No. 17-1438

IN THE

Supreme Court of the United States

NOBLE ENERGY, INC.,

Petitioner,

v.

CONOCOPHILLIPS CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF IN OPPOSITION

Richard W. Mithoff
Sherie Potts Beckman
One Allen Center
Penthouse
MITHOFF LAW
500 Dallas Street
Houston, TX 77002

Macey Reasoner Stokes
Counsel of Record
Benjamin A. Geslison
Omar J. Alaniz
BAKER BOTTS L.L.P.
910 Louisiana St.
Houston, TX 77002
(713) 229-1241
macey.stokes@bakerbotts.com

Counsel for Respondent

QUESTIONS PRESENTED

Decades ago, non-party Alma Energy, Inc. filed for bankruptcy. Petitioner Noble Energy, Inc. entered a contract with Alma to purchase Alma's assets and all associated executory contacts, whether or not the contracts were specifically disclosed. Accordingly, the reorganization plan and confirmation order stated that all executory contracts not expressly rejected would be assigned to Noble. Noble raised no objection to that language and completed the sale. The questions presented are:

1. Whether the state court adjudicating a subsequent state-law contract dispute between Noble and Respondent ConocoPhillips correctly declined to void the portion of the unappealed bankruptcy order that assigned the contract to Noble, notwithstanding Noble's belated objection that it did not receive specific notice of the contract during the bankruptcy proceeding.

2. Whether the state court correctly declined to void the same portion of the unappealed bankruptcy order notwithstanding Noble's belated objection that the reorganization plan's "assumed-unless-rejected" language did not satisfy the procedural requirements of 11 U.S.C. § 365.

CORPORATE DISCLOSURE STATEMENT

ConocoPhillips Company hereby certifies that it is a wholly owned operating subsidiary of its parent company ConocoPhillips. Besides its parent company, there is no publicly held corporation that owns 10% or more of ConocoPhillips Company's stock.

ConocoPhillips hereby certifies that there is no parent company, nor any publicly held corporation, that owns 10% or more of the stock in the aforementioned corporation.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Rules

Other Authorities

INTRODUCTION

Noble seeks this Court's review of fictitious holdings that appear nowhere in the opinion below. The Texas Supreme Court did not purport to decide any issue of bankruptcy law. This was a basic contract case decided under state law. As the court recognized, its only task was to apply the plain language of a contract that Noble knowingly and voluntarily entered and then agreed to have incorporated into a Chapter 11 reorganization plan. That plan was confirmed in bankruptcy proceedings that closed a decade ago with no objection or direct appeal by Noble.

Until now, Noble recognized as much. ConocoPhillips initiated these proceedings in Texas state court to enforce an indemnification provision of an Exchange Agreement that ConocoPhillips entered into with the debtor before bankruptcy. ConocoPhillips argued that Noble was obligated to honor the Exchange Agreement under a subsequent Asset Purchase Agreement (APA) between Noble and the debtor. The APA provided that Noble would acquire all contracts associated with the assets Noble purchased under the APA, unless specifically rejected by Noble. That unusual open-ended arrangement between Noble and the debtor was then reflected in the debtor's reorganization plan and Confirmation Order.

Noble argued that under the plain language of the APA (as interpreted according to state contract law) and subsequent Confirmation Order, the earlier Exchange Agreement was never assigned to Noble. Noble told the Texas Supreme Court that as a "state court," it could not allow any "collateral[] attack [on

the] bankruptcy court's final judgment," but instead must enforce the Confirmation Order and related documents according to their plain terms. Letter Brief of Noble Energy, Inc. at 4 (Tex. Feb. 28, 2017).[1] Noble cited this Court's decision in *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137 (2009), to show that such a collateral attack would be improper. Petitioner's Brief on the Merits at 57-58 (Tex. Apr. 7, 2016).

Noble lost—not because the court disagreed about the scope of its authority to review a federal bankruptcy court order, but because it concluded that the plain terms of the APA, Plan, and Confirmation Order did indeed assign the Exchange Agreement to Noble.

Unhappy with that result, Noble now launches precisely the kind of collateral attack it decried as illegitimate. It argues that the Texas state courts should have voided the APA, Plan, and Confirmation Order's assignment of the Exchange Agreement to Noble because of two purported procedural shortcomings during the bankruptcy: (1) the debtor's failure to provide actual notice of the Exchange Agreement to Noble, and (2) the bankruptcy court's failure to individually approve of each contract Noble agreed to purchase. According to Noble, the Texas Supreme Court upheld the bankruptcy order only because it misconstrued bankruptcy law and so mistakenly held that those procedural requirements had been met.

---

[1] Citations to briefs refer to the parties' briefs in the Texas Supreme Court, Case No. 15-0502. Those briefs can be found online at https://tinyurl.com/ycfc8ltz.

Noble's new theory of the case is unworthy of this Court's review for several reasons. First, it is premised on a misreading of the decision below. The Texas Supreme Court did not conclude, as Noble suggests, that there were no procedural shortcomings during the bankruptcy proceeding. Instead, the court expressly *declined* to resolve that issue, reasoning—as Noble had urged—that the purported violations of bankruptcy law were not grounds to alter the plain meaning of the APA, the Plan, and the Confirmation Order in this collateral proceeding.

Second, the Texas Supreme Court's decision does not conflict with any authority from other courts. Noble cites a range of decisions—most of them direct appeals of bankruptcy orders—that discuss the procedural requirements for bankruptcy proceedings. These cases do not address the type of collateral attack Noble presents here or suggest that the Texas Supreme Court had the power to nullify a longstanding bankruptcy order.

Third, the Texas Supreme Court's decision is correct. This Court's decisions in *Travelers Indemnity* and *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), bar this kind of collateral attack on final bankruptcy orders, even if the order was procedurally improper under bankruptcy law. Under those precedents, the window for Noble's procedural challenges closed a decade ago. As the Texas Supreme Court properly concluded, all that matters for this collateral contract dispute is the plain meaning of the APA, Plan, and Confirmation Order. A contrary holding would undermine the finality of bankruptcy orders, threatening the efficacy of the entire bankruptcy

process. And as the court below recognized, Noble's protestations do not even have any equitable force: Whatever Noble knew about the assignment of the Exchange Agreement when it entered the APA, it was certainly well aware of the assignment *for years* while the bankruptcy proceedings remained open—yet consistently chose to enforce the Exchange Agreement rather than challenge it in the bankruptcy court or on appeal.

