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March 19, 2014

VIA EMAIL

Magistrate Judge Mark R. Abel  
Joseph P. Kinneary U.S. Courthouse  
Room 218  
85 Marconi Boulevard  
Columbus, Ohio 43215  
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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*  
U.S. District Court, Southern District of Ohio, Eastern Division  
Case No. 2:13-CV-00886-EAS-MRA

Dear Magistrate Judge Abel:

In advance of the March 21, 2014 discovery dispute conference to be held telephonically before Your Honor, Plaintiff American Energy Corporation provides this written summary of the disputes to be brought for your resolution. These disputes relate to the discovery responses of three closely affiliated Defendants, and the discovery requests served on each were essentially the same for purposes of the disputes discussed below, unless otherwise noted.

Attached to this cover letter are the documents listed below, some of which are subject to the Court's protective order for confidential and/or "attorneys' eyes only" material. These documents set forth the dispute of the parties in more detail, as well as American Energy Corporation's extensive efforts to resolve these matters without involving the Court:

- Exhibit A: Disputed discovery requests and responses of Defendants American Energy Partners and Aubrey McClendon;
- Exhibit B: Disputed discovery requests and responses of Defendant American Energy - Utica;
- Exhibit C: Defendants' redaction Logs;

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- Exhibit D: First deficiency letter to Defendants American Energy Partners and Aubrey McClendon (December 10, 2013);
- Exhibit E: Defendants' response to deficiency letter (December 26, 2013);
- Exhibit F: Second deficiency letter to American Energy Partners and McClendon (January 17, 2014);
- Exhibit G: Deficiency letter to American Energy-Utica (January 23, 2014);
- Exhibit H: Response of Defendant American Energy Partners to January 17 deficiency letter (January 27, 2014);
- Exhibit I: Defendant American Energy-Utica's response to January 23 deficiency letter (February 3, 2014);
- Exhibit J: Final deficiency letter to Defendants (February 21, 2014); and
- Exhibit K: Defendants' response to February 21 letter (February 28, 2014).

Following the February 28, 2014 letter from Defendants' counsel, it is evident that the parties are at an impasse on several issues. Despite a total of 52 requests for production of documents to Defendants American Energy Partners, American Energy-Utica, and Aubrey McClendon (not to mention 21 subpoenas for documents issued to "American Energy" entities affiliated with Defendants), a mere 121 documents have been produced to American Energy Corporation on behalf of the three Defendants. Before summarizing the specific issues that remain, we note that the disputes before Your Honor arise largely from two primary sources of disagreement between the parties:

**1. What this case is about:** This case seeks permanent injunctive relief for trademark and trade name infringement arising out of Defendants' use of "American Energy." But as Defendants' February 28 letter makes clear, Defendants characterize this case as solely one about *trademark* infringement. According to Defendants, the "single issue" in this case is whether Defendants' "use of their names to identify their goods (of which there are none) is likely to cause confusion among relevant purchasers with respect to the goods offered or sold by Plaintiff." Defendants bootstrap their declaration of this case as a trademark-on-goods case into a conclusion that nearly all of Plaintiff's requested discovery is not relevant to the "single issue" they say is before the Court.

The problem with Defendants' approach is that it ignores the three other claims that American Energy Corporation has pleaded in this case. In addition to trademark infringement, American Energy Corporation has stated claims under Ohio law for deceptive trade practices, unfair competition, and infringement of its trade *name*. At the

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heart of these claims is the allegation that Defendants' use of "American Energy" infringes American Energy Corporation's legally protected rights to use "American Energy" as a *trade name*. Indeed, "a business of high standing and with a distinctive name has a real and vital concern in protecting that name and in preventing its exploitation by another to promote the latter's interests. That the two businesses may be noncompetitive is not controlling." *The Nat'l City Bank of Cleveland v. Nat'l City Window*, 174 Ohio St. 510, 513, 190 N.E. 2d 437 (1963). Indeed, "evidence of actual confusion is not limited to purchasers." *Ferrari S.P.A. Esercizio Fabriche Automobili E Corse v. Roberts*, 944 F.2d 1235, 1245 (6th Cir. 1991). With respect to trade names, one may also show that "public confusion will adversely affect the plaintiff's ability to control his reputation among its laborers, lenders, investors, or other group with whom the plaintiff interacts." *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 128 (4th Cir. 1990).

Defendants' use of Plaintiff's trade name is also directly relevant to the trade mark infringement inquiry as "the law is settled that a trademark can be infringed by the use of a mark solely as the tradename of another." *Moore Business Forms, Inc. v. Seidenburg*, 619 F. Supp. 1173, 1180 (W.D. La. 1985) (internal quote omitted). Much of what Defendants have refused to provide in discovery are, therefore, squarely relevant to both American Energy Corporation's trade *name* and trade mark claims.

**2. Discovery About "American Energy" Affiliates:** Defendants' objections, as well as certain responses to the discovery sought by American Energy Corporation, suggest that Defendants are using corporate formalities to avoid discovery. Because Plaintiff has thus far sued American Energy Partners and American Energy-Utica as the only entity defendants, Defendants have refused to provide discovery related to or in the possession of their affiliated entities. This refusal comes despite the fact that Defendant Aubrey McClendon controls American Energy Partners, American Energy-Utica, and the affiliated entities. See *Evenflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342, at \*10 (S.D. Ohio June 5, 2006) (stating that an entity defendant was obligated to seek documents from parent or sister companies, "particularly where . . . one individual owns the sister companies").

This is not the only way that Defendants have avoided producing documents related to affiliated entities. When American Energy Corporation sought discovery directly from third-party "American Energy" entities through Fed. R. Civ. P. 45 subpoenas, those entities (represented by the same counsel as Defendants) objected to producing anything on the basis that they are not parties to this lawsuit and therefore have nothing discoverable to provide. Thus, Defendants' discovery position is that Plaintiff American Energy Corporation may obtain discovery from affiliated entities *neither* from Defendants themselves nor from the affiliated entities directly. The Federal Rules of Civil Procedure do not countenance Defendants' gamesmanship.

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Plaintiff respectfully submits that Your Honor's viewpoint on these two overriding issues will inform the Court's resolution of many of the individual disputes. The specific disputes are as follows.

**Information About Affiliated Entities (Interrogatory No. 1 and RFP No. 27)**

American Energy Corporation requested discovery into the identity of "members, subsidiaries or affiliates" of American Energy-Utica (Interrog. No. 1) and "documents sufficient to identify the business affiliates of American Energy-Utica, including all parent and subsidiary business affiliates and all affiliates or related business entities" (RFP No. 27). In response to Interrogatory No. 1, American Energy-Utica responds only that its sole member is American Energy Holdings, LLC; in response to RFP No. 27, American Energy-Utica has recently provided a redacted organization chart showing the relationships among certain "American Energy" entities and Mr. McClendon. These responses, however, are subject to, American Energy-Utica's objections, on grounds of both vagueness and overbreadth and their various "general objections." American Energy-Utica has not withdrawn these objections.

It cannot be reasonably disputed that information about Defendants' affiliate companies are relevant to this dispute. And despite American Energy-Utica's responses, it is unclear whether it has disclosed *all* of its affiliated companies. Based on the objections, it is unclear, for example, whether American Energy-Utica has produced all of the relevant organization charts or, for that matter, disclosed all of the affiliated entities who will be engaged in business activities in Ohio under the "American Energy" umbrella that Defendant McClendon created.

Accordingly, the Court should overrule American Energy-Utica's objections and order it to respond fully to these requests.

**Documents in Affiliates' Possession (Defendants' General Objection 5)**

Defendants have refused to produce documents and information about or in the hands of their affiliate companies, including ones that also use the "American Energy" name. Defendants emphasize the fact that the affiliate entities are not parties to this case. But Defendants have not only refused to produce affiliate documents (regardless of whether American Energy Partners or American Energy-Utica has control over an affiliate), but they have also stymied efforts of American Energy Corporation to obtain third party discovery directly from the affiliates. American Energy Corporation is entitled to obtain discovery on affiliated entities from Defendants themselves or from the affiliates by way of Rule 45 subpoenas. See *Eventflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342, at \*10 (S.D. Ohio June 5, 2006) ("While Hantec may or may not have any documents responsive to this request, Hantec is obligated to seek any such documents from its parent or sister companies, particularly where, as here, one individual owns the sister companies.").



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Documents related to the affiliated entities of American Energy Partners and American Energy-Utica are legitimately discoverable. Defendant McClendon has created an entire family of companies (including Defendants American Energy Partners and American Energy-Utica) as part of a coordinated effort to pursue energy interests primarily in the same small part of Ohio where Plaintiff operates. The affiliated entities are part of an overall business effort that takes advantage of the "American Energy" name, to the detriment of American Energy Corporation. *See e.g. Nat'l City Bank*, 174 Ohio St. at 513 ("the use by another, even in a noncompeting business, of the name or title results in a dilution and lessening in value of that name to the original appropriator"). Moreover, discovery into affiliated entities is important to determine whether American Energy Corporation should seek leave to amend its complaint to add additional defendants. *See Evenflo*, at \*15 (observing that Hantec's incomplete and/or evasive discovery responses hampered Evenflo's ability to identify the appropriate defendants).

Accordingly, the Court should order Defendants to produce responsive documents in the possession of affiliate companies.

**Business Plans and Related Documents (RFPs 12, 14-16, and 26)**

Documents produced recently by Defendants for the first time shed some light on American Energy-Utica's intended operations in Ohio. But Defendants have not responded fully to Plaintiff's requests and have continued to redact—absent a claim of privilege—substantial portions of the documents they have produced. Thus, Defendants have deprived Plaintiff of discovery into the full scope of what they and their affiliate "American Energy" entities will be doing and who their customers will be.

The broad scope of redactions within responsive documents is illustrated by a recent redaction log provided by American Energy-Utica. To date, American Energy-Utica has produced a total of 19 documents in response to discovery. Yet, the redaction log for those 19 documents is 23 pages long. Some of the redactions of these otherwise responsive documents are entire pages; others are individual sentences or even words within sentences. Defendants have even redacted the organizational charts of the American Energy family of companies that they have produced. These examples indicate how heavily redacted the documents are even when Plaintiff has managed to obtain them from Defendants. The claimed basis for these redactions is generally confidentiality (despite the existence of an agreed protective order) and Defendants' practice of parsing responsive documents to micro-redact any portion within the documents that they claim to be irrelevant standing alone.

The Court should therefore enter and Order compelling Defendants to respond to these discovery requests and to do so in unredacted form.

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**Products and Customers (Interrogatories 17 and 22)**

In response to interrogatories aimed at discovering who American Energy Partners' customers will be, American Energy Partners purports to have no customers or even *intended* customers. Yet, media reports have indicated that American Energy Partners and Mr. McClendon have raised in excess of \$1 billion from investors. This response further underscores the need for information concerning the affiliates of American Energy Partners and American Energy-Utica. The fact that American Energy Partners purports to have no customers or *intended* customers begs the question of whether American Energy Partners will be selling products and/or services through one or more affiliated entities. This again underscores the importance of Plaintiff's ability to obtain discovery of these affiliated entities to determine not only the extent of the harm being done to its trademark *and* trade name, but the very nature of Defendants' business, including customers, channels of trade, and other factors relevant to both trademark *and* trade name infringement.

Regardless, the discovery request is broad enough to encompass documents and/or information related to "American Energy" entities affiliated with American Energy Partners. By refusing to provide information related to affiliate entities, American Energy Partners is engaging in corporate form gamesmanship.

**Defendants' Withholding of "Confidential" Material (General Objection No. 2)**

Defendants have raised a general objection and (as to American Energy Partners) a specific objection to producing documents that are subject to confidentiality agreements with third parties. Despite including this objection in their responses, Defendants have indicated that they have not withheld documents pursuant to this objection. Accordingly, Defendants called this a "non-issue" in their February 28 letter.

If Defendants are not withholding documents pursuant to this objection, it is puzzling why they are so steadfast in asserting a right to do so. In any event, it is not clear that this is a "non-issue." As set forth in Plaintiff's February 21 letter, it is not clear whether American Energy-Utica is withholding documents on this basis. Moreover, the case Defendants cite for the proposition that they can unilaterally withhold responsive documents pursuant to "third-party confidentiality restrictions" does not stand squarely for that proposition. In *Apple Inc. v. Samsung Elecs. Co.*, No. C 11-1846, 2012 U.S. Dist. LEXIS 96302 (N.D. Cal. July 11, 2002), the production of the unredacted documents at issue there was barred by a *protective order* issued by another tribunal and/or a district court's local rule. See *id.* at \*19-20.

The problem with Defendants' objection is that third-party confidentiality agreements do not shield documents from discovery. See *High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, at \*10-11 (D. Kan. Sept. 9, 2011). Defendants cannot purport to contract their way out of compliance with the Federal Rules of Civil Procedure in this manner. Equally important, Defendants have failed to

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explain how the protective order in place in this case does not provide the protection needed for these "confidential" documents they seek to shield from discovery. The protective order entered by this Court—a protective order agreed to by Defendants—provides for "attorneys' eyes only" protection for documents deemed to be sensitive enough to warrant such protection. If this protection is somehow inadequate, Defendants must seek further protection from this Court; they cannot simply withhold discoverable information.

The Court should therefore overrule Defendants' objection and order Defendants to produce any documents being withheld pursuant to third-party "confidentiality" agreements. Defendants can, of course, mark the documents at issue "confidential" or "attorneys' eyes only" under the protective order if those designations are appropriate.

#### **Defendant Aubrey McClendon's "Limited Appearance" Objection**

Defendant Aubrey McClendon is not only the CEO of the American Energy Defendants in this case, he is also the person who chose the "American Energy" name. Mr. McClendon appears to be the founder, co-owner, and chief executive of the "American Energy" family of companies. Yet, he has objected to responding to merits discovery pending the Court's disposition of his motion to dismiss for lack of personal jurisdiction. Defendants forward the general broad proposition that "engaging in litigation on the merits without first securing a court's determination on its jurisdictional challenge" waives the defense. But this general proposition does not provide McClendon with complete immunity from merits discovery in this case.

Courts in this Circuit have recognized that participating in discovery does *not* waive a timely asserted defense of lack of personal jurisdiction. See *e.g. Brown v. Way*, No. 10-13016, 2011 U.S. Dist. LEXIS 87404, at \*9 (E.D. Mich. Mar. 31, 2011). See also *Mielcarek v. Jackson*, No. 2:11-cv-255, 2012 U.S. Dist. LEXIS 125159, at \*4 (S.D. Ohio Sept. 4, 2012) (Deavers, M.J.) (expressing doubt that engaging in fact discovery waives a personal jurisdiction defense). Thus, requiring Mr. McClendon to respond to merits discovery does not negate his limited appearance. This Court should therefore overrule McClendon's "limited appearance" objection and order him to respond to discovery on the merits.

#### **McClendon's Contacts with Ohio (Interrogatory No. 2)**

Defendants have objected to requests aimed at discovering the nature of McClendon's contacts with and activities in Ohio. Claiming that "Ohio does not recognize general jurisdiction," Defendants object to providing information concerning Mr. McClendon's contacts with Ohio. The "general vs. specific jurisdiction" dichotomy, however, is beside the point. Mr. McClendon's contacts with Ohio, including his actions in and directed toward the state, are not only relevant to whether specific jurisdiction over him exists but also to issues related to the merits of American Energy Corporation's claims.



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McClendon's actions taken in his capacities as founder, owner, and chief executive of American Energy Partners and/or American Energy-Utica inform the nature of the business in which McClendon's "American Energy" entities will engage. This information, in turn, informs the issues of whether there may be a likelihood of confusion between American Energy Corporation and McClendon's family of "American Energy" entities. The Court should therefore overrule Defendants' objections to Interrogatory No. 2 and order Defendants to respond fully with respect to Mr. McClendon's contacts with the state of Ohio.

**Vendor Information (Interrogatory No. 4 and RFP 13)**

Defendants resist providing information with respect to their vendors on the basis that such information does not inform the "ultimate question" of whether "relevant consumers" are likely to believe that the products or services offered by the parties are affiliated in some way. Citing *Lucky's Detroit LLC v. Double L, Inc.*, 533 F. App'x 553, 555-56 (6th Cir. 2013), Defendants limit the relevant "likelihood of confusion" inquiry only to "relevant consumers." But the Sixth Circuit recognized long ago that "the potential confusion among *nonpurchasers* [e.g., vendors and suppliers] was just as significant as that among purchasers." *Champions Golf Club, Inc. v. The Champions Golf Club, Inc.*, 78 F.3d 1111, 1119-20 (6th Cir. 1996) (emphasis added). *Lucky's Detroit* did not purport to override *Champions Golf Club's* observation in this regard. Defendants' refusal to acknowledge the relevance of nonpurchasers is simply another example of Defendants' insistence on mischaracterizing the scope of the claims alleged in American Energy Corporation's amended complaint.

In light of the foregoing, it is improper for Defendants to completely avoid discovery of "vendor" information. While Plaintiff would be open to discussing the breadth of this request, Defendants have provided insufficient context to their claim of "overbreadth." Without information as to the number of documents or vendors that would be involved, there is no way to test the legitimacy of Defendants' claim of "overbreadth," nor to cooperatively discuss potential modifications to the scope of the response. The Court should therefore overrule Defendants' objections and order Defendants to respond fully to the requests for vendor information and documents.

**Use of American Energy Name (Interrogatory 5)**

Citing "facial overbreadth," Defendants balk at providing information or documents that relate to the instances in which the name "American Energy" or "American Energy-Utica" is used. Adhering to their strategy of pigeonholing this lawsuit as only a trademark-on-goods case, Defendants inexplicably contend in their February 28 letter that it is "unclear" whether Interrogatory 5 seeks information regarding the "trademark" or "ordinary" use. But the Interrogatory itself asks for instances of use as a *trade name*. Without providing any context as to how many documents exist that would fit the description set forth in Interrogatory No. 5, Defendants simply make a conclusory assertion of overbreadth. It cannot seriously be contended that Defendants can avoid



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providing discovery about instances in which they use the trade name "American Energy" when this case is *about* the use of that trade name.

Much like the vendor discovery discussed above, Plaintiff is open to narrowing the breadth of the request, if appropriate. But it is impossible to engage in a discussion about narrowing the scope of production when Defendants have given no context to their "overbreadth" claim. To date, Defendants have not provided information that would enable Plaintiff to know whether the "overbreadth" objection is legitimate and/or how it may be resolved in a cooperative manner. Absent such information, the Court should compel Defendants to respond fully to this Interrogatory.

\* \* \*

Plaintiff looks forward to discussing these issues with Your Honor at the telephone conference on March 21. Plaintiff respectfully asks the Court for an Order compelling Defendants to respond fully to the discovery requests as set forth above.

Sincerely,



Thomas M. Connor

Attachments

cc: John E. Jevicky  
Matthew A. Taylor  
Jeffrey S. Pollack  
William G. Porter  
William A. Sieck

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## **EXHIBIT A**

## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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AMERICAN ENERGY CORPORATION

PLAINTIFF,

V.

AMERICAN ENERGY PARTNERS, LP &  
AUBREY MCCLENDON,

DEFENDANTS.

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: Case No. 2:13-cv-00886-EAS-MRA

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: Judge Edmund A. Sargus

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: Magistrate Judge Mark R. Abel

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: JURY TRIAL DEMANDED  
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**DEFENDANTS AMERICAN ENERGY PARTNERS, LP'S AND AUBREY K.  
MCCLENDON'S RESPONSES TO PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS FOR PRODUCTION,  
AND REQUESTS FOR ADMISSION**

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Defendant American Energy Partners, LP ("American Energy Partners") hereby answers the following interrogatories, requests for production, and requests for admission (collectively "Requests").

