior's behalf.

The Sheffield Defendants have a particularly strong need for this discovery because, unlike Russo, LeBlanc, and Superior's senior management, the Sheffield Defendants were outside vendors, not Superior or Stabil Drill officers. Yet Superior attempts to blame the Sheffield Defendants for Superior's internal-control failures. The Sheffield Defendants are entitled to discovery showing what Superior and KPMG knew and when they knew it.

2. Summary of Opposition

The Sheffield Defendants ask the Court to overrule Superior's objections and to order KPMG to produce its audit work files for three main reasons. ***First***, KPMG's own sworn statements in other litigation give this Court a roadmap of the unique, highly relevant, and easily produced documents so central to Superior's claims and Sheffield's and the other defendants' defenses to them. ***Second***, Sheffield's subpoena identifies these documents with more than sufficient clarity so that the Court's order compelling their production will be fair. ***Third***, the Court should overrule Superior's objections (such as to relevance, burden, and "invasion of rights") because they ignore the centrality of these documents to the auditing and internal-control issues to which Superior itself opened the door when it filed this suit.

3. Argument and Authorities

a. KPMG has unique work papers that are highly relevant to the issues in this case

Superior would have this Court believe that KPMG has nothing to produce that Superior does not already have. Mot. at 2 ("[A]lmost everything sought by the Subpoena from [KPMG] has already been requested [from Superior]."). Putting aside Superior's own failure to produce a single document to date, Superior is wrong for at least three reasons: (1) KPMG creates, maintains, and uses its own unique work papers to document its audits of Superior; (2) KPMG's work papers and other documents consider potential fraud in its audits of Superior, and thus are essential to the Sheffield Defendants' right to challenge Superior's defenses; and (3) clients (such as Superior) often disagree with, and at times deceive or even intimidate, their auditors – hence the audit failures such as Enron and many other financial crises before and since. Superior itself acknowledges that at least some gaps existed in its internal controls. The Sheffield Defendants are entitled to discovery of whether Superior's senior management, its auditors, or others knew about those gaps.

1. KPMG's work papers will provide a unique source of evidence

No question exists that KPMG has responsive documents ready for production because outside this Court, KPMG has gone to great length to explain its processes and recordkeeping that bear directly on the issues here. For example, in *Pippins v.*

KPMG (a wage-and-hour dispute in New York federal court),[1] KPMG presented copious sworn statements showing how its auditors "***review...prior year work papers***" to "learn what type of ***supporting documentation*** the client had provided in the prior year, any exceptions and discrepancies the engagement team had identified, how the engagement team had resolved the issues, and what conclusions the engagement team had reached." Ex. 1 (Vick Decl. ¶ 9, at 2) (emphasis added). Likewise, KPMG auditors "***document***" their analysis "***in the work papers***," and more senior members of an engagement team "review [the auditors'] analysis." *Id.* ¶ 19, at 7 (emphasis added).

In short, KPMG has unique documents to which the Sheffield Defendants are entitled, laying to rest Superior's suggestion that the subpoena covers "the exact same information" that Sheffield Defendants have requested from Superior. *E.g.*, Mot. at 13.

2. KPMG's work papers will disclose whether its auditors discovered potential fraud at Superior

Superior also suggests that "no nexus" exists between "fraud risks" identified by KPMG's audit documents and the conduct of Superior's officers. *Id.* at 14. This argument borders on the frivolous. As one Texas court has observed, "[t]he idea that

[1] *See generally Pippins v. KPMG LLP*, 921 F. Supp. 2d 26, 32-36 (S.D.N.Y. 2012).

fraud by a company's management is not foreseeable is, of course, preposterous." *SIPC v. Cheshier & Fuller, L.L.P.*, 377 B.R. 513, 555 (Bankr. E.D. Tex. 2007).

The *Cheshier & Fuller* court cites the auditing standard that will become a central issue in this case: Statement on Auditing Standards No. 99, "Consideration of Fraud in a Financial Statement Audit," known as "SAS 99" and previously known as "SAS 82." *See Cheshier & Fuller*, 377 B.R. at 555; Ex. 2, at 163 (SAS 99) (excerpts).

SAS 99 requires auditors such as KPMG to consider whether the client's management has "***set the proper tone***" and "create[d] and maintain[ed] ***a culture of honesty and high ethical standards***," as well as whether management has "establish[ed] appropriate controls to prevent, deter, and detect fraud." SAS 99, AU § 316.04 at 165 (Ex.2) (emphasis added). This concept is generally known as the "***tone at the top***." *See id.* at 201 (emphasis added).