Finally, this case does not involve the kind of important or recurring issue that warrants this Court's attention. The bankruptcy language to which Noble now objects—that it would assume all executory agreements except those expressly rejected—is rarely used in bankruptcy asset sales.[2] Noble knowingly and voluntarily chose it here because it wished to take over the debtor's entire business with minimal disruption. In doing so, Noble assumed the risk that an unidentified executory agreement would later be enforced against it. Most purchasers in bankruptcy avoid that risk by negotiating for narrower language rejecting all executory contracts except for those expressly assumed. Noble's procedural objections thus have no bearing on the majority of bankruptcy cases.

---

[2] Provisions assuming executory contracts and leases unless rejected are commonplace in *reorganization* plans when a company wants to emerge from bankruptcy and continue its business with minimal interruption. *See, e.g.*, Amended Joint Chapter 11 Plan of Reorganization at 42, *In re: LINN Energy, LLC*, No. 16-60040 (Bankr. S.D. Tex. Jan. 26, 2017), Dkt. 1624, https://tinyurl.com/yc5x39vn. But they are atypical in asset purchase sales when business continuity between the debtor and purchaser is not usually a top priority.

STATEMENT OF THE CASE

ConocoPhillips And Alma Agree To Swap Properties, Contingent On Reciprocal Indemnification Obligations.

The genesis of this case lies in a decades-old land swap between energy companies. In 1994, Respondent ConocoPhillips[3] assigned its interests and obligations in certain Louisiana properties (collectively, the Johnson Bayou Field) to Alma Energy, Inc. In return, Alma assigned its interests and obligations in properties near Lake Washington, Louisiana, to ConocoPhillips. The parties memorialized their bargain in an Exchange Agreement.[4] They then recorded the arrangement in the Louisiana property records via an Assignment expressly "made subject to th[e] Exchange Agreement." Pet. App. 1-4.

The Exchange Agreement placed a significant condition on the land swap: Each party indemnified the other for certain costs—including litigation expenses—that might arise from hazardous materials contained within the transferred properties. Pet. App. 2. Such reciprocal indemnification obligations are typical in oil-and-gas agreements. *See, e.g.*, *Nabors Corp. Servs., Inc. v. Northfield Ins. Co.*, 132 S.W.3d 90, 93

---

[3] For clarity, this brief uses "ConocoPhillips" to refer to both Respondent and its predecessors.

[4] Alma was joined in this agreement by the Texas Petroleum Investment Company (TPIC). TPIC was originally a defendant in this case, but ConocoPhillips's claim against it was severed and later resolved by settlement. This brief thus omits any further mention of TPIC.

(Tex. Ct. App. 2004) (observing that "mutual indemnity provisions" are "customary in the oil and gas industry").

After Alma Files For Bankruptcy, Noble's Predecessor Agrees To Purchase The Johnson Bayou Field And All Associated Contracts.

Alma and ConocoPhillips performed under the Exchange Agreement without incident for five years, until 1999, when Alma filed for bankruptcy. Pet. App. 4. After a court-approved auction, an entity called East River Energy, LLC—Noble's predecessor—agreed to purchase Alma's assets pursuant to an Asset Purchase and Sale Agreement (APA). *Id.*; *see* CR 2003.[5] The APA listed properties Alma had received from ConocoPhillips under the Exchange Agreement as among those to be transferred. Pet. App. 4. It then provided that East River would acquire all "[c]ontracts … in any way associated with" those properties, "including *but not limited to*" the contracts specifically listed elsewhere in the APA. *Id.* (emphasis added).

In signing the APA, East River thus expressly acknowledged that it was assuming contractual obligations not explicitly specified, and it undertook to determine, to its satisfaction, the range of contracts

[5] All references to the "CR" can be found in the appendix to ConocoPhillips's Response Brief on the Merits (May 27, 2016), with the exception of the citations to the APA (CR 2015-2020), which can be found at App. C of Petitioner's Brief on the Merits (April 7, 2016).

"associated with" Alma's assets—including the Johnson Bayou Field. This broad, open-ended contract assignment was unusual; typically the buyer of a debtor's assets specifically identifies the contracts it wants to assume and rejects all contracts not so identified. This approach made sense in East River's situation, however, because it sought to proceed seamlessly through the bankruptcy with no change in Alma's operations besides the name of the company. *See, e.g.*, CR 6496.

To facilitate East River's diligence in reviewing the contracts it would potentially assume, the APA required Alma to "make available ... for examination ... title and other information relating to the Assets insofar as the same are in [Alma's] possession" and to "cooperate with [East River] in [East River]'s efforts to obtain ... such additional information relating to the Assets as [East River] may reasonably desire." CR 2015. There has never been any allegation that Alma failed to make available information about the Exchange Agreement's indemnification obligations during due diligence.

Alma then proposed a reorganization plan that mirrored the APA's unusual open-ended approach to the transfer of contracts: The Plan stated that all executory contracts not expressly "rejected … shall be assumed [by the Debtors] and assigned to [East River]." CR 4875. The Exchange Agreement qualified as executory because of its mutual indemnification obligations. Because Alma did not include the Exchange Agreement on the list of agreements it was expressly rejecting, *see* CR 4821, 4934-82, 4993, 5049-59, the Exchange Agreement (along with many other

executory contracts) was assumed and assigned to East River under the plain language of the APA and the Plan. *See* Pet. App. 16. East River had, but did not exercise, the contractual right to back out of the APA if it disapproved of any aspect of the Plan. Pet. App. 6.

In 2000, the bankruptcy court issued a Confirmation Order approving the APA and confirming the Plan. CR 6897-6914. Reflecting the agreed-upon provision Alma would transfer to East River all executory contracts not expressly rejected, the Confirmation Order provides:

> Except for those contracts and agreements that have either already been assumed or rejected, those Executory Contracts and Unexpired Leases proposed to be assumed and assigned to [East River] pursuant to the Plan are ordered assumed and assigned to [East River] …. [East River] … ha[s] provided adequate assurance of future performance of all Executory Contracts and Unexpired Leases being assumed and assigned to it.

Pet. App. 7-8.

Noble Performs Under The Exchange Agreement Without Challenging Its Assumption Or Assignment.