Defendant Aubrey K. McClendon has made a special and limited appearance in this case for the purpose of contesting personal jurisdiction. Mr. McClendon objects to responding to all Requests other than those related to the question of jurisdiction. Unless otherwise stated, all responses to Plaintiff's Requests are provided by American Energy Partners. By responding to Plaintiff's Requests related to the question of jurisdiction, Mr. McClendon does not waive but reserves his objections to the Court's personal jurisdiction over him.

Defendants' responses to the Requests are subject to the following general objections:



GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

2. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things.

3. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things regarding matters not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are overbroad, unduly and unreasonably burdensome, oppressive and vague.

5. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for information, documents and things not known to Defendant, nor reasonably ascertainable by Defendant, because such material is in the hands of or under the control of third parties not within Defendant's control.

6. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things already in the possession of Plaintiff or documents and things available to Plaintiff from sources other than Defendant which are equally accessible to Plaintiff and to Defendant.

7. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are so vague and ambiguous that they are not subject to reasoned interpretation.

8. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they impose requirements to respond or supplement responses to Requests beyond those that are provided for in the applicable rules governing this matter.

9. Defendants object to the use of certain undefined terms in the Requests to the extent that they have or may have different legal meanings depending upon the context in which they are used.

10. Defendants object to the definition of the terms "you," "your," or "Defendant" because it is overbroad, vague, and ambiguous, treating Defendants American Energy Partners and Aubrey K. McClendon as a single entity, which they are not. Defendants further object to this definition to the extent it purports to include entities which are not parties to this litigation. Unless the following Requests relate to the question of personal jurisdiction or the text of the Request specifically refers to Defendant Aubrey K. McClendon, Defendants will interpret "you," "your," or "Defendant" to refer to Defendant American Energy Partners.

11. Defendants object to the definition of the terms "identify" and "state the identity of" as overbroad, vague, ambiguous. Defendants further object to this definition to the extent it expands Plaintiff's interrogatories into multiple subparts in excess of what is permitted by the Federal Rules of Civil Procedure. Defendants further object to this definition to the extent it imposes any other obligations on Defendants in excess of what is required by the Federal Rules of Civil Procedure, the Local Rules, or any applicable case law.

12. Defendants object to the definition of the terms “trademark” and “trade name” as overbroad, vague, and ambiguous. The terms “trademark” and “trade name” do not have the same legal or ordinary meaning. Defendants, therefore, further object to this definition to the extent it purports to give “trademark” or “trade name” a meaning different from their ordinary or legal meaning.

13. Defendant Aubrey K. McClendon separately objects to Plaintiff’s Requests on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any Requests other than those related to the question of jurisdiction.

13. The general objections asserted above shall be deemed to be applicable to and continuing with respect to each of Plaintiff’s Requests. The general objections asserted above are incorporated into each and every one of Defendant’s responses set forth herein. Such objections are not waived, nor in any manner limited, by any responses to any specific Request or any specific objection raised thereto. Defendant reserves the right to amend, supplement or alter its responses to Plaintiff’s Requests at any time.

**RESPONSES TO INTERROGATORIES**

**Interrogatory 1**

Identify, by stating the name and address, the general partners and limited partners of Defendant American Energy Partners.

**RESPONSE:** Subject to and without waiving the general objections,<sup>1</sup> American Energy Partners responds that the general partner of Defendant American Energy Partners is McClendon Energy Operating, LLC. Its limited partners are Aubrey K. McClendon and Kathleen B. McClendon.

**Interrogatory 2**

Identify all contact with the State of Ohio, including any land purchased or leased in Ohio, whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio, and the result of such attempt, and identify all documents relating to such attempt, including the names of the persons who acted for Defendant in connection therewith.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory on the basis that the term "contact," depending on its interpretation, may require a legal conclusion. Further, the terms "all contact" and "any land," without context, are vague and overbroad. Defendants further object to this interrogatory as overbroad and unduly burdensome. Defendants further object to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it has not purchased or leased any land in Ohio, nor has it applied to the Ohio Secretary of State's Office to do business in the State of Ohio.

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<sup>1</sup> Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.



Subject to and without waiving the foregoing or general objections, Aubrey K. McClendon responds that he has not personally purchased or leased any land in Ohio nor has he personally applied to the Ohio Secretary of State's Office to do business in the State of Ohio. Mr. McClendon has, on occasion, traveled to Ohio.

**Interrogatory 3**

Identify whether and how the "American Energy Partners" trade name has been used in connection with any goods or services sold or rendered by you.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not and has not sold any goods or services.

**Interrogatory 4**

Identify, by stating the name and address, any vendors that have been contacted or used by Defendant, including those in Ohio.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory because the term "vendors," which is not defined, is vague and ambiguous. Defendants further object to this interrogatory as overbroad and unduly burdensome and seeks

information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of the preceding interrogatory 3, Defendants interpret this interrogatory as seeking information regarding resellers of goods or services that may be offered for sale by Defendants. Defendants further object to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not and has not sold any goods or services.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds that he personally does not and has not sold any goods or services.

#### Interrogatory 5

Identify instances where the trade name "American Energy Partners" has been used in connection with any document circulated or displayed by your business.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it calls for a legal conclusion. Defendants further object to this interrogatory as overbroad and unduly burdensome and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, seeking every document ever created by Defendants in which "American Energy Partners" appears. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and

limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not use "American Energy Partners" as a trademark. American Energy Partners further responds that it will produce representative documents evidencing American Energy Partners' use of the following logo:



**Interrogatory 6**

State whether and when Defendant ever caused a search to be made to determine the availability for the use of the trade name "American Energy Partners" including the words as part thereof, or as part of a trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 7**

Identify the individual(s) who requested the search described in interrogatory number 6.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 8**

Identify the individual(s) who conducted the search described in interrogatory number 6, and the sources of information investigated.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants object to Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.



**Interrogatory 9**

State whether the results of the search described in interrogatory number 6 were reported to Defendant in writing; if in writing, include the date and recipient thereof; if oral, include the date of such report and the recipient thereof.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants object to Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 10**

State the date, by month and year, when Defendant first adopted the "American Energy Partners" as part of a trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not use "American Energy Partners" as a trademark. The American Energy Partners, LP name was selected on or about February 27, 2013.

**Interrogatory 11**

Identify the financial sales and revenue of Defendant American Energy Partners.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it has had no sales or revenue.

**Interrogatory 12**

Identify the partner of Defendant, or the employee competent to bind the Defendant, most familiar with the selection and adoption by defendant of the trade name "American Energy Partners" and the decision to use same in a commercial enterprise.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the

extent it calls for a legal conclusion regarding the partner or employee competent to bind "Defendant." Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that the person most knowledgeable about American Energy Partners' selection and adoption of the American Energy Partners, LP name is Defendant Aubrey K. McClendon.

**Interrogatory 13**

Did any partner, employee or agent of Defendant know at the time Defendant adopted the name "American Energy Partners," of the existence of a business known as "American Energy Corporation"?

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory as overbroad and unduly burdensome, seeking information regarding what every partner, employee or agent of Defendant (undefined but presumably referring to American Energy Partners) knew at the time American Energy Partners adopted the business name American Energy Partners, LP regardless of whether such employees or agents were employed or retained by American Energy Partners at that time. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this

case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine until it received the August 23, 2013 demand letter from Michael McKown.

**Interrogatory 14**

If the answer to interrogatory No. 13 is in the affirmative, state the name, current position and business address of each person with such knowledge. If the answer to interrogatory No. 13 is in the negative, state when Defendant first became aware of the existence of a business known as “American Energy Corporation.”

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, seeking information regarding what every partner, employee or agent of Defendant (undefined but presumably referring to American Energy Partners) knew at the time American Energy Partners adopted the business name American Energy Partners, LP regardless of whether such employees or agents were employed or retained by American Energy Partners at that time. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners incorporates by reference its response to interrogatory 13.

**Interrogatory 15**

Identify all persons, by their current positions and business addresses, who participated in the original selection by Defendant of the name "American Energy Partners," and identify all documents substantiating the foregoing.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome and not reasonably likely to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that Aubrey K. McClendon and Scott Mueller participated in the selection of the name American Energy Partners, LP.

**Interrogatory 16**

State whether Defendant ever filed an application to register "American Energy Partners" or any variation thereof as a trademark in the United States Patent Office, or any State of the United States; identify all such applications by Serial Number, filing date; and describe the present status of any such application.

**RESPONSE:** Subject to and without waiving the general objections, American Energy Partners responds that it has not filed an application to register "American Energy Partners" or any

variation thereof as a trademark in the United States Patent (and Trademark) Office, or any State of the United States.<sup>2</sup>

**Interrogatory 17**

Identify Defendant's customer base or intended customer base.

**RESPONSE:** Subject to and without waiving the general objections, American Energy Partners responds that it has no customer base or intended customer base.<sup>3</sup>

**Interrogatory 18**

Identify any customer or marketing surveys conducted by Defendant.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that it has not conducted any customer or marketing surveys.

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<sup>2</sup> Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

<sup>3</sup> Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 19**

Identify the name and date of the publication of all advertisements of Defendant's trade name "American Energy Partners," including all documents relating to and confirming such advertising and promotion, and the person(s) having custody and/or control thereof.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiver of the foregoing and general objections, American Energy Partners responds that it will produce documents from which the response to this interrogatory can be derived.



**Interrogatory 20**

What is the name of each territorial area in which you claim the trade name of your business is known?

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory because it is vague and ambiguous, seeking information regarding "each territorial area in which . . . the trade name of your business is known" whether by one or more individuals, known or unknown to Defendants. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendants further object to this interrogatory because it is a contention interrogatory and to the extent it seeks to elicit a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 21**

On what facts do you base such claim described in interrogatory number 20?

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory because it is vague and ambiguous, seeking information regarding "each territorial area in which . . . the trade name of your business is known" whether by one or more individuals, known or

unknown to Defendants. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendants further object to this interrogatory because it is a contention interrogatory and to the extent it seeks to elicit a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

**Interrogatory 22**

Describe each and every kind and type of product and service sold, or intended to be sold by Defendant under the trade name "American Energy Partners."

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiver of the foregoing and general objections, American Energy Partners responds that it does not sell any products or services.

Interrogatory 23

Identify any contact with any land agents working in Ohio.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory because the terms "land agents," which is not defined, and "any contact" are vague and ambiguous. Defendants further object to this request to this interrogatory as vague and ambiguous because it seeks information regarding any contact with any land agents working in Ohio no matter by whom. Defendants further object to this interrogatory as overbroad and unduly burdensome and because it seeks information not in their possession custody or control. Defendants further object to this interrogatory because it is not limited to a reasonable time period. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds [REDACTED]

[REDACTED]

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds [REDACTED]

[REDACTED]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

**Interrogatory 24**

Identify any direct or indirect ownership or other interests in gas wells located in Ohio by Defendant Aubrey K. McClendon.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this interrogatory because the terms “gas wells” and “indirect ownership,” which are not defined, are vague and ambiguous. Defendants further object to this interrogatory as overbroad. Defendants further object to this interrogatory because it is not limited to a reasonable time period. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds [REDACTED]

[REDACTED]  
[REDACTED]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

**RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Request for Production 1**

Please produce all documents and things which were identified, consulted, reviewed, and/or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories to Defendants.

**RESPONSE:** Defendants object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Subject to the general objections set forth above, Defendants respond that to the extent they possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 2**

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of the "American Energy Partners" trade name and trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above,

American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 3**

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of all other trade names or trademarks not listed in Request No. 2 above.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.



**Request for Production 4**

Please produce all bills and invoices which contain the name "American Energy Partners."

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production as overbroad and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks bills and invoices sent to American Energy Partners in addition to any bills and invoices that may have been sent from American Energy Partners. Defendants interpret this Request as seeking bills and invoices sent from Defendant American Energy Partners. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that does not possess documents responsive to this request.

**Request for Production 5**

Please produce copies of all documents and correspondence, containing the results of any search conducted to determine the availability of the trade name "American Energy Partners."

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately

objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

**Request for Production 6**

Please produce all documents and correspondence related to any application to register the name "American Energy Partners" as a trademark in the United States Patent Office, or any State of the United States.

**RESPONSE:** Subject to and without waiver of the general objections set forth above, American Energy Partners responds that does not possess documents responsive to this request.<sup>4</sup>

**Request for Production 7**

Please produce all documents and correspondence relating to Defendant's knowledge of Plaintiff American Energy Corporation.

**RESPONSE:** Defendants object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of this and the general objections set forth above, American Energy Partners refers Plaintiff to Plaintiff's August 23, 2013 letter.<sup>5</sup>

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<sup>4</sup> Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

<sup>5</sup> Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

**Request for Production 8**

Please produce representative business documents such as letterhead, business cards, stationery and envelopes that contain the name "American Energy Partners."

**RESPONSE:** Subject to and without waiver of these and the general objections set forth above, American Energy Partners will produce documents responsive to this request.<sup>6</sup>

**Request for Production 9**

Please produce all documents that contain advertisements of the name "American Energy Partners."

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production because the phrase "advertisement of the name 'American Energy Partners'" is vague and ambiguous. Defendants further object to this request for production as overbroad. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 10**

Please produce all documents and things evidencing Defendant's use of Defendant's trade name and trademark in connection with fossil fuels extracted and/or produced in Ohio.

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<sup>6</sup> Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without and waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request for production.

**Request for Production 11**

Please produce all documents and things that show Defendant's volume of sales for all of Defendant's products or services.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal

jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without any waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 12**

Please produce all documents referring to Defendant's customers or potential customers.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production as overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without and waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 13**

Please produce all documents or correspondence referring to Defendant's vendors or potential vendors.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production because the term "vendors," which is not defined, is vague and ambiguous. Defendants further object to this request for production as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of interrogatory 3, Defendants interpret this request for production as seeking information regarding resellers of goods or services that may be offered for sale by Defendants. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendants further object to this request for production because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds that he possesses no documents responsive to this request.



**Request for Production 14**

Please produce all documents and things that refer to the territorial areas in the United States where Defendant currently offers or intends to offer fossil fuels.

**RESPONSE:**In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 15**

Please produce all documents and things that refer to the territorial areas in the United States where Defendant manufactures, develops or creates or plans to manufacture, develop or create fossil fuels.

**RESPONSE:**In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and

things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 16**

Please produce all documents and things that refer to the channels of trade through which Defendant offers or intends to offer products or services related to fossil fuels.

**RESPONSE:**In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 17**

Please produce all documents and things that refer to any source of sponsorship, funding or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Defendant's products and services, including to the extent possible, a breakdown of amounts spent and market share per product.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 18**

Please produce all documents and things that relate to any consumer or market testing Defendant has received or conducted relating to Defendant's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this

request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 19**

Please produce all documents and things which relate or refer to any instances of actual or possible confusion, mistake, or deception of any kind between Defendant's trade name or trademark and Plaintiff's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

**Request for Production 20**

Please produce all documents and correspondence which relate to or refer to coal.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for “all documents and correspondence which relate or refer to coal” as overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

**Request for Production 21**

Please produce all searches and opinions related to the American Energy Partners trade name and trademark and selection specifically.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff’s definition of trade name and characterization of “American Energy Partners” as a trademark. Defendants further object to this request for production because it is overbroad, unduly burdensome, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant

Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

### **RESPONSES TO REQUESTS FOR ADMISSION**

#### **Request for Admission No. 1**

Admit that Defendant has not yet commenced use of Defendant's trade name and trademark in Ohio in connection with the sale of its goods and/or services.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners admits that it has not sold any goods or services.



**Request for Admission No. 2**

Admit that coal and natural gas can both be used for power generation.

**RESPONSE:** In addition to the general objections set forth above, Defendant American Energy Partners admits that both coal and natural gas can be used for power generation.<sup>7</sup>

**Request for Admission No. 3**

Admit that both Defendant and Plaintiff use the name "American Energy" in their trade name and trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission because Plaintiff does not define its alleged "trade name" or "trade mark." Defendants interpret Plaintiff's reference to its alleged "trade name" or "trade mark" in this request for admission to refer to "American Energy" or "American Energy Corporation" as Plaintiff has defined those terms in its Complaint; American Energy Partners, however, does not concede that such terms are trademarks. Defendants further object to this request for admission to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

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<sup>7</sup> Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners denies that it or Plaintiff uses "American Energy" in any trademark.

**Request for Admission No. 4**

Admit that Defendant knew of the existence of American Energy Corporation prior to the selection of "American Energy Partners" as Defendant's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission because Plaintiff does not define "American Energy Corporation" as referring to itself or any other company with "American Energy Corporation" in its name. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies that it knew of Plaintiff's existence prior to selecting the name American Energy Partners, LP.

**Request for Admission No. 5**

Admit that natural gas directly competes with coal for market-share in the electricity generation market.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission as vague and ambiguous. Defendants further object to this request for admission because it calls for a legal conclusion. Defendant Aubrey K. McClendon separately

objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies this request for admission.

**Request for Admission No. 6**

Admit that natural gas directly competes with coal for customers.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission as vague and ambiguous. Defendants further object to this Request as vague and overbroad because it fails to identify any specific sellers of or customers for natural gas or coal. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies that it competes with Plaintiff for customers.

**Request for Admission No. 7**

Admit that Defendant is involved in the purchase and/or lease of land in Ohio, including Southeastern Ohio (e.g., Jefferson, Harrison, Guernsey, Noble, Monroe, and Belmont Counties).

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission's use of the word "involved" is vague and ambiguous. Defendants

interpret "involved" to mean whether Defendants have, themselves, purchased or leased land in Ohio. Defendants further object to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing and general objections, [REDACTED]

[REDACTED]

Subject to and without waiving the foregoing and general objections, Defendant Aubrey K. McClendon [REDACTED]

[REDACTED]

[REDACTED]

[This Response Is Designated Confidential]

**Request for Admission No. 8**

Admit that Defendant has had contact with EnerVest, Ltd., regarding land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission as overbroad, vague, and ambiguous.

Subject to and without waiving the foregoing and general objections, American Energy Partners [REDACTED]

Subject to and without waiving the foregoing and general objections, Aubrey K. McClendon [REDACTED]

[REDACTED]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

Request for Admission No. 9

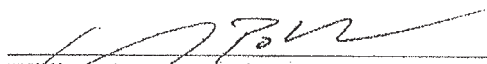
Admit that Defendant has signed an agreement to purchase over 20,000 acres of land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, Defendants object to this request for admission's use of the words "Defendant" and "signed" are vague and ambiguous. Defendants interpret this request for admission as inquiring about whether Defendants have, themselves, entered into an agreement to purchase over 20,000 acres of land in Ohio.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies this request for admission.

Subject to and without waiving the foregoing and general objections, Defendant Aubrey K. McClendon denies this request for admission.

Dated: November 7, 2013



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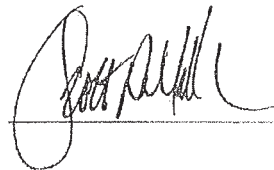
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*Counsel to Defendants  
American Energy Partners, LP &  
Aubrey K. McClendon*

VERIFICATION

I, Scott R. Mueller, depose and say that I am the Chief Financial Officer of American Energy Partners, LP, Defendant in the above-entitled action, and that I am authorized by American Energy Partners, LP to verify answers to the foregoing interrogatories and that the answers thereto are true and correct to the best of my knowledge, information and belief, and I further state that some of the matters set forth therein are not within my personal knowledge, that the facts stated therein have been assembled by counsel for American Energy Partners, LP, and that I am informed and believe that the facts stated therein are true and correct.

