CAUSE NO. 2018CVK002483D4

San Roman Ranch Mineral Partners, Ltd., *Plaintiffs*, *v.* Segundo Navarro Drilling, Ltd., *et al.*, *Defendants.*	IN THE DISTRICT COURT 406th JUDICIAL DISTRICT WEBB COUNTY, TEXAS

LEWIS DEFENDANTS' TRADITIONAL MOTION FOR SUMMARY JUDGMENT ON DAMAGES

Defendants Segundo Navarro Drilling, Ltd., Lewis Petro Properties, Inc., and Tercero Navarro, Inc. (collectively, "Lewis") respectfully submit this Traditional Motion for Summary Judgment on damages.

⁂

ARGUMENT

I. Summary judgment standard.

Lewis has the burden to prove that there is "no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Tex. R. Civ. P. 166a(c); *Gillespie v. Hernden*, 516 S.W.3d 541, 545 (Tex. App.—San Antonio 2016, pet. denied) (citing *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985)). Lewis may

carry this burden "by either conclusively negating a single essential element of the plaintiff's cause of action or establishing an affirmative defense." *Teal Trading & Dev., LP v. Champee Springs Ranches Prop. Owners Ass'n*, 534 S.W.3d 558, 573 (Tex. App.—San Antonio 2017) (citing *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508–09 (Tex. 2010)).

⁂

II. Damages is an essential element of all of San Roman's claims.

San Roman has three remaining causes of action: breach of contract; misappropriation of trade secrets; and breach of the duty of utmost good faith and fair dealing. Damages is an essential element of each:

① *Lowe v. ViewPoint Bank*, No. 3:12-CV-1725-G BH, 2015 WL 3939357, at *5 (N.D. Tex. June 26, 2015) (collecting cases holding that summary judgment on breach of contract is proper in the absence of damages).

② *Snowhite Textile & Furnishings, Inc. v. Innvision Hosp., Inc.*, No. 05-18-01447-CV, 2020 WL 7332677, at *4 (Tex. App.—Dallas Dec. 14, 2020, no pet.) (claim for misappropriation of trade secrets fails without damages).

③ The duty of utmost good faith and fair dealing appears in Paragraph "j" of the mineral leases between San Roman and Lewis. San Roman's 4th Am. Pet. at ¶ 27. The claim

> for a violation of this duty is thus for breach of contract, for which proof of damages is required.[1]

At the risk of emphasizing the obvious: without damages, all of San Roman's claims fail,[2] and this case is over.

⁂

III. Each of San Roman's four categories of damages is completely deficient as a matter of law.

According to San Roman, all of its damages fall into one of the following four tranches:[3]

---

1 San Roman purports to allege another claim for breach of the duty of utmost good faith and fair dealing—under "Texas law," rather than the leases. Our high court has, however, rejected this added layer as "nonsensical," because every breach of a mineral lease would then reflexively violate a duplicative common law duty. *See KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 86 (Tex. 2015). Lewis addresses this in its concurrently filed Traditional Motion for Summary Judgment on Specific Claims (the "Catch-All Motion"). Regardless, in the absence of damages, San Roman cannot recover at law or under the leases.

2 The only exception is San Roman's request for a declaration, which does not include a damages component. The declaratory judgment count is still fatally flawed, however, because all it does is clone the other tort and contract claims. This is treated in greater detail in Lewis's Catch-All Motion.

3 The numbered list that follows is drawn, verbatim, from San Roman's live Rule 194 disclosures.

① "Value of seismic data relating to minerals owned by San Roman gathered and processed by Global Geophysical Services, Inc. and its agents that Defendants were contractually obligated to provide to San Roman (4.69 sq. miles × **licensing fee**) – $153,832."

② "Value of seismic data relating to minerals owned by San Roman gathered and processed by Dawson Geophysical Company that Defendants were contractually obligated to provide to San Roman (24.28 sq miles × **licensing fee**) – $489,600."

③ "Value of loss of use of seismic data relating to minerals owned by San Roman gathered and processed by Dawson Geophysical Company—licensing of data to EOG Resources for ½ mile halo into West Lease (20% of West lease – 2.85 sq miles × **licensing fee**) – $57,000."