Contrary to Noble's description, Alma's bankruptcy was not "closed shortly thereafter." Pet. 1. It remained open and active for *eight years* after the

Confirmation Order issued, closing only in 2008. *See In re Equinox Oil Co., Inc.*, No. 99-12688 (Bankr. E.D. La.), Dkt. Nos. 2132-2722. At no point during that eight-year period did Noble or any of its predecessors dispute the Exchange Agreement's assumption or assignment, or move for clarification from the bankruptcy court regarding whether the APA, Plan, and Confirmation Order assigned the Exchange Agreement to East River. To the contrary, Noble and its predecessors repeatedly recognized the validity of the assignment by enforcing the Exchange Agreement against ConocoPhillips.

First, shortly after the Confirmation Order issued, East River and Alma's former operating partner together changed their name to "Elysium Energy, LLC." CR 6718. Elysium operated the Johnson Bayou Field in precisely the same manner Alma and its partner had before the bankruptcy, with the same principals, personnel, business address, and telephone number. CR 6517-19, 6559-60. And it enforced the Exchange Agreement against ConocoPhillips. The agreement provided that Alma retained a fractional interest in the Lake Washington properties, for which ConocoPhillips owed monthly production payments. Pet. App. 55. After confirmation, Elysium collected those production payments from ConocoPhillips. CR 6243, 6246-66. In 2001, Elysium sold its interest in the monthly production payments to another energy company. CR 6344, 6348, 6363. It made that conveyance "expressly subject to" the "Exchange Agreement." CR 6348, 6363.

Even after selling its interest in the production payments, Elysium continued to enforce the Exchange Agreement in other ways. For example, it repeatedly enforced the agreement by seeking a share of expenses from working interest owners in the Johnson Bayou Field. *See, e.g.*, CR 5976, 5979, 5982, 6000, 6018, 6022, 6025, 6027, 6037, 6401, 6404, 6409. In 2004, Elysium and its parent merged into Noble. CR 6889-94. To keep the names straight: Bankrupt Alma sold its assets to East River, which became Elysium, which became Noble. From this point forward, we refer to Noble and its predecessors collectively as "Noble," just as both the opinion below and Noble's petition did. Pet. App. 2 n.2; Pet. 1.

Noble, as the surviving entity, expressly assumed "all the obligations, duties, debts, and liabilities of" Elysium. CR 6734. It thus took responsibility for the Johnson Bayou Field. *See, e.g.*, CR 6422 (letter acknowledging duty to decommission equipment on the property). Noble also took responsibility for indemnifying ConocoPhillips under the Exchange Agreement. In 2011, for example, Noble agreed to indemnify ConocoPhillips under the Exchange Agreement for the expense of two environmental contamination lawsuits stemming from the Johnson Bayou Field properties. CR 6392-93; Pet. App. 8.

After Embracing And Enforcing The Exchange Agreement For A Decade, Noble Attempts To Evade Its Indemnification Obligations.

Shortly after Noble indemnified ConocoPhillips for these two lawsuits—and more than a decade after the Confirmation Order—Noble had a change of

heart. At the end of 2011, ConocoPhillips sought indemnification in connection with a third environmental contamination lawsuit related to the Johnson Bayou Field properties, which ultimately settled for $63 million. By then, Noble was far from "a stranger" (Pet. 1) to the Exchange Agreement—Noble had been enforcing and performing under the Exchange Agreement for years, including an eight-year period when the bankruptcy proceedings were still open. Breaking from its past practice, however, Noble disavowed its known obligation to indemnify under the Exchange Agreement. Pet. App. 8.

ConocoPhillips filed suit in Texas state court to enforce Noble's indemnification obligation. *Id.* In response, Noble claimed for the first time that under Texas contract law, the Exchange Agreement had never been assigned to it under the APA. ConocoPhillips disputed that reading of the APA's language, and each party moved for summary judgment. *Id.*

The district court sided with Noble, but the Texas Court of Appeals reversed. It held that "the plain language" of the APA, as well as the Plan and Confirmation Order, "aligns with ConocoPhillips' interpretation." Pet. App. 81. Accordingly, the Court of Appeals granted summary judgment for ConocoPhillips "that Noble owes ConocoPhillips a duty of defense and indemnity." Pet. App. 92.

The Texas Supreme Court Holds That Noble Is Bound By The Plain Terms Of The APA And Confirmation Order.

Noble appealed to the Texas Supreme Court. It again argued that under Texas contract law, the APA had not transferred the Exchange Agreement to Noble. Petitioner's Brief on the Merits at 19-48. Its position there was the opposite of what it argues to this Court: Noble recognized that, as a "state court," the Texas Supreme Court could not allow a "collateral[] attack [on the] bankruptcy court's final judgment" by altering the APA's plain terms. Letter Brief of Noble Energy, Inc. at 4. Noble cited this Court's decision in *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137 (2009), in support of the position that a collateral attack would be improper. Petitioner's Brief on the Merits at 57-58.

During oral argument, Noble briefly suggested that the Exchange Agreement also had been improperly "assume[d] … by implication." Transcript of Oral Argument, 2017 WL 237890. In making that point, Noble cited for the first time *In re O'Connor*, 258 F.3d 392 (5th Cir. 2001), while admitting that "the facts" of that case "are different" from those at issue here. Transcript of Oral Argument, 2017 WL 237890.

The Texas Supreme Court rejected Noble's arguments and affirmed. After construing several interlocking provisions of the APA, it concluded that the agreement—by its plain terms—had transferred the Exchange Agreement to Noble. Pet. App. 13-16. The plain language of the Plan and Order "reinforce[d]" that conclusion by providing that the Exchange

Agreement—among other executory contracts—had been assumed by Alma and assigned to Noble. Pet. App. 16. The Texas Supreme Court thus concluded that Noble was obligated to indemnify ConocoPhillips under the Exchange Agreement. Pet. App. 26-27.

The dissent did not dispute the plain meaning of the APA, the Plan, or the Order. Rather, it suggested that the transfer of the Exchange Agreement was unenforceable because of purported procedural shortcomings during Alma's bankruptcy. Citing *O'Connor*, the dissent argued that Alma's assumption of the agreement did not meet the requirements of 11 U.S.C. § 365 because the agreement was not specifically disclosed to the bankruptcy court before confirmation. Pet. App. 28-33.