A handwritten signature in black ink, appearing to read "Scott R. Mueller", is written over a horizontal line.



VERIFICATION

I, Aubrey K. McClendon, verify that the answers provided by me in the foregoing interrogatories are true and correct to the best of my knowledge, information and belief.

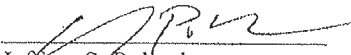
A handwritten signature in black ink, appearing to read 'Aubrey K. McClendon', followed by a horizontal line extending to the right.

**CERTIFICATE OF SERVICE**

I certify that November 7, 2013 that the foregoing was served via first-class mail postage prepaid on the following:

John E. Jevicky  
Dinsmore & Sohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

*Attorneys for Plaintiff*

  
Jeffrey S. Pollack

## **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

AMERICAN ENERGY  
CORPORATION,

Plaintiff,

Y.

AMERICAN ENERGY PARTNERS, LP

and

AMERICAN ENERGY - UTICA, LLC,

and

AUBREY McCLENDON

**Defendants.**

CASE NO. 2:13-CV-00886-GCS-MRA

Judge Edmund A. Sargus, Jr.

**DEFENDANT AMERICAN ENERGY – UTICA, LLC’S RESPONSES TO PLAINTIFF’S  
FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION,  
AND REQUESTS FOR ADMISSION**

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Defendant American Energy – Utica, LLC (“American Energy – Utica”) hereby answers the following interrogatories, requests for production, and requests for admission (collectively “Requests”).

American Energy – Utica’s responses to the Requests are subject to the following general objections:

GENERAL OBJECTIONS

1. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

2. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things.

3. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things regarding matters not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are overbroad, unduly and unreasonably burdensome, oppressive and vague.

5. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for information, documents and things not known to American Energy – Utica, nor reasonably ascertainable by American Energy – Utica, because such material is in the hands of or under the control of third parties not within American Energy – Utica's control.

6. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things already in the

possession of Plaintiff or documents and things available to Plaintiff from sources other than American Energy – Utica which are equally accessible to Plaintiff and to American Energy – Utica.

7. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are so vague and ambiguous that they are not subject to reasoned interpretation.

8. American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they impose requirements to respond or supplement responses to Requests beyond those that are provided for in the applicable rules governing this matter.

9. American Energy – Utica objects to the use of certain undefined terms in the Requests to the extent that they have or may have different legal meanings depending upon the context in which they are used.

10. American Energy – Utica objects to the definition of the terms "you," "your," or "Defendant" because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this definition to the extent it purports to include entities which are not parties to this litigation. Defendant will interpret "you," "your," or "Defendant" to refer to Defendant American Energy - Utica. Similarly, any reference to "Defendant" in any response is in reference to American Energy – Utica, only.

11. American Energy – Utica objects to the definition of the terms "identify" and "state the identity of" as overbroad, vague, ambiguous. American Energy – Utica further objects to this definition to the extent it expands Plaintiff's interrogatories into multiple subparts in excess of what is permitted by the Federal Rules of Civil Procedure. American Energy – Utica further objects to this

definition to the extent it imposes any other obligations on American Energy – Utica in excess of what is required by the Federal Rules of Civil Procedure, the Local Rules, or any applicable case law.

12. American Energy – Utica objects to the definition of the terms “trademark” and “trade name” as overbroad, vague, and ambiguous. The terms “trademark” and “trade name” do not have the same legal or ordinary meaning. American Energy – Utica, therefore, further objects to this definition to the extent it purports to give “trademark” or “trade name” a meaning different from their ordinary or legal meaning.

13. The general objections asserted above shall be deemed to be applicable to and continuing with respect to each of Plaintiff’s Requests. The general objections asserted above are incorporated into each and every one of American Energy – Utica’s responses set forth herein. Such objections are not waived, nor in any manner limited, by any responses to any specific Request or any specific objection raised thereto. American Energy – Utica reserves the right to amend, supplement or alter its responses to Plaintiff’s Requests at any time.



**RESPONSES TO INTERROGATORIES**

**Interrogatory 1**

Identify, by stating the name and address, any members, subsidiaries or affiliates of Defendant American Energy – Utica.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request as vague and ambiguous seeking information regarding “affiliates,” which term is undefined. Subject to and without waiving the general objections, American Energy – Utica responds that its sole member is American Energy Ohio Holdings, LLC.

**Interrogatory 2**

Identify whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio, and the result of such attempt, and identify all documents relating to such attempt, including the names of the persons who acted for Defendant in connection therewith.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad and unduly burdensome. American Energy – Utica further objects to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it registered to conduct business in Ohio as a foreign limited liability company.

**Interrogatory 3**

Identify whether and how the "American Energy - Utica" name has been used in connection with any goods or services sold or rendered by you.

**RESPONSE:** Subject to and without waiving the foregoing or general objections, American Energy - Utica responds that it does not and has not yet sold any goods or services.

**Interrogatory 4**

Identify, by stating the name and address, any vendors that have been contacted or used by Defendant, including those in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this interrogatory because the term "vendors," which is not defined, is vague and ambiguous.

American Energy - Utica further objects to this interrogatory as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of the preceding interrogatory 3, American Energy - Utica interprets this interrogatory as seeking information regarding resellers of goods or services that may be offered for sale by American Energy - Utica. American Energy - Utica further objects to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy - Utica responds [REDACTED]

[This Response Is Designated Attorneys' Eyes Only - Confidential]

**Interrogatory 5**

Identify instances where the trade name or trademark "American Energy - Utica" has been used in connection with any document circulated or displayed by your business.

**RESPONSE:** In addition to the general objections set forth above, American Energy -- Utica objects to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy -- Utica" as a trademark. American Energy -- Utica further objects to this interrogatory to the extent it calls for a legal conclusion. American Energy -- Utica further objects to this interrogatory as overbroad and unduly burdensome and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, seeking every document ever created by American Energy -- Utica in which "American Energy - Utica" appears. American Energy -- Utica further objects to this interrogatory to the extent it calls for confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy -- Utica responds that it does not use "American Energy -- Utica" as a trademark. American Energy -- Utica further responds that it will produce representative documents evidencing American Energy -- Utica's use of its name.

**Interrogatory 6**

State whether and when Defendant or an agent of the Defendant has ever caused a search to be made to determine the availability for the use of the name "American Energy - Utica" including the words as part thereof, or as part of a trade name(s) or trademark(s).

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it has not made or caused to be made a search to determine the availability for the use of the name "American Energy – Utica" as a trade name or trademark.

**Interrogatory 7**

Identify the individual(s) who both conducted and requested the search described in interrogatory number 6 and the sources of information investigated.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing or general objections, American Energy – Utica refers Plaintiff to its response to Interrogatory 6.

**Interrogatory 8**

Identify and describe any contact that American Energy – Utica's has had with Red Hill Development related to the development, production, extraction or sale of natural gas in Ohio, or related to the acquisition of land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory because the terms “any contact” are vague and ambiguous. American Energy – Utica further objects to this interrogatory as overbroad and unduly burdensome and because it seeks information not in its possession custody or control. American Energy – Utica further objects to this interrogatory because it is not limited to a reasonable time period. American Energy – Utica further objects to this interrogatory to the extent it seeks confidential and/or proprietary documents and things. American Energy – Utica further objects to this interrogatory to the extent the possessive reference to “American Energy – Utica's” suggests the interrogatory is missing an object and is therefore incomplete.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it has formed a joint venture with RHDK Oil and Gas, LLC of Dover to explore Utica shale deposits in Guernsey and Harrison counties.

**Interrogatory 9**

Identify all witnesses who you believe may have information or knowledge relevant to the claims and defenses to this litigation and describe what information or knowledge you believe each such witness may possess.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad, vague, and ambiguous. American Energy – Utica further objects to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this interrogatory to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing or general objections, American Energy – Utica refers Plaintiff to American Energy – Utica’s initial disclosures and the initial disclosures made by Defendants American Energy Partners, LP and Aubrey McClendon. American Energy – Utica further responds by identifying the following individuals: Annie Psencik, Director of Marketing for American Energy – Utica; Serena Evans, Land Director for American Energy – Utica.

**Interrogatory 10**

State the date, by month and year, when Defendant first adopted “American Energy – Utica” as part of a trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory based upon Plaintiff’s definition of trade name and characterization of “American Energy - Utica” as a trademark.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it does not use “American Energy - Utica” as a trademark. The American Energy – Utica, LLC name was selected on or about June 14, 2013.

**Interrogatory 11**

Identify the financial sales and revenue of Defendant American Energy – Utica since its inception, or for the prior three years, whichever time period is shorter.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. American Energy – Utica further objects to this interrogatory to the extent it calls for confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it has had no sales or revenue.

**Interrogatory 12**

Identify the member of Defendant, or the employee competent to bind the Defendant, most familiar with the selection and adoption by defendant of the name “American Energy - Utica” and the decision to use same in a commercial enterprise.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory to the extent it calls for a legal conclusion regarding the partner or employee competent to bind American Energy – Utica. American Energy – Utica further objects to this interrogatory to the extent it refers to “adoption by defendant.”

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that the person most knowledgeable about American Energy – Utica’s selection and adoption of the American Energy – Utica, LLC name is Aubrey K. McClendon.



**Interrogatory 13**

Did any partner, employee or agent of Defendant know at the time Defendant adopted the name "American Energy – Utica," of the existence of a business known as "American Energy Corporation"? If yes, state the name, current position and business address of each person with such knowledge. If no, state when Defendant first became aware of the existence of a business known as "American Energy Corporation."

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad and unduly burdensome, seeking information regarding what every partner, employee or agent of American Energy – Utica knew at the time American Energy – Utica adopted the business name American Energy – Utica, LLC regardless of whether such employees or agents were employed or retained by American Energy - Utica at that time. American Energy – Utica further objects to this interrogatory because it seeks information that is not in its possession, custody, or control.

Subject to and without waiving the foregoing and general objections, American Energy - Utica responds that it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine at the time it adopted the name American Energy – Utica, LLC. American Energy – Utica first became aware of Plaintiff American Energy Corporation on August 23, 2013, when Plaintiff sent a cease and desist letter to American Energy Partners, LP.

**Interrogatory 14**

Identify Defendant Aubrey McClendon's roles and responsibilities as it relates to the creation and incorporation of American Energy – Utica.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as vague and ambiguous. American Energy – Utica further objects to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing and general objections, American Energy - Utica responds that Aubrey K. McClendon is the CEO of American Energy – Utica.

**Interrogatory 15**

Identify all persons, by their current positions and business addresses, who participated in the original selection by Defendant of the name “American Energy - Utica,” and identify all documents substantiating the foregoing.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad and unduly burdensome and not reasonably likely to lead to the discovery of admissible evidence. American Energy – Utica further objects to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing and general objections, American Energy – Utica responds that Aubrey K. McClendon participated in the selection of the name American Energy – Utica, LLC.

**Interrogatory 16**

State whether Defendant ever filed an application to register “American Energy - Utica” or any variation thereof as a trademark in the United States Patent Office, or any State of the United States;

identify all such applications by Serial Number, filing date; and describe the present status of any such application.

**RESPONSE:** Subject to and without waiving the general objections, American Energy -- Utica responds that it has not filed an application to register "American Energy -- Utica" or any variation thereof as a trademark in the United States Patent (and Trademark) Office, or any State of the United States.

**Interrogatory 17**

Identify the target geographic market(s), consumer(s), and customer(s) intended for American Energy - Utica's products or services.

**RESPONSE:** Subject to and without waiving the general objections, American Energy -- Utica responds that it intends to sell natural gas to pipeline operators operating in the State of Ohio.

**Interrogatory 18**

Identify any market research or consumer surveys conducted by Defendant related to the American Energy - Utica trade name(s) or trademark(s).

**RESPONSE:** In addition to the general objections set forth above, American Energy -- Utica objects to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. American Energy -- Utica further objects to this interrogatory to the extent it calls for confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing and general objections, American Energy -- Utica responds that it has not conducted any market research or consumer surveys.

**Interrogatory 19**

Identify the name and date of the publication of all advertisements using the name "American Energy - Utica," including all documents relating to and confirming such advertising and promotion, and the person(s) having custody and/or control thereof.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. American Energy – Utica further objects to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of the foregoing and general objections, American Energy – Utica responds that it does not possess documents responsive to this request.

**Interrogatory 20**

What is the name of each territorial area in which the name of your business is known and on what facts do you base this knowledge?

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory because it is vague and ambiguous, seeking information regarding "each territorial area in which the name of your business is known" whether by one or more individuals, known or unknown to American Energy – Utica. American Energy – Utica further objects to this interrogatory because it seeks information that is not in its possession, custody, or control. American Energy – Utica further objects to this interrogatory because it is a contention interrogatory to the extent it seeks to elicit a legal conclusion.

**Interrogatory 21**

Identify Defendant Aubrey McClendon's roles and responsibilities as it relates to the management and operation of American Energy – Utica.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory because the terms “roles” and “responsibilities,” which are not defined, are vague and ambiguous. Defendant further objects to this interrogatory as overbroad. American Energy – Utica further objects to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that Aubrey K. McClendon is the CEO of American Energy – Utica.

**Interrogatory 22**

Describe each and every kind and type of product and service sold, or intended to be sold by Defendant under the name “American Energy - Utica.”

**RESPONSE:** Subject to and without waiver of the foregoing and general objections, American Energy – Utica responds that it intends to sell natural gas, natural gas liquids, and oil.

**Interrogatory 23**

Identify any contact related to land acquisition in Ohio, including any land purchased or leased in Ohio, contact with land agents working in Ohio, and with potential sellers of land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory because its request to “identify any contact related to land acquisition in

Ohio" is overbroad, vague, and ambiguous, failing to specify by whom and with whom said contact is made. American Energy – Utica further objects to this Interrogatory requesting information regarding "any contact" as overbroad and burdensome seeking information regarding hundreds, if not thousands, of communications related to "land" however that term is construed. American Energy – Utica further objects to this interrogatory because the term "land agents," which is not defined, is vague and ambiguous. American Energy – Utica further objects to this interrogatory as unduly burdensome. American Energy – Utica further objects to this interrogatory because it is not limited to a reasonable time period. American Energy – Utica further objects to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

**Interrogatory 24**

Describe any relationship between American Energy - Utica and Defendant American Energy Partners, LP, including the identification of any common members or affiliates and an identification of any interaction between the two companies.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this interrogatory because the terms "any relationship," "any interaction," and "affiliates," which are not defined, are vague and ambiguous. American Energy – Utica further objects to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it does not have any members in common with American Energy Partners, L.P. By way of further response, a subsidiary of American Energy Partners, LP provides certain management services to American Energy – Utica.

**RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

**Request for Production 1**

Please produce all documents and things which were identified, consulted, reviewed, and/or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories to Defendant.

**RESPONSE:** American Energy – Utica objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 2**

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of the "American Energy - Utica" name.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request.



**Request for Production 3**

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of all names, trade names or trademarks not listed in Request No. 2 above.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request for production.

**Request for Production 4**

Please produce all bills and invoices which contain the name "American Energy - Utica."

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production as overbroad and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks bills and invoices sent to American Energy – Utica in addition to any bills and invoices that may have been sent from American Energy – Utica. American Energy – Utica interprets this Request as seeking bills and invoices sent from American Energy – Utica. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American

Energy – Utica responds that does not possess documents responsive to this request.

**Request for Production 5**

Please produce copies of all documents and correspondence, containing the results of any search conducted to determine the availability of the name “American Energy - Utica.”

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of these and the general objections set forth above, American Energy - Utica responds that does not possess documents responsive to this request.

**Request for Production 6**

Please produce all documents and correspondence related to any application to register the name “American Energy - Utica” as a trademark in the United States Patent Office, or any State of the United States.

**RESPONSE:** Subject to and without waiver of these and the general objections set forth above, American Energy - Utica responds that it does not possess documents responsive to this request.

**Request for Production 7**

Please produce all documents and correspondence relating to Defendant’s knowledge of Plaintiff American Energy Corporation.

**RESPONSE:** American Energy – Utica objects to this request for production to the extent it

seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of this and the general objections set forth above, American Energy – Utica refers Plaintiff to Plaintiff's August 23, 2013 letter sent to American Energy – Utica's CEO, Defendant Aubrey K. McClendon, and Defendant American Energy Partners. American Energy – Utica also refers Plaintiff to the pleadings filed in the above-referenced action.

**Request for Production 8**

Please produce representative business documents such as letterhead, business cards, stationary and envelopes that contain the name "American Energy - Utica."

**RESPONSE:** Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 9**

Please produce all documents that contain advertisements with the name "American Energy - Utica."

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because the phrase "advertisements with the name 'American Energy Partners'" is vague and ambiguous. American Energy – Utica further objects to this request for production as overbroad.

Subject to and without waiver of these and the general objections set forth above, American Energy - Utica responds that it does not possess documents responsive to this request.

**Request for Production 10**

Please produce all documents and things evidencing Defendant's use of Defendant's "American Energy - Utica" trade name(s) and trademark(s) in connection with fossil fuels extracted and/or produced in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy - Utica" as a trademark. American Energy - Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without and waiver of these and the general objections set forth above, American Energy - Utica responds that it possesses no documents responsive to this request for production.

**Request for Production 11**

Please produce all documents and things that show Defendant's volume of sales for all of Defendant's products or services.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy - Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without any waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request.

**Request for Production 12**

Please produce all documents referring to Defendant's customers and/or customers or markets that American Energy - Utica intends to solicit for future businesses.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production as overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 13**

Please produce all documents or correspondence referring to Defendant's vendors in Ohio or vendors that Defendant has considered using in the future in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because the term “vendors,” which is not defined, is vague and ambiguous. American Energy – Utica further objects to this request for production as overbroad and

unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of interrogatory 3, American Energy – Utica interprets this request for production as seeking information regarding resellers of goods or services that may be offered for sale by American Energy – Utica. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things. American Energy – Utica further objects to this request for production because it is not limited to a reasonable time period.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 14**

Please produce all documents and things that refer to the territorial areas in the United States where Defendant currently offers or intends to offer fossil fuels, for sale and/or delivery.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

American Energy -- Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy -- Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 15**

Please produce all documents and things that refer to the territorial areas in the United States where Defendant extracts, produces, refines, or delivers or plans to extract, produce, refine, or delivers fossil fuels.

**RESPONSE:** In addition to the general objections set forth above, American Energy -- Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy -- Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy -- Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy -- Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 16**

Please produce all documents and things that refer to the channels of trade through which Defendant offers or intends to offer products or services related to fossil fuels.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 17**

Please produce all documents and things that refer to any source of sponsorship, funding or other financial support for the creation, extraction, distribution, manufacturing, marketing, promotion, and/or sale of Defendant's products and services, including to the extent possible, a breakdown of amounts spent and market share per product.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production because its request for information regarding “any source of sponsorship, funding, or other financial support,” whatever that may refer to, has no bearing on this case, is not likely to lead to the discovery of admissible evidence. American



Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

**Request for Production 18**

Please produce all documents and things that relate to any market research or consumer surveys Defendant has received or conducted relating to Defendant's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production based upon Plaintiff's definition of trade name and characterization of the same as a trademark. American Energy – Utica further objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it possesses no documents responsive to this request.