④ "Value of loss of use of seismic data relating to minerals owned by San Roman gathered and processed by Dawson Geophysical Company—licensing of data to EOG Resources for shallow depths in East and [South] Lease[s] (14.25 sq miles × **licensing fee**) – $285,000."[4]

---

4 EXHIBIT 1 (emphasis added). San Roman's disclosures refer, in one instance, to the shallow depths in the "East and *West* Leases." (Emphasis added.) This is a scrivener's error. San Roman's live petition references the shallow depths in the "East and *South* Leases." (Emphasis added.) The balance of San Roman's disclosures likewise refers to the shallow depths in the "East and South" Leases. Further, the geographic coverage of the shallow depths—14.25 miles—is exactly co-extensive with that of the "East and South" Leases.

As shown by the language from its disclosures emphasized above, San Roman's damages hinge—across the board, without exception—on its assumption that San Roman was entitled to "licensing fees" for the seismic data. As explained in the next section, however, San Roman's assumption is demonstrably false, and therefore San Roman has no case for damages. *See infra* Parts III.A.1–2.

A. San Roman cannot recover "licensing fees" for seismic data it did not own.

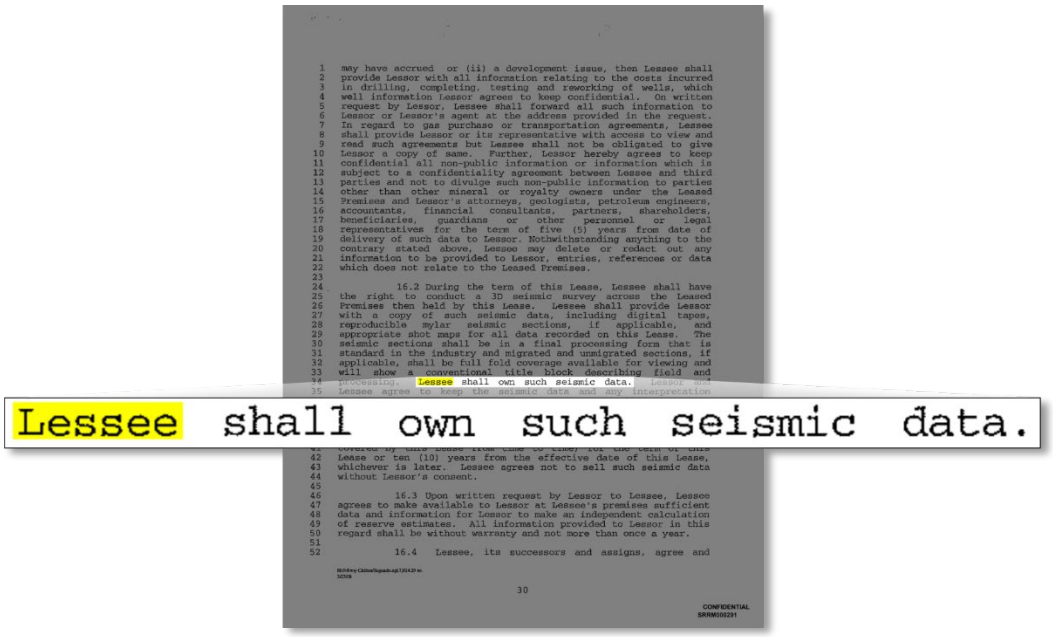
Consistent with its disclosures, San Roman's corporate representative testified that all of its alleged damages are in the form of "licensing fees" that San Roman ostensibly would have collected from sales of the seismic data:

> **Q.** How did that cause San Roman to suffer financial harm, not having the data? I understand that San Roman alleges that it didn't have the data. How did that harm San Roman financially?
>
> **A.** Because we could have used that data for seismic licenses, if we had it.
>
> **Q.** You could have sold the data; is that what you're saying?
>
> **A.** In seismic licenses.

EXHIBIT 2 at 138:22–139:5. Under the express terms of its leases with Lewis, however, San Roman did not own any of the seismic data; and, naturally, San Roman could not license and sell data it did not own.