In response to the dissent, the majority observed that the window for such procedural challenges to the bankruptcy court's orders had closed. It acknowledged that "full disclosure in bankruptcy proceedings" may be "critical." Pet. App. 26. But it concluded that "the issue before us is not whether the bankruptcy proceedings were conducted as they should have been." *Id*. Rather, as a state court overseeing a collateral dispute years after Alma's bankruptcy closed, the Texas Supreme Court was obligated—as Noble recognized—to enforce the APA, the Plan, and the Order as written: "As critical as disclosure in bankruptcy proceedings may be," it was "more critical that parties to bankruptcy proceedings and others have confidence that reorganization plans and court orders will be interpreted and enforced according to their plain terms." *Id.*

Noble now seeks certiorari. It no longer disputes that under the plain terms of the APA, the Plan, and the Confirmation Order, it acquired the Exchange Agreement from Alma. Instead, it argues that the Texas Supreme Court erred in failing to do precisely what Noble said it could not: "collaterally attack a bankruptcy court's final judgment." Letter Brief of Noble Energy, Inc. at 4.

REASONS FOR DENYING CERTIORARI

I. The First Question Presented Does Not Merit This Court's Review.

Noble's first question presented seeks review of the Texas Supreme Court's purported "holding" that "state-law principles trump the Bankruptcy Code's well-established notice requirements." Pet. 16. In Noble's telling, the decision below split from other courts by concluding "that state-law principles of 'constructive notice' and recordation were sufficient to provide the necessary notice under federal bankruptcy law." Pet. 18. Noble asks this Court to "restore uniformity" on that issue. Pet. 25. But certiorari would be inappropriate for at least three reasons. First, the Texas Supreme Court held no such thing—the holding Noble attacks is Noble's own invention. § I.A. Second, the decision does not implicate any division of authority. § I.B. Third, as the lack of conflicting authority reflects, the holding below is correct. § I.C.

A. Noble mischaracterizes the Texas Supreme Court's holding.

Noble's entire petition evaporates upon reading the Texas Supreme Court's opinion. The court expressly declined to reach the holding Noble now ascribes to it. The court acknowledged the general proposition that "full disclosure in bankruptcy proceedings" is important—even "critical." Pet App. 26. But it concluded that the window for Noble's procedural challenge to Alma's disclosure of the Exchange Agreement had closed. In the court's view, "the issue before us is *not* whether the bankruptcy proceedings were conducted as they should have been." *Id.* (emphasis added). Rather, as a state court adjudicating a collateral contract dispute years after Alma's bankruptcy closed, its task was to "decide what the APA, the Plan, and the Order mean" and enforce their language as written. *Id.* Finality took priority. The majority's closing lines underscored this point: "As critical as disclosure in bankruptcy proceedings may be, we think it more critical that parties to bankruptcy proceedings and others have confidence that reorganization plans and court orders will be interpreted and enforced according to their plain terms." *Id.*

Plainly, then, the Texas Supreme Court did not hold that "state-law principles trump the Bankruptcy Code's well-established notice requirements," as Noble now contends. Pet. 16. It held instead that in a collateral state-court proceeding, Noble's belated challenge to the sufficiency of Alma's disclosure during bankruptcy was not a ground for a state court to

void the plain meaning of the APA, Plan, and Confirmation Order. The impropriety of a state court collaterally attacking a final bankruptcy order is so obvious that even Noble argued this point below. *See* Letter Brief of Noble Energy, Inc. at 4.[6]

Noble severely mischaracterizes the court's decision when it suggests that the majority endorsed "constructive notice" as the governing standard for a debtor's disclosures under the Bankruptcy Code. Pet. 18. The court held only that Noble was bound by the plain terms of the APA, Plan, and Confirmation Order—terms that Noble knowingly and voluntarily approved—assigning Noble the Exchange Agreement because it was not among the contracts expressly rejected. Pet. App. 26. The majority mentioned constructive notice only to answer the dissent's charge that its decision was "manifestly inequitable" to Noble. *Id.* The majority explained that enforcing the Exchange Agreement against Noble was in fact fair, for several reasons:

> Noble knew from the plain terms of the APA, the Plan, and the Order that it could be assigned executory contracts not specifically

[6] To be sure, Noble's argument was that the Texas Supreme Court was bound by the plain language of the APA and Confirmation Order as interpreted by *Noble*. But once the court rejected that interpretation and found that the plain language of the documents assigned the Exchange Agreement to Noble—a holding that Noble does not challenge before this Court—the point still stood: State courts cannot allow a "collateral attack [on] a bankruptcy court's final judgment" years later on the theory that the bankruptcy court got it wrong. Letter Brief of Noble Energy, Inc., at 4 (Feb. 28, 2017).

> listed. It had at least constructive knowledge of the Exchange Agreement in its own chain of title. Years after the bankruptcy proceeding was over, it repeatedly honored the indemnity obligation imposed by the agreement. And had Noble needed indemnification from Conoco, no doubt it would have sought the benefits promised it by the Exchange Agreement.

Id.

The majority was clear, however, that these equitable considerations—including Noble's "at least constructive knowledge" of the Exchange Agreement before confirmation—were not the basis for its holding. "[I]nequitable or not," it concluded, "we think the result we reach is compelled by the governing documents and the law." Pet. App. 26-27.

In short, Noble's first question presented is premised on a fundamental misreading of the Texas Supreme Court's decision. Certiorari should be denied for that reason alone.

B. The Texas Supreme Court's rejection of Noble's belated challenge does not implicate any division of authority.

Noble cites a handful of decisions that purportedly clash with the decision below, *see* Pet. 16-25, but those cases are easily distinguishable on several grounds.

The question in *Van Sickle v. Hallmark & Associates, Inc.*, 840 N.W.2d 92 (N.D. 2013), was whether a creditor's claims against a debtor were discharged, when the creditor received no notice of the bankruptcy proceeding at all. The Supreme Court of North Dakota held there had been no such discharge. In so holding, it enforced the bedrock constitutional rule that "the discharge of a [creditor's] claim without reasonable notice of the confirmation hearing is violative of the fifth amendment to the United States Constitution." *Id.* at 102-03. Noble makes no such constitutional argument here, and for good reason: Noble bears no resemblance to a creditor left in the dark about a bankruptcy proceeding. It actively participated in Alma's bankruptcy. It knowingly and voluntarily entered an asset purchase agreement that explicitly assigned it all of Alma's contracts not expressly rejected. And Noble had a full opportunity to conduct due diligence in determining which contracts it would reject—due diligence that, if completed, indisputably would have revealed the Exchange Agreement.[7] *See supra* at 7; CR 2004, 2015. Had that due diligence revealed any concerns, Noble had the right under the APA to walk away before closing. CR 2020-21. Noble does not and cannot claim any due process right to avoid assignment of the Exchange Agreement under these circumstances.