**Request for Production 19**

Please produce all documents and things which relate or refer to any instances of actual or possible confusion, mistake, or deception of any kind between Defendant's name, trade name(s) or trademark(s) and Plaintiff's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production based upon Plaintiff's definition of trade name and

characterization of Plaintiff's name as a trademark. American Energy – Utica further objects to this request for production based upon Plaintiff's definition of trade name and characterization of American Energy – Utica's name as a trademark. American Energy – Utica further objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing or general objections, American Energy – Utica responds that it possesses no documents responsive to this request.

**Request for Production 20**

Please produce all documents and correspondence which relate to or refer to coal.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for “all documents and correspondence which relate or refer to coal” as overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

**Request for Production 21**

Please produce all searches and opinions related to the American Energy – Utica name, trade name and trademark and selection.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production based upon Plaintiff's definition of trade name and

characterization of "American Energy – Utica" as a trademark. American Energy – Utica further objects to this request for production because it is overbroad, unduly burdensome, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request for production.

**Request for Production 22**

Please produce all documents and correspondence between American Energy - Utica, including its employees and members and Defendant American Energy Partners, LP, including its employees and members regarding the extraction, development or sale of natural gas in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to the general objections set forth above, American Energy - Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 23**

Please produce all documents and correspondence identifying American Energy – Utica's competitors, the products those competitors sell, and the prices at which American Energy – Utica's competitors sell their products.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this interrogatory as overbroad and unduly burdensome and because it seeks information not in its possession, custody or control. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

**Request for Production 24**

Please produce all documents showing American Energy – Utica's real estate assets, including both leased and purchased assets.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request for production.

**Request for Production 25**

Please produce all documents and correspondence related American Energy – Utica's planning for and/or attempts to purchase real estate assets, including both leased and purchased assets in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiver of these and the general objections set forth above, American Energy – Utica responds that it possesses no documents responsive to this request for production.

**Request for Production 26**

Please produce all documents related to American Energy - Utica's business plans and projections created within the last three years.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy - Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy - Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to the general objections set forth above, American Energy - Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 27**

Please produce all documents sufficient to identify the business affiliates of American Energy - Utica, including all parent and subsidiary business affiliates and all affiliates or related business entities.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production because it is overbroad. American Energy - Utica further objects to this request for production as vague and ambiguous seeking information regarding "affiliates," which term is undefined. American Energy - Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney

Work Product Doctrine. American Energy – Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to the general objections set forth above, American Energy – Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 28**

Please produce all documents that American Energy – Utica intends to introduce at any motion, hearing, or trial in this matter.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy – Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica further objects to this Interrogatory as premature, and American Energy – Utica has not yet determined what, if any, documents, it intends to introduce as evidence at trial, hearing or with regard to future motions in this matter. Once such a determination is made, American Energy will supplement this answer as may be required by the Federal Rules of Civil Procedure and any applicable scheduling orders of the Court.

**Request for Production 29**

Please produce a current organization chart for American Energy - Utica's business operations including the identification of officers and managers. If no such chart exists, produce documents sufficient to show the same.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy - Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy - Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.

Subject to the general objections set forth above, American Energy - Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 30**

Please produce all documents and correspondence with Brothers & Company related the selection and design of the name or logo of American Energy - Utica, LLC.

**RESPONSE:** In addition to the general objections set forth above, American Energy - Utica objects to this request for production because it is overbroad, vague, and ambiguous. American Energy - Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy - Utica further objects to this request for production to the extent it seeks confidential and/or proprietary documents and things.



Subject to the general objections set forth above, American Energy - Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**Request for Production 31**

Please produce all documents and correspondence related to contact between American Energy -- Utica and EnerVest, Ltd., regarding land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy -- Utica objects to this request for admission as overbroad, vague, and ambiguous. American Energy -- Utica further objects to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiving the foregoing or general objections, American Energy - Utica responds that to the extent it possesses non-privileged documents responsive to this request for production, such documents will be produced.

**RESPONSES TO REQUESTS FOR ADMISSION**

**Request for Admission No. 1**

Admit that Defendant has not yet commenced use of Defendant's name in Ohio in connection with the sale of its goods and/or services.

**RESPONSE:** In addition to the general objections set forth above, American Energy -- Utica objects to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing or general objections, American Energy – Utica admits that it has not sold any goods or services.

**Request for Admission No. 2**

Admit that coal and natural gas can both be used for power generation.

**RESPONSE:** Subject to and without waiving the foregoing or general objections, American Energy – Utica admits that both coal and natural gas can be used for power generation.

**Request for Admission No. 3**

Admit that both Defendant and Plaintiff use “American Energy” in trade name(s) and trademark(s).

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission based upon Plaintiff’s definition of trade name and characterization of “American Energy” or any variant as a trademark. American Energy – Utica further objects to this request for admission because Plaintiff does not define its alleged “trade name” or “trade mark.” American Energy – Utica interprets Plaintiff’s reference to its alleged “trade name” or “trade mark” in this request for admission to refer to “American Energy” or “American Energy Corporation” as Plaintiff has defined those terms in its Complaint; American Energy – Utica, however, does not concede that such terms are trademarks. American Energy – Utica further objects to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing or general objections, American Energy – Utica denies that it or Plaintiff uses “American Energy” in any trademark

**Request for Admission No. 4**

Admit that Defendant knew of the existence of American Energy Corporation prior to the selection of "American Energy - Utica" as Defendant's trade name or trademark.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy - Utica" as a trademark. American Energy – Utica further objects to this request for admission because Plaintiff does not define "American Energy Corporation" as referring to itself or any other company with "American Energy Corporation" in its name. American Energy – Utica further objects to this request for admission because it requests information regarding what American Energy – Utica, a limited liability company, "knew of" prior to its formation and is, therefore, not susceptible to reasonable interpretation.

**Request for Admission No. 5**

Admit that suppliers of natural gas directly compete with suppliers of coal for market-share in the electricity generation market.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission as vague and ambiguous. American Energy – Utica further objects to this request for admission because it calls for a legal conclusion or expert testimony.

Subject to and without waiving the foregoing and general objections, American Energy – Utica denies this request for admission.

**Request for Admission No. 6**

Admit that suppliers of natural gas directly compete with suppliers of coal for customers.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission as vague and ambiguous. American Energy – Utica further objects to this request for admission because it calls for a legal conclusion or expert testimony.

Subject to and without waiving the foregoing and general objections, American Energy – Utica denies this request for admission.

**Request for Admission No. 7**

Admit that Defendant is involved in the purchase and/or lease of land in Ohio, including Southeastern Ohio (*e.g.*, Jefferson, Harrison, Guernsey, Noble, Monroe, and Belmont Counties).

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission's use of the word "involved" as vague and ambiguous. American Energy – Utica interprets "involved" to mean whether American Energy – Utica has, itself, purchased or leased land in Ohio. American Energy – Utica further objects to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing and general objections, American Energy - Utica admits that it has leased oil and gas rights in Ohio.

**Request for Admission No. 8:**

Admit that Defendant has had contact with EnerVest, Ltd., regarding land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission as overbroad, vague, and ambiguous.

Subject to and without waiving the foregoing and general objections, American Energy – Utica

[REDACTED]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

**Request for Admission No. 9**

Admit that Defendant has entered into an agreement to purchase over 20,000 acres of land in Ohio.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission as vague and ambiguous. American Energy – Utica interprets this request for admission as inquiring about whether American Energy – Utica has, itself, entered into an agreement to purchase over 20,000 acres of land in Ohio.

Subject to and without waiving the foregoing and general objections, American Energy – Utica denies this request for admission.

**Request for Admission No. 10**

Admit that coal and natural gas can be utilized for power generation at the same plant.

**RESPONSE:** In addition to the general objections set forth above, American Energy – Utica objects to this request for admission as overbroad, vague and ambiguous.

Subject to and without waiving the foregoing and general objections, American Energy – Utica is without information or knowledge sufficient to support an admission or denial of this request.

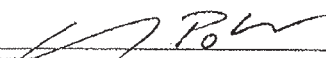
**Request for Admission No. 11**

Admit that Defendant is involved in the purchase and/or lease of land in Ohio, including Southeastern Ohio (e.g., Jefferson, Harrison, Guernsey, Noble, Monroe, and Belmont Counties) for the purpose of obtaining rights to fossil fuels for extraction and sale.

**RESPONSE:** American Energy – Utica refers Plaintiff to American Energy – Utica’s response to Request for Admission No. 7, above. In addition to the general objections set forth above, American Energy – Utica objects to this request for admission’s use of the word “involved” as vague and ambiguous. American Energy – Utica interprets “involved” to mean whether American Energy – Utica has, itself, purchased or leased land in Ohio. American Energy – Utica further objects to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing and general objections, American Energy - Utica admits that it has leased mineral rights in Ohio.

Dated: December 11, 2013

  
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*American Energy Partners, LP,*  
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**CERTIFICATE OF SERVICE**

I certify that December 11, 2013 the foregoing was served via e-mail and first-class mail  
postage prepaid on the following:

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*Attorneys for Plaintiff*

  
Jeffrey S. Pollack



## **EXHIBIT C**

**REDACTED**

**Material Designated Confidential  
Pursuant to Protective Order**

## **EXHIBIT D**

Dinsmore

*Legal Counsel.*

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December 10, 2013

VIA EMAIL & U.S. MAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*  
U.S. District Court, Southern District of Ohio, Eastern Division  
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I write to address significant deficiencies in Defendants' written discovery responses (dated November 7, 2013), and document production (dated November 18, 2013). I request that Defendants rectify these deficiencies within the next 10 days.

**General Objection No. 2** – This objection states that "Defendants object to Plaintiff's requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things." I am aware of no legal support for objecting to discovery on these grounds. A Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. Any information or documents withheld on the grounds expressed in General Objection No. 2 should be immediately produced.

**Interrogatory No. 1:** This interrogatory requested that general and limited partners be identified with an address provided. Defendants' response fails to provide an address for any of the identified persons and entities.

December 10, 2013  
Page 2

**Interrogatory No. 2:** This interrogatory requests the identification of contacts with the state of Ohio. Aubrey K. McClendon's response states that "he has not personally purchased or leased any land in Ohio nor has he personally applied to do business in the State of Ohio." To the extent that this response may exclude actions taken by Mr. McClendon on behalf of some other person or entity, such actions are plainly within the scope of this request, and directly related to the question of the exercise of personal jurisdiction over Mr. McClendon by a court in Ohio. Please clarify whether this response excluded any such actions taken on behalf of others, and if, so identify all such actions as requested by the interrogatory.

**Interrogatory No. 4:** This interrogatory simply requests the name and address of vendors used by Defendants, including those used in Ohio. American Energy Partners claims not to understand the term "vendor" in this context. To assist you in the preparation of a complete response to this interrogatory, you may use the definition of vendor as set forth in the American English version of the Cambridge Dictionary: "a person or company that sells goods or services." Defendants' response to this interrogatory unilaterally applies the limitation that Defendants will disclose only "information regarding resellers of goods or services that may be offered for sale by Defendants." But the limitation is not contained in the interrogatory itself, and applying it here yields a response that provides no information whatsoever.

American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon.

**Interrogatory No. 5:** This straightforward interrogatory requests that Defendants "identify instances where the trade name American Energy Partners has been used in connection with any document circulated or displayed by your business." Defendants' response then takes issue with American Energy's "characterization of 'American Energy Partners' as a trademark. The interrogatory makes no such characterization, and this objection is without merit. Defendants' objection that the interrogatory calls for confidential material is simply not a valid objection. We also question the claim that fully responding to this interrogatory is an undue burden, given that American Energy Partners was only recently formed and appears to employ only a small number of individuals. Producing representative documents showing the use of a particular trademark is not nearly responsive to this request. Furthermore, the documents that were produced appear to be largely unused letterhead and mock advertising rather than documents actually circulated or displayed by Defendants.

**Interrogatory Nos. 6, 7, 8, 9; Request for Production Nos. 5, 21:** These discovery requests seek information about trade name / trademark searches. No

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substantive response is provided to any of them, presumably because of the claim of privilege. I note, however, that such information is not protected from disclosure by claims of privilege. See *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyroco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 USPQ 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 USPQ 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Defendants must respond fully and substantively to the interrogatories. If Defendants persist in asserting such privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests.

**Interrogatory Nos. 13 and 14:** Defendant American Energy Partners responds to these interrogatories stating that "It was not aware of the existence of Plaintiff American Energy Corporation – Century Mine." There is not, however, any Plaintiff by that name. Perhaps American Energy Partners is simply engaging in tactical wordplay here to better suit its litigation theories, but the result is an answer that is not responsive to the request. Please respond to the request as it was asked with regard to American Energy Corporation.

**Interrogatory No. 19; Request for Production No. 9:** These discovery requests seek information about published advertising, including the names and dates of publications and documents relating to same. Defendants refer to unspecified documents that contain information from which a response can be derived. Yet the documents produced appear to reflect mock-up advertising, and in any event show no date or publication information, and no documents relating to the publishing of any advertising material have been produced. If there are documents that fully respond to this interrogatory, please identify them by bates number, because we cannot identify them. If not, these materials should be produced.

**Interrogatory Nos. 20 and 21:** These interrogatories present simple factual questions about where Defendants claim that their trade name is known. Defendants provide no substantive answer, but instead assert a series of dubious objections. Defendants object because of American Energy's "characterization of 'American Energy Partners' as a trademark. But the interrogatory makes no mention or even reference to trademarks. Defendants also object because the interrogatory is a "contention interrogatory" that seeks a "legal conclusion." Yet F.R.C.P. 33 expressly provides that "An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion..." This objection is therefore improper.

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**Interrogatory No. 22:** This interrogatory asks what products or services are sold or are intended to be sold by American Energy Partners. Defendants object because of American Energy's "characterization of 'American Energy Partners' as a trademark. But the interrogatory makes no mention or even reference to trademarks. To the extent that American Energy Partners does respond, it fails to respond to the part of the interrogatory that seeks information about products or services *intended to be sold* by American Energy Partners.

**Request for Production Nos. 1, 2, 3:** Each of these Requests seeks documents relating to Defendants' creation, consideration, design, development, selection, or adoption of trade names and trademarks. Defendants' response to Interrogatory No. 10 states that the American Energy Partners, LP name was selected on or about February 27, 2013. Yet, the produced documents relating to this all appear to be from late March - mostly just March 20 and 21, 2013. Please confirm that Defendants have identified and produced all responsive documents to these requests.

**Request for Production No. 13:** This request simply asks for the identification of vendors used by Defendants, including those used in Ohio. American Energy Partners claims not to understand the term "vendor." To assist you in the preparation of a complete response to this request, you may use the definition of vendor as set forth in the American English version of the Cambridge dictionary: "a person or company that sells goods or services." Defendants' response to this interrogatory unilaterally applies a limitation ("information regarding resellers of goods or services that may be offered for sale by Defendants") that is not contained in the request itself, and that leads to a response that provides no information whatsoever.

American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon.

**Request for Production No. 20:** This request seeks documents in Defendants' possession, custody or control relating to coal. To assist in the identification of responsive documents, American Energy specifically seeks all documents relating to coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States.

**Request for Admission No. 3:** This request asks about Defendants' use of "American Energy" in trade names or trademarks. American Energy Partners responds that it denies using American Energy in any trademark, but does not respond with regard to any trade names. Please either confirm that this silence is an admission of

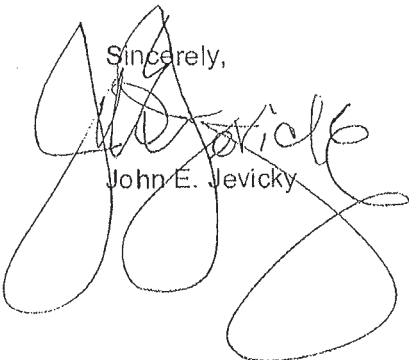
December 10, 2013  
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the stated proposition as it relates to trade names, or respond fully and substantively to the request.

**Request for Admission No. 6:** This request asks about whether coal and natural gas are competitive commercially. American Energy Partners' response states that it denies competing with American Energy for customers, but does not respond to the general proposition actually set forth in the request. Please respond to the request as written.

**Request for Admission No. 8:** This request asks whether the Defendants have had contact with EnerVest "regarding land in Ohio." [REDACTED]

Sincerely,

  
John E. Jevicky

JEJ

2598632v1



## **EXHIBIT E**

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY  
ATLANTA

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MYANMAR  
OMAN  
A GCC REPRESENTATIVE OFFICE  
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MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

December 26, 2013

### VIA EMAIL

John E. Jevicky  
Dinsmore & Shohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

Re: *American Energy Corporation v. American Energy Partners,  
LP, et al., No. 13-886*

Dear John:

We write on behalf of Defendant American Energy Partners, LP ("American Energy Partners") in response to Plaintiff's December 10, 2013 letter. The following responds to each of the issues raised by Plaintiff.

**General Objection No. 2** – This objection is proper to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents.

**Interrogatory No. 1**: Regarding your request for the addresses of American Energy Partners' general and limited partners, all inquiries to such parties may be directed through American Energy Partners' counsel at Duane Morris.

**Interrogatory No. 2**: Interrogatory No. 2's request for "any contact" with the State of Ohio is overbroad, vague, and ambiguous. Moreover, there is no basis in the text of this Interrogatory for Plaintiff's request, set forth in its December 10, 2013 letter, for information regarding actions taken by Mr. McClendon on behalf of some other person or entity. This Interrogatory is directed simply to any direct contact Defendants may have with Ohio. Moreover, Plaintiff's demand for such information is not reasonably calculated to lead to the discovery of admissible evidence as the Sixth Circuit only recognizes specific, not general jurisdiction.

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196  
DM2M643568.2

PHONE: +1 215 979 1000 FAX: +1 215 979 1020

Duane Morris

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**Interrogatory No. 4/Request for Production 13:** Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Put simply, it encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy Partners is not relevant to this inquiry. As such, American Energy Partners and Mr. McClendon have appropriately limited their responses to resellers of goods or services that may be offered for sale by Defendants.

**Interrogatory No. 5:** Interrogatory No. 5 is facially overbroad seeking every document containing the name American Energy Partners. This would require the identification of virtually every document ever created by American Energy Partners. Additionally, American Energy Partners' objection that this Interrogatory improperly characterizes American Energy Partners as a trademark is appropriate given Plaintiff's confusing definition of "trade name," which includes both trade names and trademarks. With respect to the validity of American Energy Partners' objection based upon confidentiality, American Energy Partners incorporates its response to Plaintiff's complaints regarding General Objection 2.

**Interrogatory Nos. 6, 7, 8, 9; Request for Production Nos. 5, 21:** The phrase "search" is vague and subject to multiple interpretations. Regardless, American Energy Partners is presently unaware of any "searches" in its possession potentially responsive to these discovery requests. Any "searches," however that term is defined, that may be responsive to these discovery requests were conducted by American Energy Partners' outside counsel and constitute attorney work product.

**Interrogatory Nos. 13 and 14:** Contrary to the assertions in Plaintiff's letter, American Energy Partners is not engaged in tactical wordplay. It has truthfully responded that it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine until it received the August 23, 2013 demand letter from Michael McKown. Plaintiff's argument that there is no Plaintiff by that name is itself wordplay. As Plaintiff's own documents show, Plaintiff uses the name American Energy Corporation – Century Mine. Regardless, to resolve this issue, American Energy Partners responds that it also was not aware of Plaintiff "American Energy Corporation" until it received the August 23, 2013 demand letter from Michael McKown.