1. San Roman has never owned the Dawson data and, therefore, it has never had the right to license or sell the data.

All three of San Roman's mineral leases with Lewis—the 7,924-acre East Lease, the 6,544-acre West Lease, and the 1,197-acre South Lease—contained an identical provision vesting ownership of seismic data in Lewis alone:[5]



may have accrued or (ii) a development issue, then Lessee shall provide Lessor with all information relating to the costs incurred in drilling, completing, testing and reworking of wells, which well information Lessor agrees to keep confidential. On written request by Lessor, Lessee shall forward all such information to Lessor or Lessor's agent at the address provided in the request. In regard to gas purchase or transportation agreements, Lessee shall provide Lessor or its representative with access to view and read such agreements but Lessee shall not be obligated to give Lessor a copy of same. Further, Lessor hereby agrees to keep confidential all non-public information or information which is subject to a confidentiality agreement between Lessee and third parties and not to divulge such non-public information to parties other than other mineral or royalty owners under the Leased Premises and Lessor's attorneys, geologists, petroleum engineers, accountants, financial consultants, partners, shareholders, beneficiaries, guardians or other personnel or legal representatives for the term of five (5) years from date of delivery of such data to Lessor. Notwithstanding anything to the contrary stated above, Lessee may delete or redact out any information to be provided to Lessor, entries, references or data which does not relate to the Leased Premises.

16.2 During the term of this Lease, Lessee shall have the right to conduct a 3D seismic survey across the Leased Premises then held by this Lease. Lessee shall provide Lessor with a copy of such seismic data, including digital tapes, reproducible mylar seismic sections, if applicable, and appropriate shot maps for all data recorded on this Lease. The seismic sections shall be in a final processing form that is standard in the industry and migrated and unmigrated sections, if applicable, shall be full fold coverage available for viewing and will show a conventional title block describing field and processing. Lessee shall own such seismic data. Lessor and Lessee agree to keep the seismic data and any interpretation

Lessee shall own such seismic data.

Lease or ten (10) years from the effective date of this Lease, whichever is later. Lessee agrees not to sell such seismic data without Lessor's consent.

16.3 Upon written request by Lessor to Lessee, Lessee agrees to make available to Lessor at Lessee's premises sufficient data and information for Lessor to make an independent calculation of reserve estimates. All information provided to Lessor in this regard shall be without warranty and not more than once a year.

16.4 Lessee, its successors and assigns, agree and

30

CONFIDENTIAL
SRRM000291

As the old adage goes, "you can't sell what you don't own." All of San Roman's alleged damages—across the four categories particularized in its disclosures—are unrecoverable as a matter of law, because they represent the