---

[7] Indeed, given Noble's repeated enforcement of the Exchange Agreement following its assignment to Noble—including during the eight-year period in which the bankruptcy proceedings were still open—every indication is that, as a result of its due diligence, Noble was fully aware of the Exchange Agreement when it entered the APA. *See supra* 10.

A & J Construction Co. v. Wood, 116 P.3d 12 (Idaho 2005), is equally inapposite. That was a judicial estoppel case. Specifically, the question was whether a debtor was estopped from pursuing a claim it had not listed as an asset during an earlier bankruptcy proceeding. *Id.* at 13-14. The Idaho Supreme Court held that the debtor, having minimized the value of its estate by denying the claim's existence during bankruptcy, could not later benefit by contradicting itself and asserting the claim. *Id.* at 18. Noble makes no such estoppel argument here, nor could it: ConocoPhillips was not a party to the APA, and it never made any inconsistent representations about the assumption or assignment of the Exchange Agreement. Again, it was Noble that knowingly and voluntarily chose to enter an asset purchase agreement that included an unusual open-ended transfer of all of Alma's contracts not expressly rejected by Noble—an arrangement designed to serve Noble's interest in continuing to operate Alma with no change other than its name. *See supra* 19. Whether the "Idaho Supreme Court had it right" in *A&J Construction*, Pet. 19, is thus beside the point.

Unable to show any actual division of authority, Noble frames these cases and others as demonstrating the general "importance of full and honest disclosure" in bankruptcy proceedings. Pet. 19 (quoting *A & J Constr.*, 116 P.3d at 16); *see* Pet. 16-17 (citing broad language from a handful of federal decisions suggesting that "full disclosure" plays a role in "numerous events in bankruptcy proceedings"). But the Texas Supreme Court never suggested any disagreement with those statements. Recognizing that "full

disclosure in bankruptcy proceedings" may be "critical," Pet App. 26, it held only that on the discrete facts of this case, basic principles of finality barred Noble—which was not a creditor in Alma's bankruptcy and has never invoked constitutional or estoppel doctrines—from objecting to the extent of Alma's disclosure at this collateral stage. None of the cases cited by Noble cast any doubt on that conclusion.

Finally, Noble suggests that the Texas Supreme Court's decision "[d]eepen[s] a [c]onflict" among three federal courts of appeals regarding the standard for disclosure of executory contracts during bankruptcy. Pet. 20, 23-24. But these cases—*In re Burger Boys, Inc.*, 94 F.3d 755 (2d Cir. 1996), *Sea Harvest Corp. v. Riviera Land Co.*, 868 F.2d 1077 (9th Cir. 1989), and *In re National Gypsum Co.*, 208 F.3d 498 (5th Cir. 2000)—were all rendered on *direct appeal* from bankruptcy court decisions. Each addressed a procedural dispute that was timely raised by creditors, and over which the courts of appeals indisputably had jurisdiction. *See Burger Boys*, 94 F.3d at 757-58; *Sea Harvest*, 868 F.2d at 1078; *National Gypsum*, 208 F.3d at 503-04. These decisions thus had no occasion to address the type of collateral, state-court attack on closed bankruptcy proceedings that Noble levies here. And they cast no doubt on the Texas Supreme Court's conclusion that in such a collateral posture, basic principles of finality bar Noble from altering the meaning of longstanding bankruptcy orders.

In any event, the assertion that the Texas Supreme Court deepened an existing conflict is doubly mistaken. To start, the three cases are consistent with each other. *Burger Boys* and *Sea Harvest* both held

that as a matter of bankruptcy procedure, if a debtor wishes to assume a lease or executory contract by making a submission separate from its reorganization plan, that submission must be a "formal motion" that provides the relevant creditor with specific notice and an opportunity to respond. *Burger Boys*, 94 F.3d at 763; *Sea Harvest*, 868 F.2d at 1079-80. *National Gypsum*, in turn, held that if a debtor instead wishes to assume a lease or executory contract solely by filing its reorganization plan, it must provide the *same* level of specific notice to the relevant creditor that a "formal motion" would have provided. 208 F.3d at 511-12. In so holding, *National Gypsum* explicitly established parity with *Burger Boys* and *Sea Harvest*. *See id.* at 512. Contrary to Noble's suggestion, these decisions did not "disagree … on the notice required." Pet. 23.

There is also no conflict between these federal cases and the Texas Supreme Court's holding. Setting aside their distinct, non-collateral posture, *Burger Boys*, *Sea Harvest*, and *National Gypsum* considered the level of notice required for a *creditor* who might wish to contest the proposed treatment of its agreement with the debtor. As noted, that issue implicates constitutional due process concerns that Noble never raised. *See supra* at 19. Noble, of course, was not a creditor—it was a purchaser that expressly agreed to assume unspecified contracts from Alma subject to its own due diligence. *See supra* at 6-7; CR 2004, 2015. The cases cited by Noble say nothing about the standards for a debtor's disclosure to a purchaser in those circumstances.

C. The Texas Supreme Court correctly rejected Noble's belated attempt to collaterally attack a long-final federal bankruptcy order.

Finally, certiorari should be denied because the Texas Supreme Court's holding is correct. This Court has sharply limited the scope of permissible collateral attacks on bankruptcy orders. The decision below is faithful to those precedents.

Travelers demonstrates the constraints on such collateral attacks. There, in the course of confirming a reorganization plan, a bankruptcy court entered an order prohibiting the litigation of certain claims. The order was affirmed on appeal. Decades later, several parties covered by the bankruptcy order sought to litigate some of the prohibited claims. They argued, much as Noble does here, that the bankruptcy court's longstanding order should not be enforced according to its plain terms because it had exceeded a limit on the bankruptcy court's power—there, its subject-matter jurisdiction. 557 U.S. at 140-47.