**Interrogatory No. 19:** Plaintiff's argument that American Energy Partners produced mock-up advertisements is not accurate. American Energy Partners produced actual advertisements that were run. Plaintiff's request that American Energy Partners identify the name and date of all publications in which these advertisements were run is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. We note that Plaintiff has, itself, refused to identify any advertisements it has run, objecting that such information is publicly available.

Duane Morris

December 26, 2013

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**Interrogatory Nos. 20 and 21:** It is not clear what these Interrogatories seek regarding "the name of each territorial area in which you claim the trade name of your business is known." First, it is unclear what Plaintiff means by "known." Second, American Energy Partners cannot respond about what others know.

**Interrogatory No. 22:** American Energy Partners responded to this Interrogatory – it does not sell any products or services. No further response is possible or warranted. Additionally, American Energy Partners' objection that this Interrogatory improperly characterizes American Energy Partners as a trademark is appropriate given Plaintiff's confusing definition of "trade name," which includes both trade names and trademarks.

**Request for Production Nos. 1, 2, 3:** Subject to a reasonable search, American Energy Partners has produced the documents in its possession regarding the creation, consideration, design, development, selection, or adoption of the American Energy Partners name.

**Request for Production No. 20:** This Request for Production for documents "relating to coal" is vague and ambiguous. It is also overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Based upon the guidance provided by Plaintiff, American Energy Partners will advise if it possesses any documents related to coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States."

**Request for Admission No. 3:** American Energy Partners' response to Request for Admission No. 3 is appropriate given Plaintiff's definition of "trade name," which includes trademarks. Regardless, if Plaintiff is asking if American Energy Partners uses, "American Energy" in its name, the response to that inquiry is self-evident.

**Request for Admission No. 6:** This request does not request, as Plaintiff claims, information about whether coal and natural gas are competitive commercially. It asks whether natural gas directly competes with coal for customers. American Energy Partners responded that it does not compete with Plaintiff for customers. Regardless to resolve this dispute, American Energy Partners will amend its response to deny this Request for Admission more generally – that sellers of natural gas do not directly compete with sellers of coal for customers.

**Request for Admission No. 8:**

[Redacted]  
[Redacted]  
[Redacted] This  
Response Is Designated Attorneys' Eyes Only]

To address the matters raised in your letter dated December 18, 2013, the term affiliate remains susceptible to multiple definitions. Nonetheless, to resolve any perceived dispute by Plaintiff, Defendants were prepared to identify subsidiaries and subsidiaries of subsidiaries of American Energy Partners, L.P. that have "American Energy" in their name. From the correspondence received from Century Mine today, however, it appears that no response is

Duane Morris

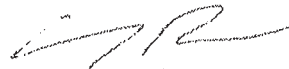
December 26, 2013

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required. We will respond to the issues raised in Plaintiff's December 26, 2013 letter after we have conferred with our clients.

We believe that this adequately addresses each of the issues raised by Plaintiff, if not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,



Jeffrey S. Pollack

JSP:

Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)  
William G. Porter, Esquire (via e-mail)

## **EXHIBIT F**



*Legal Counsel.*

DINSMORE & SHOHL LLP  
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www.dinsmore.com

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john.jevicky@dinsmore.com

January 17, 2014

VIA EMAIL & U.S. MAIL

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Samuel W. Apicelli  
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William G. Porter  
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William A. Sieck  
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52 East Gay Street  
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[wasieck@vorys.com](mailto:wasieck@vorys.com)  
[ccwager@vorys.com](mailto:ccwager@vorys.com)

Re: *American Energy Corporation v. American Energy Partners, LP, et al.*  
U.S. District Court, Southern District of Ohio, Eastern Division  
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I wrote to you on December 10, 2013 to address significant deficiencies in American Energy Partners' and Aubrey McClendon's ("Defendants") written discovery responses (dated November 7, 2013), and document production (dated November 18, 2013). On December 26, 2013, Mr. Pollack wrote to me in response, but for the following reasons that letter failed to adequately address the issues I raised. I request that Defendants rectify these deficiencies, which are detailed below, within the next 10 days.

As an initial matter, I take issue with Defendants' apparent continuing refusal to provide information and documents relating to, or in the possession of, the various affiliated entities we are still discovering through media reports and public corporate filings. This refusal extends throughout the discovery responses of American Energy Partners, American Energy – Utica, and Aubrey McClendon, as well as the non-responses to the subpoenas served on affiliated entities. This refusal is wholly improper. Defendants' discovery obligations extend to materials within their



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possession, custody, or control – and this clearly includes affiliated entities. Furthermore, we are entitled to conduct discovery to identify proper parties to this case, and Defendants' repeated refusal to cooperate borders on obstruction. The identification of all proper parties is now a central issue in this litigation, and one that we must bring to the attention of the Court if Defendants do not significantly alter the scope and content of their responses. With respect to the law on this question, I invite you to review the opinion from the Southern District of Ohio in *Evenflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342 (S.D. Ohio, June 5, 2006). See also *Steele Software Sys. v. Dataquick Info. Sys.*, 237 F.R.D. 561, 564 (D. Md. 2006) and *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468, 470-471 (S.D. Fla. 2011).

**General Objection No. 2** – The objection states that "Defendants object to Plaintiff's requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things." As I previously noted, a Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. Defendants' letter states that the purpose of this objection is to shield from production documents that are covered by confidentiality agreements with third parties. Defendants' letter is ambiguous as to whether additional classes of documents are also being withheld because, as Defendants' claim, "the Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents."

As to the first issue, Defendants appear to be claiming that they can avoid participating in document discovery pursuant to the Federal Rules of Civil Procedure simply by contracting with a third party that the parties will agree to conceal their information. Federal courts have addressed this issue and the objection is without merit. See e.g. *High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, 10-11 (D. Kan. Sept. 9, 2011) ("the Court finds that High Point's purpose in asserting its confidentiality objection, after a protective order limiting the use and disclosure of confidential information had already been entered in the case, was merely to maximize the number of objections to the requested discovery.")

If you intend to persist with this objection, we ask that you provide sufficient details about the withheld documents, and the confidentiality agreements that you believe justify withholding those documents so that Plaintiff, and the Court, can fully assess the legitimacy of the objection.

As to the second issue, if Defendants are withholding additional documents despite the existence of an agreed protective order that includes Attorneys Eyes Only protections, I ask that you either withdraw the objection and produce such materials, or detail why you believe these documents cannot be adequately protected by the existing agreed protective order, and identify what further protections you believe to be necessary.

**Interrogatory No. 1:** This interrogatory requested that general and limited partners be identified with an address provided for each identified person or entity.



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Defendants' initial response failed to provide an address for any of the identified persons and entities. The interrogatory response indicates that the general partner of American Energy Partners is non-party McClendon Energy Operating LLC, and that one of the limited partners is non-party Kathleen B. McClendon. Your letter indicated that these individuals can be contacted through counsel at Duane Morris. Please confirm that you are engaged as counsel on behalf of these two entities for purposes of this litigation. Otherwise, identify the contact information as requested.

**Interrogatory No. 2:** This interrogatory simply requests the identification of contacts with the state of Ohio. Aubrey K. McClendon's response states that "he has not personally purchased or leased any land in Ohio nor has he personally applied to do business in the State of Ohio."

It seems plain that Defendants' response seeks to parse out acts that Mr. McClendon has personally engaged in through the corporate entities he personally created to do business in Ohio. In so doing, Defendants elevate textual formalism over a plain and fair reading of the interrogatory. In any event, Plaintiffs are entitled to discover facts that would allow for a veil-piercing jurisdictional analysis as to Mr. McClendon and his business ventures directed at Ohio. See e.g. *Redhawk Global, LLC v. World Projects Int'l*, 2012 U.S. Dist. LEXIS 172054 (S.D. Ohio Dec. 4, 2012) (Sargus, J.)

Defendants then correctly discern that part of the motivation behind this inquiry is the identification of jurisdictionally-relevant contacts with the State of Ohio, given Mr. McClendon's apparent belief that he is not subject to the personal jurisdiction of the Court. Defendants object on the grounds that "the Sixth Circuit only recognizes specific, not general jurisdiction." First, this is a debatable statement of Ohio law (See *Id.* at note 2), but need not be resolved here as Ohio's long-arm statute governing specific jurisdiction is "very broadly worded and encompasses defendants who are transacting any business in Ohio, even if the defendant has never visited the state." *Id.* Unless you intend to also deny the applicability of Ohio's long-arm statute to the jurisdictional analysis, Mr. McClendon's contacts with Ohio as he initiates his new business ventures are highly relevant to this case and to the issues raised in the Motion to Dismiss filed by Mr. McClendon on November 6, 2013 in this matter.

By way of context, Forbes recently reported that "Aubrey McClendon has had no trouble finding money to play with since leaving Chesapeake Energy. As of October, his American Energy Partners LP had raised \$1.7 billion in equity and debt. The closely held company has been busy buying up acreage in the Utica play of Ohio." See Forbes, Dec. 16, 2013, *You'd Be Crazy To Invest In Aubrey McClendon's New IPO*. We should be learning of Mr. McClendon's and American Energy Partners' relevant activities through good faith responses to our discovery requests, not through the media as we have been.

We ask that you respond fully to the interrogatory. If you will not, it appears that we are unfortunately at an impasse requiring resolution by the Court.

January 17, 2014

Page 4

**Interrogatory No. 4:** This interrogatory simply requests the name and address of vendors used by Defendants, including those used in Ohio. We have clarified that you may define vendors as "a person or company that sells goods or services" for purposes of our requests. As previously explained, American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon. Defendants have answered with what is substantively a non-response. You limit the response to "resellers of goods or services," which is a convenient limitation for entities that claim not to have yet sold any goods or services.

American Energy is entitled to discover facts relating to potential confusion that may arise relating not just to the "identification of goods and services," but to other aspects of Defendants' business that could lead to confusion. See, e.g., *Beacon Mut. Ins. Co. v. OneBeacon Ins. Group*, 376 F.3d 8, 16 (1st Cir. 2004) ("We also hold that the likelihood of confusion inquiry is not limited to actual or potential purchasers, but also includes others whose confusion threatens the trademark owner's commercial interest in its mark"). Consequently, Defendants cannot unilaterally refuse to produce vendor information that may go to other aspects of Defendants' activities simply because they are not "resellers" for American Energy Partners' as yet non-existing goods and services.

We appear to be at an impasse on this question (these same considerations also apply to the related Request for Production No. 13). Unless you advise differently, we intend to take this issue to the Court.

**Interrogatory No. 5:** This straightforward interrogatory requests that Defendants "identify instances where the trade name American Energy Partners has been used in connection with any document circulated or displayed by your business." You object, in part, on the grounds that such instances of American Energy Partners' use of "American Energy" in a trade name dispute with American Energy are somehow beyond the broad scope of permissible discovery, and you suggest this would create an undue burden. I note, however, that American Energy Partners was only recently formed, and that Defense counsel has, on multiple occasions, explained that there are consequently relatively few responsive documents in existence. This interrogatory goes to a fundamental issue in this case. If Defendants are unwilling to amend their response to fully and fairly meet the substance of the request, we will have no choice but to raise the issue with the Court.

**Interrogatory No. 22:** This interrogatory asks what products or services are sold or are intended to be sold by American Energy Partners. American Energy Partners fails to respond to the part of the interrogatory that seeks information about products or

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services that it intends to sell. As in the example cited above, numerous media reports suggest that American Energy Partners and/or Mr. McClendon have raised well in excess of \$1 billion to further their business plans. Presumably to do so, they must intend to sell something, and must communicate this to, at a minimum, investors, partners, and/or vendors. If Defendants have no intention to offer for sale any particular goods or services, then please so state. Otherwise, respond fully to the interrogatory.

**Request for Production No. 20:** In your December 26 letter, you indicated that we could expect a further response to this request. Please advise as to the status of that response.

We are open to conferring on any of these points if you believe it would be productive to do so. I am hopeful that that we can resolve these issues in the spirit of cooperative and transparent discovery. If not, we regret that it will be necessary to seek the assistance of the Court to obtain the discovery information and documents to which our client is entitled.

Sincerely,

John E. Jevicky

JEJ

2628972v2

## **EXHIBIT G**



*Legal Counsel.*

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January 23, 2014

VIA EMAIL & U.S. MAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*  
U.S. District Court, Southern District of Ohio, Eastern Division  
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I write to address significant deficiencies in Defendant American Energy - Utica's written discovery responses (dated December 11, 2013), and document production (dated December 23, 2013). I request that Defendant rectify these deficiencies within the next 10 days.

**General Objection No. 1** – This objection states that American Energy – Utica objects to the extent the requests or interrogatories seek information or documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica asserts this as an objection to many of Plaintiff's requests; however, a corresponding privilege log has not been provided to American Energy as required by instruction no. 3 of American Energy's discovery requests. Please provide a privilege log to corroborate any claims of privilege that American Energy – Utica makes.

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**General Objection No. 2** – This objection states that “American Energy - Utica objects to Plaintiff’s Requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things.” I am aware of no legal support for objecting to discovery on these grounds. A Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. If Defendants are withholding additional documents despite the existence of an agreed protective order that includes Attorneys Eyes Only protections, I ask that you either withdraw the objection and produce such materials, or detail why you believe these documents cannot be adequately protected by the existing agreed protective order, and identify what further protections you believe to be necessary.

Moreover, to the extent Defendant claims this objection is to shield from production documents that are covered by confidentiality agreements with third parties, Defendant’s objection also fails. Federal courts have addressed this issue and the objection is without merit. *See e.g. High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, 10-11 (D. Kan. Sept. 9, 2011) (“the Court finds that High Point’s purpose in asserting its confidentiality objection, after a protective order limiting the use and disclosure of confidential information had already been entered in the case, was merely to maximize the number of objections to the requested discovery”). If you intend to persist with this objection on this ground, we ask that you provide sufficient details about the withheld documents, and any confidentiality agreements that you believe justify withholding those documents so that Plaintiff, and the Court, can fully assess the legitimacy of the objection.

**General Objection No. 4** – This objection states that “American Energy – Utica objects to Plaintiff’s Requests and the instructions and definitions to the Requests to the extent that they are overbroad, unduly and unreasonably burdensome, oppressive and vague.” Additionally, American Energy – Utica objects to many discovery requests on this basis. American Energy – Utica has been in existence for less than a year. Furthermore, the document production proffered by American Energy – Utica consists of only 15 documents. If you intend to rely on this objection, we ask that it be supported with something more than formulaic objection language or we will be forced to conclude that this objection is not properly asserted.

**General Objection No. 5** – This objection states that “American Energy – Utica objects to Plaintiff’s Requests and the instructions and definitions to the Requests to the extent that they call for information, documents and things not known to American Energy – Utica, nor reasonably ascertainable by American Energy – Utica, because such material is in the hands or under the control of third parties not within American Energy – Utica’s control.” It appears, however, that American Energy – Utica has relied upon this objection to avoid producing information and documents from affiliated entities. For instance, despite identifying 18 subsidiaries of American Energy – Utica and/or American Energy Partners in a January 6, 2014 letter to Plaintiff, Defendant has provided no documents related to nearly all of those subsidiaries. This is also true with



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respect to additional affiliates that American Energy partners neglected to identify in its January 6 letter.

The law is clear that even if American Energy – Utica does not have responsive documents that it “is obligated to seek any such documents from its parent or sister companies.” *Evenflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342, at \*10 (S.D. Ohio June 5, 2006). Therefore, please produce responsive documents to these discovery requests that may be in the possession of affiliated entities.

**Interrogatory No. 1, Request for Production No. 27:** The interrogatory requests the name and address of any members, subsidiaries or affiliates of American Energy – Utica. The request seeks all documents sufficient to identify the business affiliates of American Energy – Utica. As an initial matter, Defendant’s interrogatory response fails to provide an address for the one identified member. Additionally, the written responses to both the interrogatory and the request largely do not provide the requested information apparently on the grounds that American Energy – Utica does not know what “affiliate” means in this context. To assist you in this regard, you may refer to the following definition of “Affiliate:” Two parties are “affiliates” if either party has the power to control the other, or a third party controls or has the power to control both. Affiliation also exists (a) in interlocking directorates or ownership, (b) in identity of interests among members of a family and (c) where employees, equipment and/or facilities are shared. (See [businessdictionary.com](http://businessdictionary.com)).

**Interrogatory No. 2:** This interrogatory requests an identification of American Energy – Utica’s attempts to do business in Ohio. Although, American Energy – Utica states that it is registered to conduct business in Ohio it does not identify either “all documents relating to such an attempt” or “the names of persons who acted for Defendant in connection therewith” as requested. Please fully respond to this interrogatory.

**Interrogatory No. 4, Request for Production No. 13:** The interrogatory simply requests the name and address of vendors used by Defendant, including those used in Ohio. Similarly, the request simply asks for documents referring to vendors used by Defendant in Ohio. American Energy – Utica claims not to understand the term “vendor” in these contexts. To assist you in the preparation of a complete response to this interrogatory and request, you may use the definition of vendor as set forth in the American English version of the Cambridge Dictionary: “a person or company that sells goods or services.” Defendant’s response to this interrogatory and the request unilaterally applies the limitation that Defendant will disclose only “information regarding resellers of goods or services that may be offered for sale by American Energy – Utica.” But the limitation is not contained in the interrogatory or request, and applying it here yields responses that are incomplete.

American Energy is entitled to know the identity of those vendors/suppliers that American Energy – Utica has used in the course of its operations to ascertain American Energy – Utica’s use of American Energy’s protected rights and also to lead to the

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discovery of admissible evidence relating to American Energy – Utica's intended business plans, and the steps taken in furtherance of those plans.

**Interrogatory No. 5:** This straightforward interrogatory requests that Defendant "identify instances where the trade name or trademark American Energy – Utica has been used in connection with any document circulated or displayed by your business." Defendant's response then takes issue with American Energy's "characterization of 'American Energy – Utica' as a trademark." The interrogatory makes no such characterization, and this objection is without merit. Defendant's objection that the interrogatory calls for confidential material is not a valid objection in light of the Court's entry of a protective order. We also question the claim that fully responding to this interrogatory is an undue burden, given that American Energy – Utica was only recently formed and appears to employ only a small number of individuals, especially considering that American Energy – Utica produced only 15 documents total responsive to all discovery requests. Identifying and producing representative documents showing the use of a particular trademark is not nearly responsive to this request. Please fully respond to this interrogatory.

**Interrogatory Nos. 6, 7; Request for Production Nos. 5, 21:** These discovery requests seek information about trade name / trademark searches. While American Energy – Utica states that it has not made or caused to be made a trade name / trademark search, the answer is limited because of the claim of privilege. I note, however, that such information is not protected from disclosure by claims of privilege. See *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyroco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 USPQ 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 USPQ 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Defendant must respond fully and substantively to the interrogatories and requests. If Defendant persists in asserting such privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests.