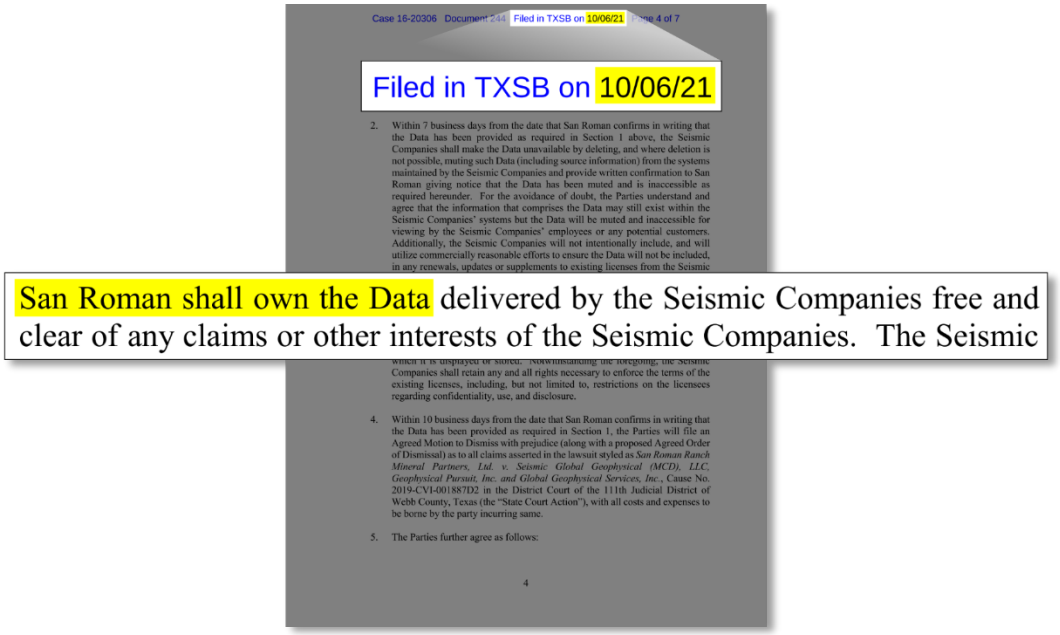
---

5 EXHIBITS 3 (at ¶ 16.2), 4 (same), and 5 (same). The exemplar pictured above is from the East Lease.

anticipated proceeds from the sale of seismic data that San Roman did not own. Without damages, San Roman's entire case collapses.

2. San Roman had no right to license or sell the Global data before owning it.

San Roman did not, until recently, own any of the seismic data shot by Global. The data was instead owned by Global itself. EXHIBIT 6. Eventually, however, Global declared bankruptcy. Pursuant to a Bankruptcy Court order entered on October 6, 2021,[6] San Roman for the first time acquired ownership of the Global seismic data covering the three leases:


Case 16-20306 Document: 244 Filed in TXSB on 10/06/21 Page 4 of 7

Filed in TXSB on 10/06/21

2. Within 7 business days from the date that San Roman confirms in writing that the Data has been provided as required in Section 1 above, the Seismic Companies shall make the Data unavailable by deleting, and where deletion is not possible, muting such Data (including source information) from the systems maintained by the Seismic Companies and provide written confirmation to San Roman giving notice that the Data has been muted and is inaccessible as required hereunder. For the avoidance of doubt, the Parties understand and agree that the information that comprises the Data may still exist within the Seismic Companies' systems but the Data will be muted and inaccessible for viewing by the Seismic Companies' employees or any potential customers. Additionally, the Seismic Companies will not intentionally include, and will utilize commercially reasonable efforts to ensure the Data will not be included, in any renewals, updates or supplements to existing licenses from the Seismic

San Roman shall own the Data delivered by the Seismic Companies free and clear of any claims or other interests of the Seismic Companies. The Seismic

which it is displayed or stored. Notwithstanding the foregoing, the Seismic Companies shall retain any and all rights necessary to enforce the terms of the existing licenses, including, but not limited to, restrictions on the licensees regarding confidentiality, use, and disclosure.

4. Within 10 business days from the date that San Roman confirms in writing that the Data has been provided as required in Section 1, the Parties will file an Agreed Motion to Dismiss with prejudice (along with a proposed Agreed Order of Dismissal) as to all claims asserted in the lawsuit styled as *San Roman Ranch Mineral Partners, Ltd. v. Seismic Global Geophysical (MCD), LLC, Geophysical Pursuit, Inc. and Global Geophysical Services, Inc.*, Cause No. 2019-CVI-001887D2 in the District Court of the 111th Judicial District of Webb County, Texas (the "State Court Action"), with all costs and expenses to be borne by the party incurring same.

5. The Parties further agree as follows:

4

---

6 EXHIBIT 7 at 4.

This means two things. First, San Roman cannot pursue damages for "licensing fees" lost before October 6, 2021. Second, nor can San Roman pursue damages for "licensing fees" lost on or after the same date, because by this point San Roman owned the Global seismic data—and, therefore, could license and sell the data to whomever it wanted. Indeed, several months later, San Roman licensed and sold the Global data to another operator, San Isidro Development Company. EXHIBIT 8.

B. There were no willing buyers for any of the seismic data.

The licensing fees that San Roman allegedly would have been paid are, of course, a form of lost profits. It is axiomatic that damages of this stripe must be proven with reasonable certainty.[7] Ordinarily, this is shown through proof of market value, which is defined as what a willing buyer is prepared to pay.[8] As its corporate

---

7 *Phillips v. Carlton Energy Group, LLC*, 475 S.W.3d 265, 269 (Tex. 2015) ("Texas law is quite clear that lost profits cannot be recovered as damages unless proven to a reasonable certainty, and the defendant argues that the rule applies equally to profits-based value determinations. We agree.").