This Court enforced the prohibition order as written, despite any jurisdictional defects. Its holding rested on basic principles of finality: When the original bankruptcy orders "became final on direct review," they "became res judicata to the parties and those in privity with them." *Id.* at 152 (quotation marks omitted). That was true "whether or not" the original orders were "proper exercises of bankruptcy court jurisdiction and power." *Id.* The plaintiffs had been "given a fair chance to challenge the Bankruptcy Court's subject-matter jurisdiction" years earlier. *Id.*

at 153. Once that window closed, the plaintiffs—like Noble here—were bound by the plain terms of the final bankruptcy orders. *Id.*; *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 312-13 (1995) (when applying a bankruptcy court order in a subsequent proceeding, "we need not, and do not, address whether the Bankruptcy Court acted properly in issuing" the order).

This Court reiterated these finality principles in *Espinosa*. There, a bankruptcy court entered a confirmation order discharging the debtor's student loan debt—but without first making the "undue hardship" finding mandated by 11 U.S.C. § 523(a)(8). 559 U.S. at 263-64. The lender did not appeal but subsequently filed a collateral action seeking to void the confirmation order as procedurally deficient. This Court recognized that the omission of an "undue hardship" finding was "a legal error." *Id.* at 275. Nonetheless, it upheld the confirmation order in full. Echoing *Travelers*, the Court held that once the lender received "notice of the error and failed to object or timely appeal," the order became "enforceable and binding" notwithstanding the bankruptcy court's procedural mistake. *Id.* In enforcing that finality rule, the Court expressly declined to permit parties to a bankruptcy "to sleep on their rights" and then belatedly file collateral attacks on final orders. *Id.*

The Texas Supreme Court's holding is consistent with these precedents. Noble had notice that it was acquiring all contracts related to properties Alma had received under the Exchange Agreement, whether or not specified in the APA. *See supra* at 6-7; CR 2004, 2015. And it had specific knowledge of the Exchange Agreement by 2001, at the latest. *See supra* at 9; CR

6344, 6348, 6363. Alma's bankruptcy remained open for seven years after that point. During that time, Noble could have moved to clarify whether the bankruptcy court's orders assumed and assigned the Exchange Agreement—and then appealed if necessary. *Cf. Travelers*, 557 U.S. at 151 ("[T]he Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders."); *National Gypsum*, 208 F.3d at 503 (adjudicating declaratory judgment action filed in bankruptcy court regarding meaning of prior bankruptcy order). Instead, Noble chose to enforce, and benefit from, the Exchange Agreement—and continued to do so for years after the bankruptcy closed. Having slept on its rights for all that time, Noble cannot now collaterally attack the bankruptcy court's final orders in state court. Nearly two decades after those orders issued, "the time to prune them is over." *Travelers*, 557 U.S. at 154.

II. The Second Question Presented Does Not Merit This Court's Review.

Noble next argues that this Court should grant review to decide whether § 365 of the Bankruptcy Code (which provides that a "trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor") allows a court to approve "boilerplate 'assumed-unless-rejected' language" in a reorganization plan. Pet. 26. This argument fails for the same reasons as the first. Again, Noble relies on false premises: The language in the plan was not boilerplate, nor does Noble's argument accurately reflect the decision below. In any

event, there is no conflict among courts over this issue, and the Texas Supreme Court resolved it correctly under this Court's precedent.

A. The Texas Supreme Court correctly declined to set aside the plain language of the APA, Plan, and Confirmation Order as "boilerplate."

The Texas Supreme Court held that the confirmed bankruptcy plan provided that Alma assumed the Exchange Agreement and assigned it to Noble. Pet. App. 16. That holding flowed from the plain language of the APA, the Plan, and the Confirmation Order. The Plan stated that "executory contracts not specifically referenced were to be 'assumed and assigned to [Noble]' unless rejected at closing." Pet. App. 6 (alteration in original). The Exchange Agreement was an executory contract, *see* Pet. App. 12-13, and it did not appear on any of the lists of rejected agreements, Pet. App. 4. And the Confirmation Order made clear that "those Executory Contracts … proposed to be assumed and assigned to [Noble] pursuant to the Plan are ordered assumed and assigned to [Noble]." Pet. App. 7 (quoting Confirmation Order ¶ 15). As a matter of plain meaning, therefore, Alma assumed the Exchange Agreement and assigned it to Noble under the confirmation plan via the APA. Noble does not argue otherwise.

Noble asserts that this decision is "clearly wrong" because it "essentially" vitiates "the requirement that a bankruptcy court expressly and meaningfully review and approve an assumption or rejection of an executory contract under [11 U.S.C.] section 365(a)."

Pet. 30. In Noble's view, "boilerplate 'assumed-unless-rejected' language is [in]sufficient to assume an undisclosed executory contract." Pet. 31. This argument rests on two false premises.

First, Noble has no support for its characterization of the "assumed-unless-rejected" provision as "boilerplate." Noble's only basis for that label seems to be that the Fifth Circuit once used it to describe materially different assumption language. As the Texas Supreme Court explained, however, the "boilerplate" label certainly "does not fit" here, Pet. 28: The provision was carefully crafted to mirror the open-ended contract assignment that Alma *and Noble* knowingly and voluntarily included in the APA so that Noble could continue to operate Alma's assets with no change beyond the name of the company. CR 6517-19, 6559-60.

The assumption and assignment here was thus not the "unilateral act[] of the debtor" that Noble warns of. Pet. 30 (quoting *In re FBI Distribution Corp.*, 330 F.3d 36, 45 (1st Cir. 2003)). It was Noble's precise aim when it negotiated the APA with Alma and specifically chose to take the unusual route of assuming all contracts related to the assets it acquired unless otherwise specified.

The record also supported the Texas Supreme Court's conclusion that the provision here was not "boilerplate." ConocoPhillips presented the court with an appendix of 31 recent bankruptcy sales involving energy companies, and just one had a clause that deemed executory contracts assumed unless rejected. Response Brief on the Merits at app. A (Tex. May 27,

2016). Noble has offered no explanation for why this Court should assume that the provision here, which Alma *and Noble* selected and which differs from 30 other bankruptcy cases in the energy sector, is "boilerplate" rather than an intentional choice by sophisticated parties to efficiently select which contracts were assumed and assigned and which were rejected. *See infra* 6-9.