Here, in Superior's public filings, KPMG has given Superior a clean bill of health for more than a decade, never questioning whether Superior had adequate controls to prevent, detect, and deter fraud, including Superior's process designed to "provide reasonable assurance regarding ***prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets*** that could have a material effect on the financial statements." *See* Ex. 3 (Superior Form 10-K for 2004 year, signed 2005, at 34-35) (excerpt) (emphasis added).

In this Court, Superior now says that Russo's and LeBlanc's conduct did, in fact, have a material effect on its financial statements. Superior contends that "as reflected in Superior's July 27, 2016 Form 10-Q, Superior identified a $10,900,000 loss due to unnecessary goods and services that Russo and LeBlanc purchased through Stabil Drill during their time as corporate officers. Plaintiffs seek recovery of these damages as well [as the $72,000,000 refund they seek from defendants, jointly and severally]." Resp. to RFD, at 16 (Ex. 4) (excerpts).

Moreover, as KPMG swore in the *Pippins v. KPMG* case, its auditors are well-trained to root out "***gaps in the client's controls***" that reflect exactly the discovery the Sheffield Defendants seek here. *See* Ex. 5 (Catania Decl. ¶ 20, at 8) (emphasis added). After finding one such gap, this auditor "***prepared a work paper*** in which I documented my analysis and conclusion." *Id.* ¶ 17, at 7 (emphasis added). This same auditor held a "walkthrough" meeting with the client's employees to have them explain a "particular control process"; after the walkthrough, he "***documented the results in the work papers***." *Id.* ¶ 20 (emphasis added). The auditor further testified that "[d]uring the entire walkthrough exercise, I constantly made judgments about ...whether the individual staff members ***were knowledgeable and credible***." *Id.* (emphasis added). Part of evaluating the credibility of its clients' employees is exercising "professional skepticism and judgment"; KPMG auditors "***must always***

be aware of the potential for fraud during engagements." Ex. 6 (Chan Decl., ¶ 21, at 6) (emphasis added).

KPMG's work papers thus sit at the center of the issues that Superior itself has raised in what it touts as an $82 million case, a figure made possible because Superior has pled the discovery rule as well as ignorance in general of Russo's and LeBlanc's activities. Of course, when a plaintiff pleads the discovery rule, "reasonable diligence is [at least] a question of fact" that the defendant can take to the jury. *Hooks v. Samson Lone Star, LP*, 457 S.W.3d 52, 57-58 (Tex. 2015). Effectively responding to these allegations requires defendants to obtain and review KPMG's audit work papers to determine whether Superior and/or KPMG exercised "reasonable diligence" that would entitle Superior to toll limitations and overcome other affirmative defenses such as waiver, ratification, estoppel, and/or laches. Superior's own pleadings confirm that the Sheffield Defendants are entitled to discover what Superior and KPMG knew about the deficiencies in Superior's internal controls, and when they knew it.

3. KPMG's work papers will enable to the Court to learn whether anyone at Superior deceived or intimidated KPMG's auditors

Superior's petition opens the door to discovery of whether anyone at Superior deceived or intimidated its auditors at KPMG. According to Superior, Russo and LeBlanc engaged in "acts of fraudulent concealment" so that Superior's senior management had no suspicions about Russo's and LeBlanc's "activities" or the

"deficiencies" of their "corporate disclosures" to Superior. 2nd Am. Pet'n ¶ 52, at 14, 16. If Russo and LeBlanc successfully concealed an eight-year asset-misappropriation scheme from Superior, the Sheffield Defendants (whom Superior contends conspired with Russo and LeBlanc) are entitled to know that they in fact were successful, that is, that Superior's senior management did not know what was happening. If, on the other hand, KPMG warned Superior's senior management about Russo's, LeBlanc's, and others' activities (or lax corporate controls in general), the Sheffield Defendants are entitled to know that, too.

Cases involving auditor deception – such as what Superior implicitly alleges here – require the trier of fact to consider all the pertinent facts and circumstances, including "credibility determinations." *See SEC v. Yuen*, 272 Fed. App'x 615, 617 (9th Cir. 2008). These factual determinations are part and parcel of the fact issues that Superior has raised by pleading ignorance in general and the discovery rule in particular. *See Hooks*, 457 S.W.3d at 57-58.