8 *Humes v. Hallmark*, 895 S.W.2d 475, 480 (Tex. App.—Austin 1995, no writ) ("Market value is the amount that would be paid in cash by a willing buyer who desires to buy, but who is not required to buy, to a willing seller who desires to sell,

representative testified, San Roman calculated its damages by reference to what it believed was the market value of the Dawson and Global seismic data. EXHIBIT 2 at 14:1–2, 149:12–16, 153:18–19.

Accordingly, if there were no buyers for the seismic data, then as a matter of law San Roman cannot recover for lost profits in the form of "licensing fees." This would be independently fatal to San Roman's entire case.

1. There were no willing buyers for the Global data, or for the Dawson data covering the "Deep Unleased Depths."

The first two tranches of San Roman's alleged damages consist of the licensing fees that San Roman claims it would have received for: (i) the Global data; and (ii) the Dawson data covering the so-called "Deep Unleased Depths." But San Roman's corporate representative repeatedly admitted that there were no buyers for this data:

> **Q.** [T]ell the jury who it is you would have sold it to. Put another way, Ms. Chilton, what offer did you have for this seismic, or are you just assuming that you could have sold it?
>
> **A.** I guess this is putting the value on it.

---

but who does not need to sell.") (citing *City of Pearland v. Alexander*, 483 S.W.2d 244, 247 (Tex. 1972)).

Q. So you're assigning a value to the seismic, correct?

A. Correct.

Q. *You are not saying that you had a willing buyer for the seismic on which you have placed a value, correct?*

A. *Correct.*

EXHIBIT 2 at 148:6–18 (emphasis added).

Q. [A]s to the items in Nos. 1 and 2, for the Global data, $153,000, and the Dawson data, $489,000, these are values that you assign to the seismic, correct?

A. Correct.

Q. And you are simply assuming that someone--we have no idea who--would have paid you those amounts for the seismic. That's your assumption, correct?

A. Correct.

Id. at 149:17–25.

Q. In No. 1, you say ... that somebody would have paid San Roman $153,000 for the Global seismic, correct?

A. Correct.

Q. You cannot tell the jury who that is, correct?

A. No.

Q. And in No. 2, according to your testimony today, you are telling the jury that someone would have paid San Roman $489,000 for the Dawson data, correct?

A. Correct.

Q. But you can't tell the jury who that is, correct?

A. Correct.

Id. at 150:22–151:11.

Leaving no room for doubt, when asked whether "[t]he damages you claim in Nos. 1 and 2 are *speculation* about money you think you might have been paid by some *unknown mystery buyer*," San Roman's corporate representative answered, unequivocally, in the affirmative: "Correct." *Id.* at 153:20–25 (emphasis added).

2. There were no willing buyers for the shallow depths in the East and South Leases, or for the alleged half-mile "halo" into the West Lease.

San Roman's third and fourth categories of damages correspond to the licensing fees that EOG allegedly would have paid San Roman for seismic data covering: (i) the shallow depths in the East and South Leases; and (ii) the purported half-mile "halo" into the West Lease. San Roman has admitted multiple times, however, that EOG was unwilling to purchase the data covering either the halo or the shallow depths:

> **Q.** EOG never wanted a license just for the halo, correct?
>
> **A.** Correct.
>
> **Q.** EOG never wanted a license just for the shallow depths, correct?
>
> **A.** Correct.

EXHIBIT 2 at 133:4–9.

Q. EOG never indicated that [it] would pay just for the half mile halo, correct?

A. Correct.

Q. Similarly, EOG never said that it was interested in purchasing the seismic for only the shallow depths, correct?

A. Correct.

Id. at 151:22–152:4.

Q. They [EOG] never offered to purchase just the half mile halo, did they?

A. I don't believe so.

Q. And they [EOG] never offered to purchase just the shallow, did they?

A. I don't believe so.

Id. at 153:4–9.

Q. Did EOG ever offer to buy just the half mile halo for $57,000?

A. No.

Id. at 155:7–9.

Q. And there was never an offer for $285,000 for the shallow depths, correct?

A. Correct.

Id. at 155:15–17.