Second, Noble again ascribes a fictitious holding to the Texas Supreme Court. The court said nothing about the meaning of § 365 in its decision. Instead, the court recognized that whatever § 365(a) may require in bankruptcy proceedings is irrelevant here because this is not a bankruptcy case. Noble did not raise its objection in the bankruptcy court and so is not appealing any decision from that court. This is *ConocoPhillips's* state-court claim for indemnification that Noble seeks to avoid by collaterally attacking a final order in a federal bankruptcy proceeding that closed a decade ago.

As noted above (at 22-23), this Court has held even a faulty bankruptcy order "remains enforceable and binding … because [an out-of-time objector] had notice of the error and failed to object or timely appeal." *Espinosa*, 559 U.S. at 275; *see also Travelers*, 557 U.S. at 152; *Celotex*, 514 U.S. at 312-13. And this guard against collateral attacks of bankruptcy orders has been the rule for decades. *Stoll v. Gottlieb*, 305 U.S. 165, 171-72 (1938); *Chicot Cty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376-78 (1940). Noble's window to challenge the "assumed-unless-rejected" provision under § 365(a) closed years ago.

Notably, Noble no longer challenges the Texas Supreme Court's interpretation of the APA, Plan, or Confirmation Order. Noble dedicated the lion's share of its brief in the Texas Supreme Court to arguing that the Court of Appeals had misinterpreted those documents. Petitioner's Brief on the Merits at 19-48. It has abandoned that argument now, and accordingly it is undisputed at this stage that the Texas Supreme Court is correct about the plain meaning of those documents. By holding that the APA, Plan, and Confirmation Order mean what they say, the Texas Supreme Court ensured that "parties to bankruptcy proceedings and others have confidence that reorganization plans and court orders will be interpreted and enforced according to their plain terms." Pet. App. 26.

B. There is no conflict about whether state courts may void bankruptcy orders that include "assumed-unless-rejected" clauses.

Noble identifies only one decision from a federal court of appeals or state court of last resort that it believes is in tension with the decision below—*In re O'Connor*, 258 F.3d 392 (5th Cir. 2001). *See* Pet. 26. The Fifth Circuit's decision there is both factually and legally distinguishable from this case.

Most obviously, *O'Connor* was a direct appeal from a bankruptcy court decision. The court thus noted at the outset that the bankruptcy court's "interpretation [of the confirmed plan] is entitled to deference." 258 F.3d at 401 (citing *In re Weber*, 25 F.3d 413, 416 (7th Cir. 1994) ("In reviewing a bankruptcy

court's interpretation of a confirmed plan … the reviewing court should extend to that interpretation the same deference that is otherwise paid to a court's interpretation of its own order.")). Accordingly, the court's conclusion that "an executory contract may *not* be assumed either by implication or through the use of boilerplate plan language," which Noble latches onto as the basis for a supposed split, merely reflects a deferential approval of "[t]he bankruptcy court's interpretation." *Id.* The Fifth Circuit's own view on whether a debtor can assume and assign an executory contract through "boilerplate" language remains unknown, and so the decision below cannot create any conflict with that court.

O'Connor also involved materially different contractual language than the Plan used here. The reorganization plan in *O'Connor* provided that executory contracts "with or for the benefit of employees, agents or brokers … are hereby rejected" and that any other such contracts "not rejected prior to time [sic] set forth herein *will be* assumed." *O'Connor*, 258 F.3d at 401 (emphasis added) (alteration in original). The Fifth Circuit deferred to the bankruptcy court's interpretation because "[b]y using the phrase 'will be' to refer to assumption of executory contracts, as contrasted with the phrase 'are hereby rejected' to refer to rejected executory contracts, the Plan implies that something more than plan-confirmation is necessary for assumption." *Id.* The confirmation order here, by stark contrast, provided that "those Executory Contracts … proposed to be assumed and assigned to [Noble] pursuant to the Plan *are ordered* assumed and assigned to [Noble]." Pet. App. 7 (emphasis added). Unlike the plan in *O'Connor*, there was nothing left to be done to

effectuate Alma's confirmation plan. Whatever concerns the Fifth Circuit may have had about the contractual language in *O'Connor*, the opinion gives no indication how it would have viewed the clause Noble complains of here.

Noble nevertheless tries to manufacture a split by claiming that the Fifth Circuit rejected "the same sort of 'assumed-unless-rejected'" clause because it was "boilerplate." Pet. 28. As explained above (at 26-27), however, the clause at issue here was not boilerplate, and Noble has presented no reason to conclude otherwise. Without that foundation, Noble's split with the Fifth Circuit evaporates.

Noble next argues that review is warranted because the decision below conflicts with a handful of bankruptcy court decisions. Pet. 28-29. Bankruptcy court decisions of course do not serve as the source of conflict that merits this Court's review. *See* S. Ct. Rule 10. This is true too of decisions from bankruptcy appellate panels, which sit in the place of district courts and whose decisions are appealable to federal appellate courts. 28 U.S.C. § 158(b), (d).

Regardless, the decision below does not conflict with any decision Noble flags. *In re Parkwood Realty* concerned the manner in which a debtor had rejected executory contracts. 157 B.R. 687 (Bankr. W.D. Wash. 1993). The court refused to allow the debtor to escape its contractual obligations because the bankruptcy court had not approved the rejection, and doing so would raise due process concerns. *Id.* at 690-91. Here, the question is whether a creditor (ConocoPhillips) can enforce a contract that a debtor (Alma) assumed

and assigned to a party (Noble) that had the opportunity to conduct due diligence before purchasing the debtor's assets. *See supra* 7. Noble did not appeal the bankruptcy court confirmation order that ordered the Exchange Agreement assumed and assigned. Nor has Noble raised any constitutional due process concerns.

In re Swallen's, Inc., meanwhile, did not feature an "assumed-unless-rejected" provision. 210 B.R. 120, 122 (Bankr. S.D. Ohio 1997). The single sentence from that case that Noble quotes—"There is no room in the bankruptcy scheme for assumption of an executory contract by implication"—is irrelevant to this case. Pet. 29 (quoting *In re Swallen's*, 210 B.R. at 122). The Texas Supreme Court did not hold that Alma had assumed an executory contract and assigned it to Noble by implication. It held that Noble had agreed to an arrangement that allowed Alma to specifically reject certain exchange agreements and assign all others to Noble. *In re Swallen's* did not consider a similar agreement.

