

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

SEP - 8 2017

RICK WARREN  
COURT CLERK  
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Oklahoma Department of Securities )  
ex rel. Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Secure Operations Group, LLC, an )  
Oklahoma limited liability company; )  
Johnnie Louis McAlpine, an individual; )  
Cindy Kay McAlpine, an individual; )  
George Franklin Conner, an individual; )  
and Cody Belitz, an individual, )  
 )  
Defendants. )

Case No. CJ-2017-1138  
Judge Roger H. Stuart

**OBJECTION AND MOTION TO STRIKE**

Plaintiff, Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator, hereby objects to the affidavit of Defendant Johnnie Louis McAlpine (“McAlpine”) submitted to the Court as an exhibit to the *Defendants’ Response to Motion for Summary Judgment* (the “Response”) on the grounds that it includes inadmissible hearsay. Specifically, Plaintiff moves this Court for an Order striking Item Nos. 29 – 31 of McAlpine’s affidavit from the Response.

In support of its Motion, Plaintiff alleges and states as follows:

1. On July 14, 2017, the Plaintiff filed a *Motion for Summary Judgment* (the “MSJ”).
2. On August 15, 2017, the Defendants submitted the Response to the Court with McAlpine’s affidavit attached as “Exhibit 1” (the “Affidavit”).

3. In the Affidavit, Item Nos. 29 – 31, McAlpine submits out-of-court statements (allegedly informing him as to the production, and possible production, of certain oil and gas wells), by a non-party declarant (Petrolite), to the Court for the truth of the matters asserted.

4. These statements, allegedly made by Petrolite, are relevant to the alleged misrepresentations in offering documents, authored by McAlpine,<sup>1</sup> and used by the Defendants to entice offerees to invest in the securities transactions in the case at bar.<sup>2</sup>

### **ARGUMENTS AND AUTHORITY**

Rule 13 of the Rules for the District Courts of Oklahoma, Okla. Stat. tit. 12, Ch. 2, App 1. (the “Rules”), and 12 O.S. § 2056 govern summary judgment. A party opposing summary judgment must file, *inter alia*, “acceptable evidentiary material” justifying its opposition to summary judgment. Rule 13(b). Affidavits filed in opposition to summary judgment must set forth matters that would be admissible in evidence at trial. Rule 13(c); 12 O.S. § 2056(E). A party challenging the admissibility of evidentiary material may file a motion to strike the material, and the Court may rule on its admissibility prior to disposing of the motion for summary judgment. Rule 13(c). If such evidentiary material is not challenged by written objection or motion to strike, the objection shall be deemed waived. *Id.*

Sections 2801 through 2806 of Title 12 govern hearsay. Hearsay is defined as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted” and is not generally

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<sup>1</sup> McAlpine testified in an administrative deposition that he authored, or primarily authored, offering documents given to potential investors. *Exhibit A*, excerpts from Admin. Depo. of McAlpine at 29:1 – 29:23 and 88:3 – 88:20. (Only relevant portions of the administrative deposition transcript have been attached).

<sup>2</sup> MSJ at Item Nos. 12(c), (d), 15, 16 and Pgs. 13 and 14 at Item No. (6) and (7) and Response at Item Nos. 12, 15 and 16 and Part IV, Item No. 3.

admissible. 12 O.S. §§ 2801 and 2802. Hearsay is only admissible under one of the non-hearsay categories or under an exception to its inadmissibility. 12 O.S. §§ 2801(B) and 2803 – 2804.1.

In the Affidavit, Item Nos. 29 – 31, McAlpine submits out-of-court statements (allegedly informing him as to the production, and possible production, of certain oil and gas wells) by Petrolite to the Court for the truth of the matters asserted and, therefore, is inadmissible hearsay. The Defendants do not assert an applicable non-hearsay category or an exception to the inadmissibility of the hearsay.

### CONCLUSION

Materials submitted in opposition of summary judgment must be acceptable and admissible evidence at trial or convertible into admissible evidence at trial. McAlpine's Affidavit contains inadmissible hearsay. The Plaintiff requests this court issue an order striking Item Nos. 29 – 31 of the Affidavit as inadmissible hearsay.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



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CERTIFICATE OF MAILING

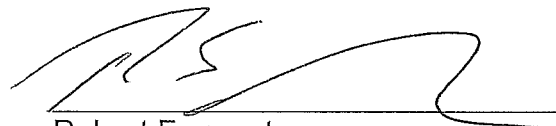
The undersigned hereby certifies that on the 8th day of September, 2017, a true and correct copy of the above and foregoing *Objection and Motion to Strike* was mailed via first-class US mail, with postage prepaid thereon, and addressed to:

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Robert Fagnant

Johnnie Louis  
June 23, 2016

vs.  
Case No. 14-046

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BEFORE THE DEPARTMENT OF SECURITIES  
STATE OF OKLAHOMA

**COPY**

IN RE: SECURE OPERATIONS )  
GROUP, LLC )  
) ODS FILE NO. 14-046

DEPOSITION OF JOHNNIE LOUIE McALPINE  
TAKEN ON BEHALF OF OKLAHOMA DEPARTMENT OF SECURITIES  
IN OKLAHOMA CITY, OKLAHOMA  
ON JUNE 23, 2016

REPORTED BY: MELISSA RAMES, CSR

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A P P E A R A N C E S

For The Department of Securities:

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For the Witness:

Trevor R. Henson  
Attorney at Law  
1743 East 71st Street  
Tulsa, Oklahoma 74135

Also present: Oliver Blaha  
Cindy McAlpine

1 I'm handing you what I've marked  
2 Exhibit C. Exhibit C is a document we received  
3 from you pursuant to the subpoena. It's marked  
4 pages 631 to 689.

5 (Exhibit No. C was marked for  
6 identification and made a part of the  
7 record.)

8 A Yes.

9 Q Are you familiar with this document?

10 A Yes.

11 Q What is this document?

12 A This is the prospectus for X Bar Tract  
13 1.

14 Q Who made this document?

15 A I did.

16 Q Did you have any help?

17 A No.

18 Q So what's the purpose of this  
19 document?

20 A To outline for the investors what the  
21 X Bar Tract 1 is, what it will cost, what the  
22 money will go for, what their responsibilities  
23 are and what our responsibilities are.

24 Q Just right off, kind of off the bat on  
25 the cover page is listed Oklahoma, Algeria,

1 X Bar Tract. I would like to look now at Sleeper  
2 No. 3, Tract 1 -- was it 1, 2, 3, 5 -- 5, I believe.  
3 I'm going to hand you what I'm marking as Exhibit G.  
4 Do you recognize this document, sir?

5 (Exhibit No. G was marked for  
6 identification and made a part of the  
7 record.)

8 A Sure.

9 Q Is this a -- well, what is this  
10 document?

11 A It's a program summary for investment  
12 in Sleeper 3 Tract 1.

13 Q Did you make this document?

14 A Yeah, most of it.

15 Q Who else made it?

16 A My pop helped me.

17 Q Your father?

18 A Helped me. I would make sure -- he  
19 would make sure it was right. He would reread  
20 everything.

21 Q So the Sleeper No. 3 Tract 1, that  
22 deals with -- is it Conine?

23 A Conine, C-o-n-i-n-e.

24 Q Conine 1-1, 1-2, 1-4 and 1-5 wells;  
25 correct?