The Sheffield Defendants are entitled to discovery of KPMG's work papers not only because Superior alleges deception by Russo and LeBlanc, but because of the potential that Superior's management pressured KPMG – dependent as it is on Superior for fees – for clean attestations. KPMG, like other auditors, has succumbed to client pressure in the past, such as in its audits of subprime mortgage lender New Century. In that case, New Century's bankruptcy examiner found that New

Century's controller was "***difficult and domineering***" and intimidated KPMG's audit partner, "often ma[king] fun of [him] in [the] presence [of other KPMG professionals]."[2] In one meeting, according to New Century's audit committee chair, the New Century audit committee spent much of one meeting "***yelling and screaming***" at the same KPMG auditors. *Id.* at 476 (emphasis added). Financial scandals in public companies often involve questions about whether auditors have done their job – Enron and WorldCom being two other famous examples.[3]

Here, the Sheffield Defendants are aware that Superior fostered a "founder's mentality" for its subsidiaries, discouraging interference and allowing individuals at Superior's subsidiaries to operate as if they remained independent of their public company parents at Superior. The auditing standards caution against this kind of

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[2] Final Report of Michael J. Missal, Bankruptcy Court Examiner, *In re New Century TRS Holdings, Inc.* at 473 (Case No. 07-10416, Bankr. D. Del., Feb. 29, 2008) (emphasis added) (Ex. 7).

[3] *See, e.g.*, REPORT OF THE SPECIAL INVESTIGATION COMMITTEE OF ENRON CORPORATION, Feb. 1, 2002, at 202 ("[T]he evidence we have seen suggests Andersen accountants did not function as an effective check on the disclosure approach taken by the Company.") (Ex. 8); *see also* JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET 736 (3d ed. 2003) ("At its core Enron involved an audit failure.") (Ex. 9); *In re WorldCom, Inc. Sec. Lit.*, 352 F. Supp. 2d 472, 499 (S.D.N.Y. 2005) (concluding that fact issues existed as to whether "Andersen acted in willful blindness to the realities at WorldCom and in abrogation of its duty as an auditor. ***It has identified a host of audit failures***, which would permit a jury to find that there was an egregious refusal to see the ***obvious, repeated failures to investigate*** the doubtful, and a pattern of acquiescence in improper accounting practices.") (emphasis added).

structure, especially when small groups dominate subsidiaries without compensating controls. *See* SAS 99, AU § 316.04 at 170, 174, 194-95, 197 (Ex.2).

For example, as even Superior acknowledges in its petition, it allowed executives to sign off on each others' business expenses (thus evading review, at least on paper, by Superior's controller, treasurer, and CFO). These expenses were significant and, based on the Sheffield Defendants' investigation, well known. They included private air travel, a variety of drinking and other recreational activities, and extravagant hunting and fishing trips with, among others, "Shorty's Outdoor Adventures." 2nd Am. Pet'n ¶ 65, at 22. Executives signing off on each other's extraordinary expenses with little or no oversight triggers several red flags under SAS 99 that Superior and KPMG ignored or were talked into accepting. *E.g.*, Ex. 2, at 197, 212.

Superior bears the burden of proving its lack of knowledge and reasonable diligence despite this audit failure. Superior paid KPMG to help assure that Superior had controls in place to prevent and/or detect the misappropriation of the size and scope alleged here. The Sheffield Defendants bore none of these responsibilities, yet Superior has asked this Court to sign a multimillion-dollar judgment against them as if they did. Thus, the Sheffield Defendants have a compelling need for these documents.

b. Documents Requested

The following categories of documents the Sheffield Defendants have subpoenaed are reasonable, relevant, and proportional to this issues in this case, given the breadth and scope of Superior's allegations, as well as the nearly $100 million that Superior seeks against the Sheffield Defendants.

Category #1: KPMG's internal control documents for Superior (subpoena items #2, 4, 5)

The Sheffield Defendants' subpoena to KPMG seeks information about deficiencies in Superior's or Stabil Drill's executives' disclosures; documents flagging fraud risks; and internal control documents, particularly potential or actual deficiencies or weaknesses in the effectiveness of Superior's internal control over financial reporting. Superior used internal controls to prevent or detect "unauthorized acquisition, use, or disposition" of its assets. Now Superior asks this Court to exempt it from affirmative defenses of such as waiver, ratification, and limitations and to reach back for eight years to unwind, rescind, and refund for every penny paid on every single invoice that the Sheffield Defendants submitted to Superior. For Superior to ask this Court to shield KPMG's testing and auditing of Superior's internal controls in the context of Superior's liability and damages claims is neither just nor fair. The Sheffield Defendants thus ask for the Court to order KPMG to produce the responsive documents.