Finally, Noble claims that two cases that the Texas Supreme Court relied upon cut the opposite way. Pet. 29. Both cases concerned a third party arguing their contract had not been rejected in bankruptcy—not a party who, like Noble, signed a contract including an "assumption-unless-rejected" provision and then claimed it had not assumed a contract. And the courts in both cases approved of the challenged provisions, consistent with the decision below. *See In re Amerivision Commc'ns, Inc.*, 349 B.R. 718, 723 (B.A.P. 10th Cir. 2006); *In re GCP CT Sch. Acquisition, LLC*, 429 B.R. 817, 831 (B.A.P. 1st Cir. 2010).

III. This Case Is Not A Proper Vehicle To Resolve Any Alleged Split.

Even if the issues Noble raises accurately reflected the Texas Supreme Court's decision and sparked disagreement among courts, this case would make an especially poor vehicle to resolve those issues.

As noted above (at 22-23, 27), this Court has already held that a party may attack bankruptcy court orders only through direct review (absent narrow exceptions not at issue here). *Travelers*, 557 U.S. at 152. To the extent the Court is interested in considering the specific contract language that § 365 permits or forbids (even though there is no division of authority on that issue), it would make no sense to do so in a collateral state court proceeding rather than a direct appeal from bankruptcy court. And if the Court wishes to consider the notice that bankruptcy law requires (again, not the subject of any conflict), it should wait either for a direct appeal or at least for a case featuring a constitutional claim that can survive even after a final bankruptcy order.

This case also makes a poor vehicle to resolve the strictures of § 365 because the issue received scant attention below. In its briefing before the Texas Supreme Court, Noble focused entirely on whether it should prevail under the plain meaning of the APA and whether the APA was an executory contract. *See* Petitioner's Brief on the Merits; Reply Brief on the Merits (Tex. July 13, 2016). The solitary time § 365 appeared in Noble's extensive opening brief was in

language quoting the appellate court's opinion. Petitioner's Brief on the Merits at 38. And indeed it was *Noble* that urged that any attempt to interpret the APA based on something other than the parties' intent and the language's plain meaning would constitute "a collateral attack—ten years after the fact—on a final bankruptcy confirmation order." *Id.* at 57-58. If this Court wants to review this issue, it should wait for a case where the petitioner has asserted the argument from the start, rather than expressly condemning it.

IV. Noble Overstates The Importance Of This Case.

Noble claims this case will have "wide-ranging consequences" because allowing parties to use the "assumed-unless-rejected" language at issue here will "jeopardize[]" the "core purpose of Chapter 11." Pet. 33. But a future party like Noble is unlikely to sign an asset purchase agreement that says it will be assigned all executory contracts *not* listed unless, like Noble, it plans to run the same business as the debtor. *See, e.g.*, CR 6496-97. "Assumed unless rejected" provisions like the one at issue here are the exception, not the rule, *see* Response Brief on the Merits at app. A, and any decision from this Court about those provisions is likely to have minimal practical significance.

Noble's warning of the apocalyptic bankruptcy consequences that will follow from the decision below, *see* Pet. 34, are similarly unfounded. Noble warns that debtors "will take longer to emerge"—and perhaps

might not even "emerge at all"—as "ever longer proceedings" take place with asset purchasers scared off by the risk imposed by the decision below. *Id.* How, then, does Noble explain the recent Cobalt bankruptcy sale of assets that began in Texas after the decision below came out and wrapped up in a tidy four months? *See In re Cobalt Int'l Energy, Inc.*, No. 17-36709 (Bankr. S.D. Tex.). Nothing about the Texas Supreme Court's case seems to have impeded that case's progress.

Next, Noble warns that the decision below "creates a strong incentive for a debtor and a counterparty to an executory contract to disregard disclosure and notice requirements, thereby benefiting them and prejudicing an unwitting purchaser." Pet. 34. Not so. Rather, when parties sign asset purchase agreements taking an assignment of all unlisted executory contracts, the decision below incentivizes them to ensure they know what those contracts say before signing—or else negotiate different language. Indeed, parties less familiar with the debtor's operations than Noble was here frequently opt to *reject* all executory contracts not listed, just as the confirmation plan in *Cobalt* provided. *See In re Cobalt Int'l Energy, Inc.*, Dkt. 273 at 26.

Noble also suggests that the decision below is inequitable because it permits ConocoPhillips to make indemnity claims against Noble instead of against "reorganized Alma." Pet. 35. But Noble knows that there is no "reorganized Alma"—Alma was liquidated in bankruptcy. *See* Petitioner's Brief on the Merits at app. E, Alma Plan, §9.4. Noble also ignores that the

Exchange Agreement provides for *mutual* indemnification. Should Noble incur a cost at the Lake Washington properties covered by the Exchange Agreement, Noble will seek indemnification from ConocoPhillips and enjoy the benefit of the bargain—just as it enjoyed the arrangement while collecting production payments post-bankruptcy. *See supra* 9. There is no windfall here.

Finally, it is Noble's position, not ours, that would significantly disrupt the Nation's bankruptcy system. Noble's collateral attack on the APA, Plan, and Confirmation Order comes 18 years after the bankruptcy court entered the Order and ten years after distributions ceased and the bankruptcy case closed. Yet Noble wants this Court to turn back the clock so it can litigate—for the first time—the validity of the APA, Plan, and Confirmation Order. As this Court has recognized, the need for finality in the bankruptcy context is paramount. *See Travelers*, 557 U.S. at 153-54. And in the long run, Noble's position is most harmful to debtors, as it would open the door to unending collateral attacks on seemingly final bankruptcy orders. That approach would undermine "an important policy goal in bankruptcy law, that is, that a debtor should obtain a fresh start in life and an opportunity to move ahead free of financial distress as quickly as possible." *In re Chalasani*, 92 F.3d 1300, 1310 (2d Cir. 1996).

CONCLUSION

The petition should be denied.

Respectfully submitted,

Richard W. Mithoff
Sherie Potts Beckman
One Allen Center
Penthouse
MITHOFF LAW
500 Dallas Street
Houston, TX 77002

Macey Reasoner Stokes
Counsel of Record
Benjamin A. Geslison
Omar J. Alaniz
BAKER BOTTS L.L.P.
910 Louisiana St.
Houston, TX 77002
(713) 229-1241
macey.stokes@baker-botts.com

June 18, 2018