**Interrogatory No. 8:** This interrogatory asks American Energy – Utica to "identify and describe any contact that American Energy – Utica has had with Red Hill Development related to the development, production, extraction or sale of natural gas in Ohio, or related to the acquisition of land in Ohio." Defendant's response indicates that it has formed a joint venture with RHDK Oil and Gas, LLC of Dover but provides no additional information about the contact with the company. This is incomplete. Please refer to the definition of "identify" in the definitions section of Plaintiff's requests. Given



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that no responsive documents have been produced, American Energy must assume that all contact with RHDK Oil and Gas, LLC has been in the form of an oral communication. As such, please state (a) the date, place, and circumstances such oral communication was made; (b) the identity of each person who was present at or who participated in such oral communication; (c) the substance of such oral communication; and (d) the identity of each document reflecting, summarizing or memorializing such oral communication, (or attach copies of each such document to your answers). If instead the contact had been via documents, please produce the documents.

**Interrogatory Nos. 14, 21:** These interrogatories ask for an identification of Defendant Aubrey McClendon's "roles and responsibilities" as it relates to the "creation and incorporation" of American Energy – Utica and as it relates to the "management and operation" of American Energy – Utica." American Energy – Utica's answer merely provides Aubrey McClendon's official title as its response to both interrogatories which is incomplete. Please supplement this response to identify what responsibilities Aubrey McClendon had in both the "creation and incorporation" of American Energy – Utica and in the "management and operation" of American Energy – Utica.

**Interrogatory No. 20:** This interrogatory presents a simple factual question about where Defendant claims that its name is known. Defendant provides no substantive answer. Instead, Defendant objects because the interrogatory is a "contention interrogatory" that seeks a "legal conclusion." Yet F.R.C.P. 33 expressly provides that "[a]n interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion..." This objection is therefore improper.

**Interrogatory No. 23:** This interrogatory asks American Energy – Utica to identify "contact related to land acquisition in Ohio, including any land purchased or leased in Ohio, contact with land agents working in Ohio and with potential sellers of land in Ohio." American Energy – Utica provides no substantive answer and instead merely asserts a string of stock objections. For example, American Energy – Utica objects to American Energy's request that it identify contact related to land acquisition on the basis that it does not specify "by whom and with whom said contact is made." American Energy seeks in this interrogatory to determine with whom American Energy – Utica has made contact with regarding land acquisition. It is American Energy – Utica that has the ability to specify this, not American Energy. Furthermore, American Energy – Utica objects to this interrogatory because it is not limited to a reasonable time period. As American Energy – Utica states in its response to Interrogatory No. 10, it did not even select its name until June 14, 2013. This question is, by operation of the facts in this case, limited to a reasonable time period. Also, to the extent American Energy – Utica does not understand the term "land agent," American Energy provides the following definition: "a person who deals with the sale of land." (See <http://www.oxforddictionaries.com>).

**Request for Production Nos. 2, 3:** Each of these Requests seeks documents relating to Defendant's creation, consideration, design, development, selection, or

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adoption of trade names and trademarks. Defendant's response indicates that no such documents exist but limit such answer to claims of privilege. If Defendant has documents relevant to such requests but subject to privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests. Please confirm whether such documents exist and, if so, provide an appropriate privilege log.

**Request for Production No. 4:** This request seeks "bills and invoices which contain the name 'American Energy – Utica.'" Defendant improperly limits its response to bills and invoices sent from American Energy – Utica and therefore excludes from its response bills and invoices sent to American Energy – Utica. There is no basis for such a limitation as the request is reasonably calculated to lead to the discovery of admissible evidence. Please immediately produce bills and invoices sent to American Energy – Utica.

**Request for Production No. 9:** This request merely asks for all documents that contain "advertisements with the name 'American Energy – Utica.'" Plaintiff objects to this request on the basis that the phrase "advertisements with the name 'American Energy Partners'" is vague and ambiguous and further objects on the basis that the request is overbroad. First, we have here requested advertisements containing the name "American Energy – Utica" not "American Energy Partners." Second, as American Energy – Utica has been in existence for less than a year, Plaintiff fails to see how the request is overbroad. Finally, to assist you with the alleged ambiguous phrase American Energy will provide you with the following definition for "advertisement:" "a notice or announcement in a public medium promoting a product, service, or event or publicizing a job vacancy." (See <http://www.oxforddictionaries.com>). Please confirm whether documents exist responsive to this request and whether such documents have been or will be produced.

**Request for Production No. 17:** This request asks for "documents and things that refer to any source of sponsorship, funding or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Defendant's products and services, including to the extent possible, a breakdown of amounts spent and market share per product." Despite the fact that Defendant's counsel understood this request enough to produce an answer in discovery requests propounded to American Energy Partners, they now apparently find it so objectionable as to not answer. The request is reasonably calculated to lead to the discovery of admissible evidence and should be responded to fully by Defendant.

**Request for Production No. 20:** This request seeks documents in Defendant's possession, custody or control relating to coal. To assist in the identification of responsive documents, American Energy specifically seeks all documents relating to coal as a competitive product to natural gas, as well as all documents relating to Defendant's intention or desire to reduce the usage of coal in the United States. Given the following clarification, please produce all responsive documents to this request.

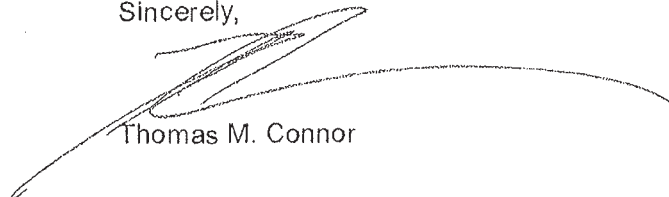
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**Requests for Production- Redactions for Relevancy:** American Energy – Utica has produced documents with redactions that appear to be unsupported by a claim of privilege and instead presumably done for some other reason such as claims of relevance. See e.g. Utica00037- 42; Utica00046 – 118; Utica00127 – 133; Utica00134 – 294; Utica00295-297; Utica 00298-00300; Utica00301-304. American Energy – Utica's attempt to redact for relevancy improperly strips these relevant and responsive documents of context and meaning. See e.g. *Beverage Distribs. v. Miller Brewing Co.*, 2010 U.S. Dist. LEXIS 50732 (S.D. Ohio Apr. 28, 2010). Please confirm whether the redactions are done for relevancy, privilege, or for some other reason. If done for reasons other than privilege, please immediately produce unredacted versions of the clearly relevant and responsive documents listed above. If done for privilege, provide supporting privilege log entries.

**Request for Admission No. 3:** This request asks about Defendant's use of "American Energy" in trade names or trademarks. American Energy – Utica responds that it denies using American Energy in any trademark, but does not respond with regard to any trade names. Please either confirm that this silence is an admission of the stated proposition as it relates to trade names, or respond fully and substantively to the request.

**Request for Admission No. 4:** This request asks American Energy – Utica to admit that they had knowledge of "the existence of American Energy Corporation" prior to the selection of American Energy – Utica as Defendant's trade name or trademark. Defendant poses a host of formulaic objections and does not provide an answer to the request, despite the fact that counsel for Defendant found that the exact same question was answerable as it pertains to American Energy Partners in their discovery responses submitted on November 7, 2013. Please either confirm that this silence is an admission of the stated proposition, or respond fully and substantively to the request.

Sincerely,



Thomas M. Connor

2633806v1

## **EXHIBIT H**

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY  
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MEXICO CITY  
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MIRANDA & ESTAVILLO

January 27, 2013

### VIA EMAIL

John E. Jevicky  
Dinsmore & Shohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

Re: *American Energy Corporation v. American Energy Partners,  
LP, et al., No. 13-886*

Dear John:

We write on behalf of Defendant American Energy Partners, LP ("American Energy Partners") in response to Plaintiff's January 17, 2013 letter. The following responds to each of the issues raised by Plaintiff.

**"Affiliated" Entities:** First, we disagree with the assertions made in Plaintiff's letter regarding discovery related to "affiliated" entities. This case was filed by Plaintiff against American Energy Partners, LP ("American Energy Partners"), American Energy – Utica, LLC ("American Energy – Utica"), and Aubrey K. McClendon. The definitions of "you" provided by Plaintiff in its discovery requests does not extend to "affiliates." Moreover, Plaintiff's discovery requests addressed to American Energy – Utica, (the only discovery requests that seek information regarding "affiliates") did not define the term "affiliate." Nonetheless, in an effort to compromise and resolve any purported dispute regarding this issue, American Energy Partners and American Energy – Utica identified all subsidiaries and subsidiaries of subsidiaries of American Energy Partners that have "American Energy" in their name (despite the fact that no such request was directed to American Energy Partners). Plaintiff's demand for additional information regarding the purported "proper parties to this case" is unnecessary and vexatious. As we discussed during our January 17, 2014 conference call, Plaintiff's First Amended Complaint already purports to seek injunctive relief extending to American Energy Partners, LP, American Energy – Utica, LLC, "their parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them." Additionally, to the extent your email is

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addressed to the subpoenas issued last month to non-parties, those subpoenas are improper for the reasons set forth in the objections to those subpoenas. By way of example, and without limitation, those subpoenas are improper because (1) one subpoena was directed to a party to this case, Aubrey K. McClendon, after the deadline set by the Court to serve Mr. McClendon with written discovery and (2) the subpoenas are not reasonably calculated to lead to the discovery of admissible evidence regarding Plaintiff's claims against the Defendants in this case.

**General Objection No. 2:** As previously stated, this objection is proper and necessary to preserve American Energy Partners' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents. To respond to the questions raised in Plaintiff's most recent letter, no documents have not been produced on the basis of confidentiality.

**Interrogatory No. 1:** Regarding your request for the addresses of American Energy Partners' general and limited partners, all inquiries to such parties may be directed to American Energy Partners' counsel at Duane Morris. As you know, counsel are prohibited from contacting represented parties; this extends to partners in a partnership.

**Interrogatory No. 2:** We reiterate our response to Plaintiff's December 26, 2013 letter. Interrogatory No. 2's request for "any contact" with the State of Ohio is overbroad, vague, and ambiguous. Moreover, as previously stated, there is no basis in the text of this Interrogatory for Plaintiff's request, set forth in its December 10, 2013 letter, and now its January 17, 2014 letter, for information regarding actions taken by Mr. McClendon on behalf of some other person or entity. This Interrogatory is directed simply to any direct contact Defendants may have with Ohio. Moreover, Plaintiff's demand for such information is not reasonably calculated to lead to the discovery of admissible evidence as the Sixth Circuit only recognizes specific, not general jurisdiction. Contrary to the arguments raised in Plaintiff's January 17, 2014 letter, this is controlling precedent. We also note that during our January 17, 2014 conference call, Plaintiff agreed that no further discovery would be needed regarding the motion to dismiss on personal jurisdiction. And, finally, the First Amended Complaint contains no allegations, nor could it, stating a claim for a "veil-piercing jurisdictional analysis," which theory Plaintiff states, for the first time, in its January 17, 2014 letter, thereby evidencing Plaintiff's ever-shifting tactics to maintain this baseless case.

**Interrogatory No. 4/Request for Production No. 13:** American Energy Partners stands by the response in its December 26, 2013 letter. Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Put simply, it encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy Partners is not relevant to this inquiry. The First Circuit case law cited in Plaintiff's January 17, 2014 letter is not consistent with Sixth

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Circuit law and not persuasive authority. As such, American Energy Partners and Mr. McClendon have appropriately limited their responses to resellers of goods or services that may be offered for sale by Defendants.

**Interrogatory No. 5:** As previously stated, Interrogatory No. 5 is facially overbroad seeking every document containing the name American Energy Partners. This would require the identification of virtually every document ever created by American Energy Partners. Even for a relatively new company such as American Energy Partners, this is an extraordinary burden. Every letter, every email, every document bearing American Energy Partners' name would have to be produced whether related or unrelated to the claims and defenses at issue. That is plainly improper.

**Interrogatory No. 22:** American Energy Partners responded to this Interrogatory -- it does not sell any products or services. Further, as stated in response to Interrogatory 17, American Energy Partners has no intended customer base. Thus, no further response is possible or warranted.

**Request for Production No. 20:** As previously stated, this Request for Production for documents "relating to coal" is vague and ambiguous. It is also overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Plaintiff's offer to limit this request to documents related to "coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States" is no less vague or ambiguous. Nonetheless, subject to the General and Specific objections asserted by American Energy Partners, it is presently unaware of any such documents, and reserves the right to supplement its response as discovery progresses.

We believe that this addresses each of the issues raised by Plaintiff. If not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,



Jeffrey S. Pollack

JSP:  
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)  
William G. Porter, Esquire (via e-mail)

## **EXHIBIT I**



NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
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HO CHI MINH CITY  
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A GCC REPRESENTATIVE OFFICE  
OF DUANE MORRIS  
MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

February 3, 2013

### VIA EMAIL

John E. Jevicky  
Dinsmore & Shohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

Re: *American Energy Corporation v. American Energy Partners,  
LP, et al., No. 13-886*

Dear John:

We write on behalf of Defendant American Energy – Utica, LLC (“American Energy – Utica”) in response to Plaintiff’s January 17, 2013 letter. The following responds to each of the issues raised by Plaintiff.

**General Objection 1:** Defendant’s will provide a privilege log to Plaintiff to the extent there are any relevant privileged documents responsive to Plaintiff’s requests. We note that Plaintiff has also yet to produce a privilege log and request that such a log be produced to the extent documents are being withheld on the basis of privilege or work product.

**General Objection No. 2:** As previously stated by Defendant American Energy Partners, LP (“American Energy Partners”), this objection is proper and necessary to preserve American Energy Partners’ right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents.

**General Objection No. 4:** Various of Plaintiff’s requests are facially overbroad. By way of example, and without limitation, American Energy – Utica responded to Interrogatory No. 23’s demand for information regarding “any contact” as overbroad and burdensome seeking information regarding hundreds, if not thousands, of communications related to “land” however that term is construed. Other discovery requests, even for a relatively new company, are

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February 3, 2013

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similarly overbroad on their face in terms of the amount and irrelevance of information sought. Moreover, this objection is necessary and appropriate to preserve rights as litigation progresses.

**General Objection No. 5, Interrogatory No. 1, Request for Production 27:** As stated in our letter to Plaintiff's January 17, 2014 letter, responding on behalf of American Energy Partners, we disagree with the assertions made by Plaintiff regarding discovery related to "affiliated" entities. This case was filed by Plaintiff against American Energy Partners, LP ("American Energy Partners"), American Energy – Utica, LLC ("American Energy – Utica"), and Aubrey K. McClendon. The definitions of "you" provided by Plaintiff in its discovery requests does not extend to "affiliates." Moreover, Plaintiff's discovery requests addressed to American Energy – Utica, (the only discovery requests that seek information regarding "affiliates") did not define the term "affiliate." Nonetheless, in an effort to compromise and resolve any purported dispute regarding this issue, American Energy Partners and American Energy – Utica identified all subsidiaries and subsidiaries of subsidiaries of American Energy Partners that have "American Energy" in their name (despite the fact that no such request was directed to American Energy Partners). Plaintiff's demand for additional information regarding the purported "proper parties to this case" is unnecessary and vexatious. As we discussed during our January 17, 2014 conference call, Plaintiff's First Amended Complaint already purports to seek injunctive relief extending to American Energy Partners, LP, American Energy – Utica, LLC, "their parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them."

**Interrogatory No. 2:** We refer Plaintiff to the documents produced showing American Energy – Utica's registration to do business in Ohio Bates stamped Utica00121-126 pursuant to Rule 33(d).

**Interrogatory No. 4/Request for Production Nos. 4 & 13:** American Energy – Utica incorporates by reference the response of American Energy Partners' previous letters responding to Plaintiff's request for information regarding vendors. Put simply, Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. It encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy – Utica is not relevant to this inquiry. For the same reason, only bills and invoices sent from American Energy – Utica regarding any goods or services that may be sold by American Energy – Utica are relevant.

**Interrogatory Nos. 6, 7; Request for Production Nos. 5, 21:** The term "search" is vague and subject to multiple interpretations. Regardless, American Energy – Utica is presently unaware of any "searches" in its possession potentially responsive to these discovery requests.

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February 3, 2013

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**Interrogatory No. 8:** This Interrogatory simply states: “[i]dentify and describe any contact that American Energy – Utica has had with Red Hill Development related to the development, production, extraction or sale of natural gas in Ohio, or related to the acquisition of land in Ohio.” American Energy – Utica directly responded to that interrogatory. Contrary to the statement in Plaintiff’s letter, there is no request for documentation related to such contact, nor does the definition of “Identify” have any impact on this Interrogatory which does not request American Energy – Utica to identify any document or communication. Moreover, requests related to land acquisitions are not relevant or reasonably likely to lead to the discovery of relevant information in this case. As noted above, the central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners’ identification of its goods and services. There is no reason to extend discovery to the highly proprietary and confidential terms of American Energy – Utica’s relationship with RHDK other than to harass and annoy.

**Interrogatory Nos. 14 & 21:** These Interrogatories, seeking information regarding the roles and responsibilities of Defendant Aubrey K. McClendon regarding the creation, incorporation (Interrogatory 14) and management and operation (Interrogatory 21) of American Energy – Utica are overbroad, vague and ambiguous. Mr. McClendon’s role is that of CEO. It would be impractical to describe everything Mr. McClendon does in that role in a written interrogatory response. To the extent a further response to Interrogatory 14 can be provided, we refer Plaintiff to documents Bates Stamped Utica00121-126 pursuant to Rule 33(d).

**Interrogatory No. 20:** It is not clear what this Interrogatory seeks regarding “the name of each territorial area in which you claim the trade name of your business is known.” First, it is unclear what Plaintiff means by “known.” Second, American Energy – Utica cannot respond about what others know.

**Interrogatory No. 23:** As stated above, requests related to land acquisitions are not relevant or reasonably likely to lead to the discovery of relevant information in this case. As noted above, the central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners’ identification of its goods and services. Moreover, this Interrogatory is overbroad for the reasons stated in American Energy – Utica’s objections.

**Requests for Production Nos. 2 & 3:** As stated above, American Energy - Utica will produce a privilege log to Plaintiff. To the extent there are any relevant privileged documents responsive to these requests, they will be logged.

**Request for Production No. 9:** American Energy – Utica is presently unaware of any advertisements with the name American Energy – Utica.

**Request for Production No. 17:** [REDACTED]

Duane Morris

February 3, 2013

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[This Is Designated Attorneys' Eyes Only]

**Request for Production No. 20:** As previously stated by American Energy Partners, this Request for Production for documents "relating to coal" is vague and ambiguous. It also has no relevance to this action, regarding alleged trademark infringement. Furthermore, it is overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Plaintiff's offer to limit this request to documents related to "coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States" is no less vague or ambiguous. Nonetheless, subject to the General and Specific objections asserted by American Energy – Utica, it is presently unaware of any such documents, and reserves the right to supplement its response as discovery progresses.

**Redactions:** American Energy – Utica produced documents in an effort to provide information responsive to what was requested by Plaintiff. Plaintiff is not entitled to anything more than that. Utica00037-42 identifies individuals employed by or associated with American Energy – Utica. Plaintiff did not ask for and is not entitled to any other information that is not responsive to Plaintiff's requests. Utica00046-127 is a highly confidential and proprietary investor presentation subject to, among other things, third-party confidentiality obligations. Additionally, it contains information that is not responsive to and has no relevance to Plaintiff's requests. The unredacted portions are sufficient to respond to, *inter alia*, Plaintiff's requests regarding management, intended operations, customers, territorial areas in which American Energy – Utica intends to extract, offer, or deliver fossil fuels, and channels of trade. Finally, Utica00127-300 relates and responds to Plaintiff's requests for documents related to "contact" between American Energy – Utica and EnerVest. The redacted documents show that "contact." These documents, which do not involve the sale of any good or service by American Energy – Utica, are not relevant to any claim in this case, and Plaintiff is not entitled to discover, the confidential terms of American Energy – Utica's agreements with Enervest.