[*continued …*]

Consistent with its disclosures, San Roman confirmed through its corporate representative that EOG was the only potential buyer for the seismic data described in its third and fourth categories of alleged damages:

> **Q.** [T]o be clear, Nos. 3 and 4 here only identify EOG as a potential buyer, correct?
>
> **A.** Correct.
>
> **Q.** So you're only seeking damages with respect to EOG, not with respect to any other potential buyer, correct?
>
> **A.** Correct.

Id. at 155:21–156:2.

Finally, even assuming EOG was willing to purchase the seismic data for the halo and shallow depths—as part of a more expansive data package, covering additional acreage and depths—San Roman would fare no better. Although San Roman and EOG did engage in preliminary negotiations over a potential seismic sale, their negotiations broke down only because San Roman refused to grant EOG an extension on its drilling deadline.

In this regard, San Roman's corporate representative testified that the possibility of a seismic sale was part and parcel of a larger conversation about extending EOG's deadline to drill additional wells on the San Roman leases: "I know originally they [EOG] came to us wanting an extension, and in that meeting, they

also discussed the seismic license. And we negotiated a price and then decided to work on a draft agreement." *Id.* at 12:11–14. But, as San Roman's witness further testified, after "EOG came to us wanting an extension for their drilling requirements, we went back and forth on terms … and, ultimately, we never agreed to terms and the lease lapsed." *Id.* at 12:21–24. As a result, EOG no longer wanted any seismic from San Roman:

> **Q.** And because the extension could not be negotiated, the seismic license also fell by the wayside as a result, correct?
>
> **A.** Correct.
>
> **Q.** So once the extension was off the table, EOG was no longer interested in purchasing the seismic, correct?
>
> **A.** Correct.
>
> * * *
>
> **Q.** [EOG] wasn't willing to do that at all [*i.e.*, purchase any seismic] without an extension of the drilling program?
>
> **A.** Right, *because if they couldn't have an extension, there would be no need the seismic*.

Id. at 15:2–9, 205:1–4 (emphasis added).

[*continued …*]

C. San Roman seeks an impermissible double-recovery for the Global seismic data.

San Roman cannot recover twice for the same alleged economic harm. On the one hand, a "party is generally entitled to sue and to seek damages on alternative theories"; on the other hand, however, a "party is not entitled to a double recovery." *Waite Hill Services, Inc. v. World Class Metal Works, Inc.*, 959 S.W.2d 182, 184 (Tex. 1998).

San Roman agrees that, "[a]s to the Global data, the damages [it] allege[s] in this case are based on a supposed seismic license that San Isidro wanted to purchase from San Roman." EXHIBIT 2 at 143:1–6. The elephant in the room is the fact that San Isidro did, in fact, buy the seismic from San Roman. Indeed, as discussed earlier, the data sale to San Isidro occurred just months after San Roman acquired ownership of the data from Global's bankruptcy estate. *See supra* Part III.A.2. The sale is memorialized in a signed "Seismic Data License Agreement" between San Roman and San Isidro,[9] and San Roman's corporate representative confirmed the sale during her sworn deposition testimony.[10]

---

9 EXHIBIT 8.

10 EXHIBIT 2 at 194:14–25.

⁂

CONCLUSION

As shown above, there are several independent reasons why San Roman has sustained no damages as a matter of law. And, without damages, San Roman's case is no more.

Lewis therefore respectfully requests that the Court grant this motion in full and render judgment against San Roman on its claims for breach of contract, misappropriation of trade secrets, and breach of the duty of utmost good faith and fair dealing.

DATED: September 12, 2023

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: 

THOMAS G. CIARLONE, JR.
TEXAS BAR NO. 24075649
E-MAIL | *tciarlone@krcl.com*

DEMETRI J. ECONOMOU
TEXAS BAR NO. 24078461
E-MAIL | *deconomou@krcl.com*

MAIN | 713 425.7400
DIRECT | 713 425.7428
FACSIMILE | 713 425.7700

Sage Plaza
5151 San Felipe, Suite 800
Houston, Texas 77056

Attorneys for the Lewis Defendants

CERTIFICATE OF SERVICE

I certify that on September 12, 2023, I served the foregoing instrument on all counsel of record by e-service.

THOMAS G. CIARLONE, JR.