Category #2: Internal investigation and forensic audit documents
(subpoena items #1, 18-20)

Now that Superior has accused two of its former executives, along with the Sheffield Defendants and many others, of an eight-year "enterprise" and "conspiracy" resulting in alleged damages and other losses exceeding $82 million, Superior no doubt has advised KPMG of its "internal investigation" and involved it in a forensic audit. KPMG, as Superior's public auditor, serves a "public watchdog" function, demanding "total independence from the client at all times" and "complete fidelity to the public trust"; no privilege exists for its work. *E.g., United States v. Arthur Young*, 465 U.S. 805, 817-18 (1984). Moreover, to the extent Superior has implemented any changes in its internal controls as a result of the alleged fraud here, those too are discoverable.

Category #3: FCPA compliance documents
(subpoena item #13)

Superior argues that the Foreign Corrupt Practices Act, 15 U.S.C. § 78m, has no relevance in this case. Mot., at 14. Wrong. As Superior knows from years of its own public-company audits, the FCPA – a part of the Securities Exchange Act of 1934 – imposes even stricter internal-controls and books-and-records requirements than SAS 99, and those requirements apply to public companies such as Superior,

regardless of whether the transactions are foreign or corrupt.[4] Most important here, Superior's public company regulator, the Securities and Exchange Commission, interprets these provisions without regard to materiality.[5] Here, given Superior's claims of asset misappropriation, KPMG's FCPA audits are key documents to determine what information Superior's management knew and when they knew it.

Category #4: Expense reports and other conflict-of-interest issues (subpoena items #6-8; 17-18)

To the extent not covered by the preceding categories, the Sheffield Defendants are entitled to documents KPMG has in its possession bearing on expenses that Russo and LeBlanc allegedly charged to Stabil Drill and/or Superior, including obtaining reimbursement for Gulf Air Management Co. flight expenses, Shorty's Outdoor Adventures hunting and fishing trips, and any other related-party transactions, or conflict-of-interest issues.

[4] U.S. DEP'T OF JUSTICE & SECURITIES AND EXCHANGE COMM'N, A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT 38 (2012) (the FCPA accounting provisions "do not apply only to bribery-related violations.... Rather, [they] form the backbone for most accounting fraud and issuer disclosure cases brought by DOJ and SEC") (Ex. 10); Hurd Baruch, *The Foreign Corrupt Practices Act*, HARV. BUS. REV. (January 1979) (Ex. 11) ("not all of the practices dealt with are 'corrupt,' nor are all of them foreign").

[5] *See* Exchange Act Release No. 15,570, 44 Fed. Reg. 10,964, 10968-70 (Feb. 15, 1979) (Ex. 12).

Category #5: Billing practices/"sport" billing
(subpoena items #9-12; 20)

Superior seeks to recover tens of millions of dollars from the Sheffield Defendants for goods and services that the Sheffield Defendants billed and/or invoiced Superior/Stabil Drill. Based on its initial investigation, Superior's senior management may have encouraged or at least allowed a practice colloquially known as "sport" billing – that is, overcharging customers. To the extent KPMG addressed Superior/Stabil Drill's billing practices in its audits, these documents are unquestionably responsive to Superior's "tone at the top."[6]

c. Responses to Superior's Objections

Objection #1: "Invasion of personal rights"/accountant-client privilege

Superior objects because it contends that the subpoena "threatens the rights of Plaintiffs who must now face the prospect of having their sensitive financial information – unrelated to any claims or defenses asserted in this lawsuit – disclosed to the very individuals who have been sued by Plaintiffs…." Mot. at 11. This objection is groundless; as shown above, the documents the Sheffield Defendants

[6] Unless otherwise noted, the Sheffield Defendants seek production of documents from 2006 to the present. Superior's allegations involve conduct dating back to 2008. As one of the courts in the *New Century* litigation observed, courts in this context generally "allow discovery to extend to events before and after the period of actual liability so as to provide context." *In re New Century*, 2009 U.S. Dist. LEXIS 133786; 2009 WL 9568860; 2009 U.S. Dist. LEXIS, *7 (C.D. Cal., July 8, 2009) (citing cases).