**Request for Admission No. 3:** American Energy – Utica's response to Request for Admission No. 3 is appropriate given Plaintiff's definition of "trade name," which includes trademarks. Regardless, if Plaintiff is asking if American Energy – Utica uses, "American Energy" in its name, the response to that inquiry is self-evident.

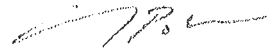
**Request for Admission No. 4:** The objections to this Request for Admission are appropriate. American Energy – Utica cannot answer to what it "knew" before it even existed.

Duane Morris

February 3, 2013  
Page 5

We believe that this addresses each of the issues raised by Plaintiff, if not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,



Jeffrey S. Pollack

JSP:  
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)  
William G. Porter, Esquire (via e-mail)

## **EXHIBIT J**



*Legal Counsel.*

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February 21, 2014

VIA EMAIL & U.S. MAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*  
U.S. District Court, Southern District of Ohio, Eastern Division  
Case No. 2:13-CV-00886-EAS-MRA

Dear Counsel:

We have spoken and exchanged a series of letters over the last weeks regarding deficiencies in the discovery responses of defendants American Energy Partners ("AEP"), American Energy – Utica ("Utica"), and Aubrey McClendon ("McClendon"). To date, despite serving numerous discovery requests, we have received little information and very few documents from defendants. AEP has produced a total of 101 documents, McClendon has produced 1 document, and Utica has produced 15—many of which are heavily redacted. In your most recent letters (dated January 27, 2014 and February 3, 2014), you continue to take the position that defendants' existing responses and production are sufficient.

It appears that we are at an impasse regarding several of the discovery disputes addressed in our letters. With the parties' Rule 30(b)(6) depositions taking place between now and mid-April pursuant to Magistrate Judge Abel's directive, it is imperative that we resolve these disputes. I am therefore writing in a final attempt to reach an extra-judicial resolution. If we cannot resolve the disputes summarized below,



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we will bring them before Magistrate Judge Abel via informal telephone conference (the procedure Judge Abel instructed us to use at the recent case management conference).

If your position has changed with regard to any of the matters below, please let us know by Friday, February 28. Otherwise, we will contact the Court to schedule a discovery conference.

**A. Information about Affiliated Entities (Interrog. 1 and RFP 27 to Utica)**

Based on media reports, information in the few documents defendants have produced to date, and based on statements by defense counsel, it has become clear to us that the current defendants in this case are but a portion of a larger family of entities controlled by defendant Aubrey McClendon, all or many of which use "American Energy" in their names. We believe that several of these affiliated entities, in addition to the currently named defendants, are part of the same course of conduct identified in the complaint as infringing on American Energy Corporation's ("AEC") rights.

We served two requests on Utica to learn the identity and role of the various McClendon companies: Interrog. 1 asks Utica to identify its affiliates, and RFP 27 requests documents sufficient to identify "all affiliates or related business entities." You objected that "affiliate" was undefined, did not respond to the interrogatory (other than to identify the sole member of Utica), and have not produced the requested documents.

We need this information for two main reasons: (1) to identify all of the McClendon companies that are infringing on AEC's rights, so that we can, if necessary, add them as parties; and (2) to identify all of the entities that may have relevant documents and information about the McClendon companies' infringing activities in the Ohio region. These are essential, threshold issues. Unfortunately, defendants' continued refusal to provide information and documents related to or in the possession of the affiliated entities is preventing the orderly and timely conduct of this litigation.

You say (in your Jan. 27 and Feb. 3 letters) that we have no need to add additional defendants because the Amended Complaint seeks injunctive relief extending to defendants' "parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them." But even though AEC believes it is entitled to—and would certainly welcome the Court granting—the full relief for which it prays in the Amended Complaint, it would be presumptuous for any party to assume that the court will tailor a remedy in the precise fashion demanded. It is more than reasonable for AEC to bring affiliated entities into the case as parties.

You also suggest that the affiliates are somehow irrelevant to this action because the only currently named defendants are AEP, Utica, and McClendon. (Jan. 27 Letter at p. 1; Feb. 3 Letter at p. 2.) This objection is improper in the first place because Utica did not object to the original requests on relevance grounds. Regardless, the information sought is directly relevant, and well within the broad scope of discovery. We



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now know that there are multiple affiliated entities using "American Energy" in their names. How and where these entities are using and intend to use their trademarks and/or trade names are relevant to this litigation, as is the role that these entities may play in furthering the business objectives of McClendon and his various companies, including the existing defendants. See *Evenflo Co., Inc. v. Hantec Agents Ltd.*, No. C-3-05-346, 2006 U.S. Dist. LEXIS 36342, at \*7 (S.D. Ohio June 5, 2006) (finding defendant's relationships with affiliated entities to be relevant to how defendant may have been using the plaintiff's proprietary information that was at issue in the lawsuit). AEC's discovery requests are designed to discover relevant information related to whether the affiliated entities created by Mr. McClendon are (or will be) using "American Energy" in a manner that is likely to cause confusion or misunderstanding as to an affiliation with American Energy Corporation. This issue is, of course, at the heart of this dispute. For you to withhold information on the basis of a purported lack of relevance is therefore unjustified.

Finally, you point to your Jan. 6, 2014 letter listing roughly 20 subsidiaries of AEP as evidence of your sufficient compliance. (Feb. 3 Letter, p. 2.) But that list is, at best, incomplete; for example, it does not identify any parent entities or sister companies, such as American Energy - Ohio, LLC, American Energy Ohio Holdings, LLC and American Energy Incentive Holdings, LLC who we suspect are additional undisclosed affiliates of the defendants. Moreover, Utica still has not answered the interrogatory. Nor has Utica provided any information or documents about its affiliates or their relationship to the named defendants.

**B. Documents in the Possession of Affiliates (Gen. Obj. 5)**

All three defendants objected to providing information "in the hands of or under the control of third parties not within [defendants'] control." (Utica Gen. Obj. 5; AEP & McClendon Gen. Obj. 5.) On this basis, defendants have apparently withheld responsive documents in the possession of other, affiliated McClendon companies. (See Feb. 3 Letter, p. 2.) This is improper. Defendants must produce documents in their "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). This extends to documents in the possession of affiliates, including subsidiaries, parents, and sister companies. See *Evenflo Co.*, 2006 U.S. Dist. LEXIS 36342, at \*10. Moreover, McClendon (or the other defendants) has ultimate control over the affiliated entities, and therefore must produce their documents. See *Steele Software Sys. v. Dataquick Info. Sys.*, 237 F.R.D. 561, 564 (D. Md. 2006); *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468, 470-471 (S.D. Fla. 2011).

Defendants' objection is particularly improper because, when AEC served multiple subpoenas directly on defendants' affiliates, the affiliates also refused to produce any documents. Your position is effectively that we cannot obtain the affiliates' documents either from the parties under Rule 34 or from the affiliates themselves under Rule 45. That is an untenable position; the affiliates are not immune from discovery obligations.

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The types of information we would expect to see, but have not received, include information about defendants' (and their affiliates') business plans, products and services, intended customers, intended geographical area, and the selection of the "American Energy" formative name and/or trademark. Some of these categories are also addressed separately below. This information and documentation should be produced regardless of which of the various McClendon companies possess them.

**C. Business Plans and Related Documents (RFP's 12, 14-16, and 26)**

We served multiple document requests aimed at understanding defendants' business plans. RFP 26 to Utica expressly requested "business plans," and RFP's 12, 14, 15, and 16—which were served on all three defendants—seek documents about their intended customers, geographical market, production locations, and channels of trade.

AEP responded that it has no responsive documents. That is hard to believe. AEP and McClendon's other companies have raised well over \$1 billion in investment, according to numerous media reports. Surely they have some plan for how they are going to invest that capital, what they will sell, whom their customers will be, and the like. Even if those documents are in the possession of one of AEP's affiliates rather than AEP itself, as discussed above, AEP has a duty to produce them all the same.

Utica responded that, subject to its objections, it will produce responsive documents "to the extent" it has any. But, with the exception of one heavily redacted presentation (discussed below), we still have not received any of these documents. This appears to be another instance where defendants are wrongly withholding documents in their affiliates' possession.

Defendants' business plans and related documents are important and discoverable because, among other reasons, they would shed light on what kind of presence the "American Energy" entities will have in the region, whether they will compete with AEC for customers, and whether customers and others in the industry are likely to be confused about whether there is an affiliation or connection between plaintiff and defendants. All of these are central issues in this case.

**D. Products and Customers (Interrog. 17 and 22 to AEP)**

These interrogatories ask AEP to identify its customers or intended customers, and the products or services it sells or intends to sell. AEP responded that it "has no customer base or intended customer base" and "does not sell any products or services." (AEP Response to Interrog. 17; Jan. 27 Letter, p. 3.) If we are to understand you correctly, AEP and McClendon have raised well in excess of \$1 billion to further an endeavor in which AEP has no intended customers and does not sell or intend to sell anything. Again, that is hard to believe.

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Perhaps you mean that one of AEP's affiliates, rather than AEP itself, will sell product to customers, in partnership with AEP. If so, this only intensifies the need for information regarding affiliated entities and their business plans.

**E. Redacted Investor Presentation**

The only document we have received to date that resembles a business plan is an apparent investor presentation, bates-labeled Utica00046 – 118. The document, however, was heavily redacted. It is my understanding from the February 6 pretrial conference that you explained these redactions by characterizing the document as "90 percent irrelevant." But this belief does not justify unilaterally redacting a responsive document. Your redaction for supposed "relevancy" strips the document of all context and meaning. That is why courts regard relevancy redactions as improper. See e.g. *ArcelorMittal Cleveland, Inc. v. Jewell Coke Co., L.P.*, No. 1:10-cv-362, 2010 U.S. Dist. LEXIS 133263, at \*9 (N.D. Ohio Dec. 16, 2010) (finding no reason for responding party to have redacted documents on "relevancy" grounds "where [redacted] information appears in a document that contains otherwise relevant or responsive information"); see also *Beverage Distribs. v. Miller Brewing Co.*, 2010 U.S. Dist LEXIS 50732, at \*11-16 (S.D. Ohio Apr. 28, 2010). AEC is not obligated to simply take your word for what is relevant and what is not.

**F. Withholding of "Confidential" Material (Gen. Obj. 2)**

In General Objection No. 2, all three defendants have objected to AEC's requests "to the extent that they call for confidential and/or proprietary documents and things." Even though there is a protective order in place, with attorney's eyes only protection where appropriate, you have maintained that you have the right to shield documents that are "protected from disclosure by confidentiality agreements with third parties" and that the protective order does not prohibit the parties from "seeking additional protections for confidential or proprietary documents." (Jan. 27 Letter, p. 2; Feb. 3 Letter, p. 1.)

It appears that Utica (at least) is withholding responsive documents on this basis. Yet, you have not provided any details as to what documents are being withheld, what confidentiality agreements are in place, or why these agreements justify withholding discoverable documents. And you have not responded as to what "additional protections" you require or why the existing protective order is inadequate.

In any event, confidentiality agreements with third parties are not a valid basis for withholding discoverable information, particularly in light of the fact that there is a strong protective order in place that provides whatever confidentiality protection is needed. See e.g. *High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, at \*10-11 (D. Kan. Sept. 9, 2011) (finding that a party's confidentiality objection, when a protective order was already in place, to be a tactic "merely to maximize the number of objections to the requested discovery").

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**G. McClendon's "Limited Appearance" Objection**

McClendon refuses to answer interrogatories or produce documents on the basis that "he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any Requests other than those related to the question of jurisdiction." (Responses of AEP and McClendon, Gen. Obj. No. 13.) McClendon repeats this objection throughout the discovery responses. (*Id.*, Responses to Interrogs. 3, 5 - 22; Responses to RFP Nos. 2 - 12, 14 - 21; Responses to Requests for Admission Nos. 1 - 7.) Mr. McClendon cannot use this objection to avoid responding to the discovery requests. First, McClendon's jurisdictional arguments do not excuse him from participating in merits discovery. Second, the requests are relevant to the issue of personal jurisdiction, as well as the merits of the case.

The requests seek information and documents related to defendants' activities in and directed at Ohio. Such activities are germane to the question of whether McClendon took actions that fall under the coverage of Ohio's broad long-arm statute (O.R.C. § 2307.382(A)). McClendon cannot create a family of companies, under his personal control, and then claim that he is immune from discovery about his actions in setting up and naming those companies, as well as immune from responding to discovery about his actions in furtherance of those companies' business endeavors in Ohio. McClendon is the central actor in the events that form the entire basis of this litigation, and he must respond fully and substantively to discovery if this case is to move forward.

**H. McClendon's Contacts with Ohio (Interrog. 2)**

This interrogatory requests the identification of contacts with the state of Ohio. You have taken the position that there is "no basis" for seeking information concerning Mr. McClendon's actions in Ohio taken "on behalf of some other person or entity." (Jan. 27 Letter, p. 2.) But this is simply not true. Mr. McClendon's actions in Ohio, even those taken on behalf of a business entity, are relevant to establishing personal jurisdiction. See *Kehoe Component Sales, Inc. v. Best Lighting Prods., Inc.*, 2009 U.S. Dist. LEXIS 74852, at \*22 (S.D. Ohio Aug. 19, 2009).

You also take the position that defendants' contacts with Ohio are "not reasonably calculated to lead to the discovery of admissible evidence" because "the Sixth Circuit only recognizes specific, not general jurisdiction." We disagree with your statement of the law, but in any event, this information is relevant to the specific jurisdiction inquiry since defendants' contacts are highly likely to reveal actions that fall within the very broad scope of O.R.C. § 2307.382(A).

**I. Vendor Information (Interrog. 4 and RFP 13)**

Interrog. 4 and RFP 13, which AEC propounded to all three defendants, requests information and documents related to defendants' vendors and potential vendors. You



February 21, 2014  
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take the position that the "central issue ... is alleged trademark infringement"; thus, "all that is relevant" is AEP's and Utica's identification of their own goods and services. (Jan. 27 Letter, p. 2; Feb. 3 Letter, p. 2.) That is incorrect. AEC seeks to protect both its trademark and its trade name. This case is therefore not solely about the confusion that will result from defendants' marketing and sale of goods and services under the trademark "American Energy." It also, and just as importantly, concerns the confusion that will result in other aspects of AEC's business if members of the industry perceive a false association or connection between American Energy Corporation and American Energy Partners or American Energy - Utica. See, e.g., *Beacon Mut. Ins. Co. v. OneBeacon Ins. Group*, 376 F.3d 8, 16 (1st Cir. 2004) ("We also hold that the likelihood of confusion inquiry is not limited to actual or potential purchasers, but also includes others whose confusion threatens the trademark owner's commercial interest in its mark").<sup>1</sup>

Vendors are one of the groups of people in the industry who could be confused by defendants' use of "American Energy" as both a trademark **and** a trade name. AEC's requested discovery is reasonably calculated to lead to evidence of the unwanted confusion that may arise with respect to defendants and AEC being related entities.

#### **J. Use of "American Energy" Name (Interrog. 5)**

This interrogatory asks defendants to identify instances in which the trademarks or trade names "American Energy Partners" or "American Energy - Utica" have been used in connection with any document circulated or displayed by the business. You object, in part, on the grounds that such instances of American Energy Partners' use of "American Energy" in a trade name dispute with American Energy are somehow beyond the broad scope of permissible discovery, and you suggest this would create an undue burden. To the extent you have committed to producing responsive documents, you have indicated that defendants will produce a "representative" sample of documents evidencing use of the "American Energy Partners" and "American Energy - Utica" names.

You have provided no context necessary to meaningfully evaluate your conclusory assertion of "undue burden," and the document productions to date have been of trivial size. AEP and Utica were formed relatively recently and defense counsel has, during the course of this litigation, explained that there are few responsive documents in existence. But your objection here leads us to believe that there are many more otherwise responsive documents being withheld. The information sought in

<sup>1</sup> Though you state in your Jan. 27 letter that *Beacon Mut. Ins. Co.* "is not consistent with Sixth Circuit law," you cite no case to support your position. Notably, a close reading of *Beacon Mut. Ins. Co.* shows that the First Circuit was applying (in substance) the same eight-factor test as the Sixth Circuit (*i.e.*, the *Frisch* factors). See *id.* at 15. Even more notably, the First Circuit relied on Sixth Circuit authority as support for the above-quoted parenthetical statement that you say is "not consistent" with Sixth Circuit law. *Id.* at 16 (citing *Champlons Golf Club, Inc. v. The Champions Golf Club, Inc.*, 78 F.3d 1111, 1119-20 (6th Cir. 1996)).

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this interrogatory is plainly relevant to Defendants' use of "American Energy," which is a fundamental issue in this case. Your unilateral limitation on the response and your limited production of documents is unjustified.

**K. Trademark/Trade Name Searches (Interrog. 6 and RFP 21)**

Interrogatory No. 6 asks for information about trademark searches performed by the Defendants. In related requests, RFP No. 21 (and also RFP No. 5 as to American Energy—Utica) seeks documents related to any trademark searches conducted by Defendants. While American Energy—Utica responded that it conducted no trademark searches and has no documents relating to such searches, American Energy Partners has simply objected to the requests without providing a response.

You claim "attorney-client privilege" and "attorney work product doctrine," but neither of these doctrines shields trademark searches from disclosure. The searches themselves are not protected from disclosure from claims of privilege. *See Flagstar Bank, FSB v. Freestar Bank, N.A.*, 2009 U.S. Dist. LEXIS 104414 (D.N.H. 2009) (holding that trademark searches are not privileged even though legal advice based on the searches is privileged); *Fisons Ltd. v. Capability Brown Ltd.*, 209 U.S.P.Q. 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 U.S.P.Q. 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 U.S.P.Q. 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 U.S.P.Q. 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Moreover, your claim of "attorney work product" is curious. Such an objection is proper only for materials prepared in anticipation of litigation. Thus, your objection on "attorney work product" grounds essentially states that your client conducted name searches and/or prepared documents concerning such name searches in anticipation of specific litigation. The inference from an "attorney work product" objection is that defendants expected some legal objection—perhaps by AEC—arising from the selection of "American Energy" in their trade name and trademark.

Regardless, defendants must produce responsive information and documents, as these requests are undoubtedly proper and relevant to this litigation.

\* \* \*

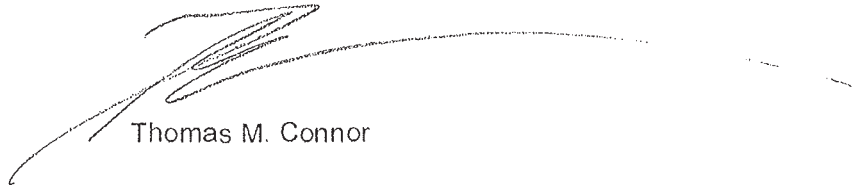
In identifying the foregoing areas of dispute, AEC does not intend to waive its right to obtain additional information and documents that the parties referenced in the previous discovery letters. We simply highlight the above specific disputes as the most urgent to address in light of the timetable set by Magistrate Judge Abel for our

February 21, 2014  
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completion of the Rule 30(b)(6) depositions. It is entirely reasonable for AEC to obtain information and documents responsive to its discovery requests before taking its Rule 30(b)(6) deposition, such that we can take a meaningful deposition of defendants' 30(b)(6) designee.