seek are core to Superior's claims and the Sheffield Defendants' affirmative defenses, including waiver, laches, ratification, and limitations. Likewise, Superior's objection under the "accountant-client privilege" in Tex. Occ. Code § 901.457 fails because that statute serves only to protect client documents from widespread disclosure; the documents are subject to court-ordered discovery. Like nearly every other state and federal court that has considered the issue, Texas has no accountant-client privilege. As a leading case states, "[s]tatutory provisions [such as § 901.457] providing for duties of confidentiality do not automatically imply the creation of evidentiary privileges binding on courts." *In re Patel*, 218 S.W.3d 911, 920 & n.6 (Tex. App.—Corpus Christi 2007, pet. denied). Here, this Court's protective order, signed July 25, 2016, guards against the disclosure of sensitive documents; Superior has no further privilege or other basis for nondisclosure of these central documents. As in *Patel*, "[o]ther than citing section 901.457 of the Occupations Code, neither party has provided authority for the proposition that an accountant-client evidentiary privilege exists in Texas." *Id.* As in *Patel*, the Court should decline to find such a privilege here. *Id.*[7]

[7] *See also Canyon Partners, L.P. v. Developers Diversified Realty Corp.*, No. 3-04-CV-1335-L, 2005 U.S. Dist. LEXIS 26782 at *3 (N.D. Tex., Nov. 4, 2005) (mem. op.), citing *Ferko v. Nat'l Ass'n for Stock Car Auto Racing, Inc*., 218 F.R.D. 125, 134 (E.D. Tex. 2003); *Sims v. Kaneb Servs., Inc*., No. B14-87-00608-CV, 1988 Tex. App. LEXIS 2243 at *14 (Tex. App.—Houston [14th Dist.] June 16, 1988, no writ).

Objection #2: "No nexus"

Superior contends that "[n]o claim or defense of any of the Defendants turns on the fraud risks identified by KPMG." Mot. at 14. Superior is, again, wrong. The fraud risks Superior paid KPMG $22 million to search for over the eight-year period in suit are exactly the kind of fraud risks that Superior claims to have missed here.

Superior cites a 1994 North Dakota magistrate's opinion for the proposition that any subpoena to an auditor is a "fishing expedition" and "tantamount to harassment." Mot. at 14, citing *Phillips v. Automated Tel. Mg't Sys., Inc.*, 160 F.R.D. 561, 562 (N.D. 1994). Superior omits from its discussion of *Phillips* that the plaintiffs there sought the accountant's records in a securities-fraud case in which "the plaintiff candidly admitted that any securities fraud claim against the auditors is speculative at this point in time." *Id.* Unlike *Phillips*, Superior is the plaintiff in this state-court fiduciary-duty lawsuit; by doing that, it has forced the Sheffield Defendants to defend themselves and thus opened the door wide to the pending subpoena.

Objection #3: "Cumulative of … request … to Plaintiffs" (pages 5, 13)

Superior objects that the subpoena seeks documents that Superior has in its possession and that therefore the subpoena is unnecessary. But as discussed above, KPMG creates, maintains, and uses its own internal work papers and other

documents central to the question of the alleged mismanagement of Superior/Stabil Drill. KPMG must produce them here.

Objection #4: "Burden outweighs [allegedly marginal] benefit" (page 15)

The documents that Sheffield has subpoenaed are documents that federal law, federal regulations, and professional auditing standards all require KPMG to maintain as a part of its duties as an auditor to Superior. It is precisely for disputes regarding misappropriation for which KPMG provides its professional audits and maintains work papers documenting those audits. Superior cannot claim nearly $100 million in damages in an audit-failure case and then turn around and complain that production of the auditors' files is too difficult.

Objection #5: "Defective service"

Superior objects because of a supposed defect in service, but Superior argues the wrong rule. Superior's timing objection applies to documents-only subpoenas. Here, however, Sheffield has subpoenaed documents along with noticing a deposition on written questions under Rules 199.2(b)(5) and 200.1(a), giving both KPMG and Superior, as Superior admits, "21 days" notice, Mot. at 5, consistent with the rules. *See also* O'CONNOR'S TEXAS RULES – CIVIL TRIALS at 592 (2016) (table summarizing deadlines to serve and for notice) (Ex. 13). The Court should overrule this groundless objection.

4. Conclusion and Prayer

Based on the foregoing, the Sheffield Defendants respectfully request the Court deny Superior's motion to quash and order Superior and KPMG to produce KPMG's audit files as subpoenaed by the Sheffield Defendants.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on the below listed counsel via email, certified mail, and/or Federal Express pursuant to the Texas Rules of Civil Procedure on this the 17th day of November, 2016:

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