Unless we hear otherwise from you by Friday, February 28, 2014, we will move forward in seeking the resolution of the impasses regarding these issues. Accordingly, we will contact the chambers of Magistrate Judge Abel to schedule a discovery conference with his Honor to take place as soon as practicable for the Court.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Thomas M. Connor', with a long, sweeping horizontal stroke extending to the right.

Thomas M. Connor

cc: John E. Jevicky

742146v2

## **EXHIBIT K**



NEW YORK  
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February 28, 2014

### VIA EMAIL

Thomas M. Connor  
Dinsmore & Shohl, LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

Re: *American Energy Corporation v. American Energy Partners,  
LP, et al., No. 13-886*

Dear Tom:

We write to address the issues most recently raised in Plaintiff's letter dated February 21, 2014.

### Introduction

Plaintiff's purported discovery disputes must be viewed in the context of this case. This case involves a single issue, whether Defendants American Energy – Partners, LP's ("Partners") and American Energy – Utica, LLC's ("Utica") use of their names to identify their goods (of which there are none) is likely to cause confusion among relevant purchasers with respect to the goods offered or sold by Plaintiff. There is no such likelihood of confusion.

As briefed in Defendants' Motion to Dismiss, Plaintiff does not even possess a protectable interest in the formative – "American Energy" – that it seeks to assert in this case. Moreover, for the last 13-14 years, Plaintiff has done nothing while another company unrelated to Defendants, American Energy Associates, Inc., drilled 80+ oil wells right in Plaintiff's backyard in Northeast Ohio (<http://americanenergyassociatesinc.com/>), all of which was done with no apparent confusion between American Energy Associates and Plaintiff.

It also must be noted that Plaintiff filed this case the Friday before Labor Day 2013 as an emergent matter seeking a preliminary injunction. While that motion was pending, the parties agreed to engage in expedited discovery. However, Plaintiff failed to notice a single deposition

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Duane Morris

February 28, 2014

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or bring any discovery issues before the Court despite the fact that Plaintiff did not withdraw its motion for a preliminary injunction until January 10, 2014 – less than a month before fact discovery was set to close regarding that motion.

As Plaintiff knows from Defendants' discovery responses and document production, Partners and Utica have not sold or offered for sale any natural gas or oil. Moreover, Utica's intended purchasers – midstream gas transporters – are markedly different from the purchasers of Plaintiff's goods – electric generation plants. Indeed, at the recent Rule 16 Conference, Plaintiff conceded that it is unaware of any damages caused to it due to Partners' or Utica's use of their names.

As follows, the disputes raised by Plaintiff are asserted without basis for the sole purpose of generating purported disputes. Indeed, as detailed below, Plaintiff persists with certain disputes despite being informed multiple times by Defendants, including in written discovery responses, that Defendants possess no discoverable information.

We address each of the disputes raised in Plaintiff's February 21 letter as follows:

**Information Regarding Affiliated Entities**  
**Interrogatory 1 and Request for Production 27 to Utica**

Defendants understood this issue to be resolved. On December 18, 2013, Plaintiff delivered a letter to Defendants stating that if Defendants did not identify all "affiliates," Plaintiff would serve subpoenas on various companies. Despite the fact that Plaintiff served those subpoenas without awaiting Defendants' response, Partners and Utica responded to Plaintiff's December 18, 2013 letter by identifying all subsidiaries and subsidiaries of subsidiaries of American Energy Partners with the formative "American Energy" in their name. This included 18 separate entities. Plaintiff accepted this information only to demand additional information about other "affiliates."

Plaintiff's continued insistence that a dispute remains between the parties as to this topic appears geared solely to generate disputes where none exist. For example, Plaintiff claims that Defendants did not identify American Energy Ohio Holdings, LLC. However, that entity was specifically disclosed by Utica in response to Plaintiff's Interrogatory No. 1.

The identity of *all* "affiliates" most of which have no connection to Ohio and do not use the formative "American Energy" in their name is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's citation to *Evenflo Co., Inc. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342 (S.D. Ohio Jun. 5, 2006) does not suggest a different conclusion. As Plaintiff's letter points out, *Evenflo* involved the use of alleged proprietary information by a defendant and its affiliates. This case involves no such claims.

Duane Morris


February 28, 2014

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Regardless, to resolve this dispute, Partners and Utica will produce an organization chart. This is despite the fact, which we have previously pointed out, that Plaintiff served no discovery request on Partners seeking information related to Partners' "affiliates."

**Documents Allegedly In The Possession of Affiliates**  
**General Objection 5**

General Objection 5 objects to producing information not known to Defendants, nor reasonably ascertainable by Defendants, because such material is in the hands of or under the control of third parties not within Defendants' control. Defendants' objection does not refer to "affiliates." Regardless, the law in this district is that "[w]hen a party argues that one company has the legal right to demand documents from another company, courts closely analyze the relationship between the two companies." *In re Porsche Cars N. Am., Inc.*, 2012 U.S. Dist. LEXIS 136954 (S.D. Ohio Sept. 25, 2012). A motion to compel will not be granted absent evidence, which is the movant's burden to demonstrate, that a company operates "another as its alter ego, that [a] company acted as the agent of the other in the transaction giving rise to the suit, or that [a] company has access to the documents of another in the regular course of business." *Id.* As you know from Defendants' discovery responses, Defendants are separate companies with different ownership structures.

  
Plaintiff could have learned this at any time during the last several months through a deposition of Utica.

Partners has 18 separate subsidiaries and subsidiaries of subsidiaries that use the formative "American Energy" in their names. As discussed, all but one of these companies have no contact with Ohio. The geographic designations in the names of these companies indicate where their business operations are conducted. Plaintiff provides no basis, in a lawsuit involving no damages, to compel Partners to produce documents from its files and those of 18 other non-parties.

Finally, the reference in Plaintiff's letter to the subpoenas served in this case illustrates precisely why the information Plaintiff seeks by raising this purported dispute is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff is not seeking information related to Partners' or Utica's use of their names to identify goods. Instead, Plaintiff is seeking information regarding the business activities of Partners' and Utica's "affiliates." Those "affiliates" are not parties to this action and the definition of "you" provided in Plaintiff's discovery requests does not extend to "affiliates." Additionally, Plaintiff's Requests for Production are uniformly addressed to "Defendants," "Defendant," or refer to Defendants by name. For example, Plaintiff cannot contend that Request No. 13 asking Defendant American Energy Partners to "[p]roduce all documents or correspondence referring to Defendants' vendors

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or potential vendors” also extends to documents or correspondence referring to the vendors of Partners’ “affiliates.” Such a construction strains the English language.

**Business Plans And Related Documents  
Redacted Investor Presentation  
Requests for Production 12, 14-16 and 26**

Utica produced an Investor Presentation responsive to this request. After the Rule 16 Conference, at which Plaintiff raised an issue regarding this document, we offered to stay in the Court’s conference room with Plaintiff’s counsel to explain how this document is responsive to the information Plaintiff seeks. Our invitation was declined.

Defendants produced a redaction log showing what information was redacted from this document. The redacted information relates to highly proprietary information regarding, *inter alia*, geological studies, acreage locations, acquisitions and valuations, well production analysis, and water usage that, along with other information contained in the Investor Presentation, is not reasonably calculated to lead to the discovery of admissible information, nor to the matters listed in Plaintiff’s February 21, 2014 letter: intended customers, geographic market, and channels of trade.<sup>1</sup> Plaintiff certainly would not be entitled to this highly confidential and competitive information that has no bearing on the claims and defenses in this case if it was set forth in a stand-alone document. Accordingly, there is no reason such information should be produced simply because it is included alongside other information.

The Southern District of Ohio has held that it is appropriate to redact confidential information that is not reasonably likely to lead to the discovery of admissible evidence. In *N. Am. Rescue, Inc. v. Bound Tree Med., LLC*, 2010 U.S. Dist. LEXIS 39695 (S.D. Ohio Mar. 25, 2010), the defendant moved to compel information regarding a change of ownership of the plaintiff. In granting the defendant’s motion to compel, the court ordered plaintiff to produce a bill of sale but directed that, if it contained information “that is both irrelevant to the issue of ownership . . . and commercially sensitive,” that the document be produced such that “irrelevant and sensitive material has been redacted.” *Id.* at \*5. Likewise, in *Thompson v. Village of Mt. Pleasant*, 2011 U.S. Dist. LEXIS 740 (S.D. Ohio Jan. 4, 2011), the court considered whether an unredacted interview should be produced in full simply because portions of the interview were responsive to a party’s discovery requests and reasonably likely to lead to the discovery of admissible evidence. In rejecting that argument, the court, after an *in camera* review, held that “the portions of the interview are simply not relevant to any party’s claim or defense in this action. See Fed. R. Civ. P. 26(b)(1).” *Id.* at \*4. “[P]roduction of the redacted portions,” the

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<sup>1</sup> Plaintiff’s letter also seeks information regarding production locations. Defendants fail to see how Utica’s highly confidential acreage locations are reasonably likely to lead to the discovery of admissible evidence regarding the claims at issue – the use of Partners’ and Utica’s names to identify their goods (of which there are none).

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Court held, "is[, therefore,] not necessary to plaintiff's ability" to prosecute its case. *Id.* Accordingly, the court held that "defendants need not produce to plaintiff an unredacted version of the interview." *Id.* The same is equally true here.

Additionally, as stated in our February 21 letter, we are evaluating what redactions can be withdrawn. We expect to produce a revised document over the weekend or by Monday morning. We will also supplement Utica's production, at the same time, which will include another investor presentation, dated February 19, 2014, which provides detailed information regarding "the business." We expect that the production of this document should address and resolve any dispute between the parties. Raising any dispute with the Court before the production of this document would be premature and counterproductive.

With respect to Partners, as explained in our January 27, 2014 letter (incorrectly dated 2013), Partners' discovery responses show that it sells no goods or services and has no intended customers. *See* (Partners' Response to Plaintiff's Interrogatories 17 and 22). Plaintiff's demand for documents regarding intended customers, geographic market and channels of trade, therefore, is a *non-sequitur* as to Partners.

**Products and Customers**  
**Interrogatories 17 & 22 to Partners**

Plaintiff's statement that it does not believe that Partners has no customer base or intended customer base is not a basis for a motion to compel with the Court. Partners cannot be compelled to provide a different response because its response is different from what Plaintiff might want it to be.

**Alleged Withholding Of Confidential Material**  
**General Objection 2**

This purported dispute is a non-issue. Defendants repeatedly informed Plaintiff that no documents are being withheld on the basis of confidentiality.

Additionally, as previously stated, this objection is proper and necessary to preserve Defendants' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. *See Apple Inc. v. Samsung Elecs. Co.*, 2012 U.S. Dist. LEXIS 96302, at \*20-22 (N.D. Cal. July 11, 2012) (party not required to produce documents subject to third-party confidentiality restrictions).

Finally, the Protective Order permits the parties to seek additional protections for confidential or proprietary documents. (*See* Protective Order ¶ 20.) Indeed, such protections appear necessary in this case due to Plaintiff's insistence on compelling information related to the redacted portions of Utica's extremely confidential Investor Presentation which are not reasonably calculated to lead to the discovery of admissible evidence. Utica's concerns about



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Plaintiff's continued demands for this information are heightened by the fact that Plaintiff expressed the intent, albeit unsubstantiated, to enter into the natural gas and oil industry.

**Defendant Aubrey K. McClendon's Limited Appearance Objection**

Your February 21, 2014 letter is the first letter that raises any issue regarding Defendant Aubrey K. McClendon's limited appearance objection. Regardless, this dispute is baseless.

Mr. McClendon moved to dismiss this case for lack of personal jurisdiction. To preserve his limited appearance for purposes of that motion, Mr. McClendon objected to Plaintiff's merits-based discovery. *See Clarke v. Marriott Int'l, Inc.*, 2013 U.S. Dist. LEXIS 125963 (D.V.I. Sept. 4, 2013) ("[a] defendant can waive its objection to personal jurisdiction by engaging in litigation on the merits without first securing a court's determination on its jurisdictional challenge."). Mr. McClendon's objections were necessary and proper. Indeed, in the Oklahoma action, Plaintiff refused to participate in a Rule 26 conference on the same grounds. Plaintiff cannot have it both ways.

Consistent with preserving his limited appearance, Mr. McClendon offered to and has engaged solely in discovery related to personal jurisdiction and his personal contacts with Ohio.

Finally, opening this case up to merits-based discovery regarding Mr. McClendon is cumulative and unnecessary. It would also be inconsistent with the Court's order directing the parties to engage in Rule 30(b)(6) depositions before seeking additional discovery. As stated above, the claims at issue center around Partners' and Utica's use of their names to identify any goods they offer or sell. Mr. McClendon is the CEO of Partners and Utica. Thus, addressing discovery to him individually would be cumulative of what has already been produced by Partners' and Utica.

**McClendon's Alleged Contacts With Ohio**  
**Interrogatory 2**

Defendants do not understand why this matter is in dispute. As discussed during our January 17, 2014 conference call, Plaintiff agreed that no further discovery was needed regarding the motion to dismiss on personal jurisdiction. And, Plaintiff responded to Defendants' Motion to Dismiss without raising any discovery disputes.

Additionally, the law in this district is clear. Ohio does not recognize general jurisdiction. *Lexon Ins. Co. v. Devinshire Land Dev., LLC*, 2013 U.S. Dist. LEXIS 66958, at \*6-7 (S.D. Ohio May 10, 2013). Thus, Mr. McClendon's individual contacts with Ohio are not reasonably calculated to lead to the discovery of admissible evidence. Regardless, Mr. McClendon responded to this Interrogatory, which asks him to identify any land purchased or leased in Ohio and whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio. Mr. McClendon informed Defendants that he has not personally purchased or leased any land in Ohio nor has he applied to the Ohio Secretary of State's Office

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to do business in the State of Ohio. Based on this response, there should be nothing in controversy.

**Vendor Information**  
**Interrogatory 4 and Request for Production 13**

Plaintiff's request for "any vendors" that have been contacted or used by Defendant is facially overbroad and not reasonably calculated to lead to the discovery of admissible evidence. First, despite the fact that Plaintiff does not claim to possess national trademark rights, this request is not geographically limited. Second, and more to the point, this Interrogatory encompasses all possible manner of vendors, including those who sell goods to Partners and Utica. This includes, among others, paper and office supply salesman, companies that provide janitorial services, trash collectors, landscaping companies, FedEx, and other service providers.

The central issue in this case is alleged trademark infringement. Information that is reasonably calculated to lead to the discovery of admissible evidence relates to the manner in which Partners and Utica identify their goods and services (of which there are none). The test for likelihood of confusion in the Sixth Circuit is the following:

(1) the strength of [plaintiff's] marks, (2) the relatedness of the [good or services sold], (3) the similarity of the marks, (4) the evidence of actual confusion, (5) the marketing channels used, (6) the likely degree of purchaser care and sophistication, (7) [defendant's] intent in selecting its mark; and (8) the likelihood of expansion of the [parties] using the marks. *Under this test, the "ultimate question" is "whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way."*

*Lucky's Detroit, LLC v. Double L, Inc.*, 533 Fed. Appx. 553, 555-556 (6th Cir. Mich. 2013) (Citing *Frisch's Rests., Inc. v. Elby's Big Boy of Steubenville, Inc.*, 670 F.2d 642, 648 (6th Cir. 1982)) (emphasis added). As this case, decided last year, makes clear, the focus in trademark cases is on "relevant consumers," not on vendors or any other class of individuals. Accordingly, Partners and Utica appropriately narrowed their responses to this Interrogatory to the identification of potential "resellers of goods or services that may be offered for sale by Defendants."

Plaintiff's attempt to open the inquiry further than this is improper and aimed only at burdening Defendants with overbroad discovery requests that bear no reasonable relation to this case and are not reasonably likely to lead to the discovery of admissible evidence.

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**Use Of American Energy Name  
Interrogatory 5**

Plaintiff's request that Defendants "identify instances where the trade name 'American Energy Partners' [or 'American Energy – Utica'] have been used in connection with *any document circulated or displayed by your business*" is facially overbroad. (emphasis added).

First, it is unclear if this Interrogatory seeks information regarding the trademark or ordinary "use" of the names American Energy Partners or American Energy – Utica. If this Interrogatory seeks information regarding the alleged trademark "use" of Defendants' names, Defendants already responded that they do not use the formative "American Energy" as a trademark. (See Partners' Response to Plaintiff's Request for Admission No. 3; Utica's Response to Plaintiff's Request for Admission No. 3).

If, however, this Interrogatory seeks information regarding the ordinary "use" of Defendants' names, it is grossly overbroad and not at all reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory might as well request every letter, every email, and every document bearing Defendants' name whether or not those documents are related to the claims and defenses at issue. As Plaintiff should be aware from Defendants' document production, Partners' and Utica's names appear in their letterhead, business cards, and stationary. Without doubt, Partners' and Utica's names are included on documents countless times every day in letters, email, and other documents. Plaintiff cannot contend that it is entitled to every document and every communication ever authored by Partners and Utica containing their names. This is plainly improper. See e.g., *Am. Eagle Outfitters, Inc. v. Payless Shoesource, Inc.*, 2009 U.S. Dist. LEXIS 3781 (E.D.N.Y. Jan. 21, 2009) (request for "all documents" concerning marketing or promotion of goods under a specific mark overbroad and not reasonably calculated to lead to the discovery of admissible evidence); Fed. R. Civ. Pro. 34 (requests for production "must describe with reasonable particularity each item or category of items to be inspected.").

**Trademark/Trade Name Searches  
Interrogatory 6 and Request For Production 21**

It appears that Plaintiff has ignored our letter dated December 26, 2013 stating that American Energy Partners is presently unaware of any 'searches' in its possession potentially responsive to these discovery requests. Any "searches," however that term is defined, that may be responsive to these discovery requests were conducted by American Energy Partners' outside counsel and are privileged. Further, Plaintiff has ignored Utica's written discovery responses. Utica's response to Plaintiff's Request for Production 5 states that it "does not possess documents responsive to this request." (Utica's Response to Plaintiff's Request for Production 5.)



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Additionally, Plaintiff has Defendants' privilege log in its possession. The log confirms what Defendants have said in correspondence and in written discovery responses. Specifically, no documents appear on that log related to "searches and opinions related to the American Energy Partners trade name and trademark." Again, it appears that disputes are being raised with no basis.<sup>2</sup>

We believe that the disputes discussed above are baseless. Nonetheless, if Plaintiff intends to raise these matters with the Court, we request that counsel for Defendants be included on any call Plaintiff makes to the Court regarding this matter. Further, we believe that it would be most helpful for any issues Plaintiff may raise to be fully briefed and put before the Court.

Sincerely,



Jeffrey S. Pollack

JSP:

cc: Matthew A. Taylor, Esquire (via e-mail)  
James L. Beausoleil, Esquire (via email)  
William G. Porter, Esquire (via e-mail)  
William A. Sieck, Esquire (via email)  
John E. Jevicky, Esquire (via e-mail)  
John W. McCauley, Esquire (via e-mail)  
Allison G. Davis, Esquire (via e-mail)

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<sup>2</sup> Even if Defendants did have such searches in their possession, the law Plaintiff cites is not availing. "Documentation evidencing the performance of trademark searches and the resulting search reports themselves are . . . protected by the attorney-client privilege." *Flagstar Bank, FSB v. Freestar Bank, N.A.*, 2009 U.S. Dist. LEXIS 76842 (N.D. Ill. Aug. 25, 2009).