

SCOTT LAW and REBECCA LAW	§	IN THE DISTRICT COURT
Plaintiffs,	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
RANGE RESOURCES CORPORATION	§	
AND RANGE TEXAS PRODUCTION, LLC	§	
AND RANGE PRODUCTION COMPANY	§	
Defendants.	§	236 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANTS' SUPPLEMENTAL MOTION TO EXCLUDE THE OPINION  
TESTIMONY OF ALISA RICH, AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF THE COURT:

Defendants Range Resources Corporation, Range Texas Production, LLC, and Range Production Company (although separate legal entities, they are collectively referred to for convenience as "Range"), file this Supplemental Motion to Exclude the Opinion Testimony of Alisa Rich, and Brief in Support (the "Motion"). In support of this Motion, Range submits the following exhibits, which are incorporated by reference.

- Exhibit 1: Affidavit of Richard C. Bost, dated October 15, 2010;
- Exhibit 2: Report by Alisa Rich;
- Exhibit 3: Testimony from the oral deposition of Alisa Rich dated September 29, 2010;
- Exhibit 4: Excerpts from certified copy of a transcript of a meeting of the Flower Mound Oil and Gas Board of Appeals in March 2008;
- Exhibit 5: Screenshot of Wolf Eagle Environmental website;
- Exhibit 6: Report of Industrial Hygiene and Safety Technology, Inc. dated August 24, 2009;
- Exhibit 7: Report of Environmental Resource Management, dated September 20, 2009;
- Exhibit 8: Affidavit of Richard C. Bost dated October 26, 2010;

Exhibit 9: Affidavit of Kirby H. Tyndall, Ph.D., DABT dated March 18, 2011; and

Exhibit 10: Excerpts from the deposition of Alisa Rich taken January 18, 2011.

**I. Alisa Rich is Dishonest, Biased, and Wholly Unqualified.**

Plaintiffs allege, among other things, that a well site on property covered by an oil and gas lease owned by Range Texas Production, LLC, and located in Parker County, Texas, is causing a nuisance or “trespass” of air particles from the well site to Plaintiffs’ property.

Plaintiffs hired Ms. Rich as a purported “expert” to provide opinion testimony regarding the air at Plaintiffs’ property. This motion exposes her dishonesty and bias, lack of qualifications, and flawed methodology and unreliable conclusions, any of which alone warrant preclusion of her testimony as a purported “expert.”

**A. Rich’s Dishonesty and Bias.**

Ms. Rich has lied about her credentials. (*See* Ex. 3: p. 40, line 1 – p. 42, line 6)(*See* Ex.

4). As recorded by a certified court reporter in a meeting of the Flower Mound Oil and Gas

Board of Appeals in March 2008, Ms. Rich stated:

I have a Ph.D. in air pollution control design. If that does not satisfy you, I don’t know what possibly could. I’m a specialist in the oil and gas. I am not only a specialist, I am a consultant to oil and gas to provide the most possibly environmentally sensitive, environmentally supportive industry technology that give the rights to the land owner but at the same time protects human—human environments as well as animal environments. I have a doctorate in air pollution.

(*See* Ex. 4, p. 26, lines 13-21). Contrary to her statements, Ms. Rich does not have a Ph.D. in

anything, nor does she have a doctorate in anything, much less, “air pollution.” (*See* Ex. 3: p. 40,

lines 2 – 3). Moreover, she is not an expert in anything to do with oil and gas, nor is she a

consultant to the oil and gas industry. (*See* Ex. 3: p. 202, lines 13 – 24).

Ms. Rich has represented to the public that her firm is an engineering firm, but it is not. (See Ex. 3: p. 42, line 2 – p. 43, line 9). The Texas Board of Professional Engineers forced her to remove the word “engineering” from the name of her company. (See Ex. 3: p. 42, line 2 – p. 43, line 9).

Ms. Rich represents to the public through her website that “Wolf Eagle Environmental *scientists* are skilled in air emissions studies....” (emphasis added). (See Ex. 5). However, in her deposition, she swore under oath that Wolf Eagle Environmental has no employees, and it certainly does not have multiple scientists on staff, as the website clearly represents. (See Ex. 3: p. 43, lines 10 – 22; p. 50). As shown below, Ms. Rich is anything but a credible “scientist.” The only other person whom she claims works with her in setting out air canisters to obtain air samples (which is all Wolf Eagle Environmental actually does since it sends the samples to other companies for the actual testing) is her “technician,” and he happens to be her 19 year old son.

Ms. Rich represents to the public that her firm, Wolf Eagle Environmental, provides “Expert Legal Services.” (See Ex. 5). Under the heading “Expert Legal Services,” the website states, “With advanced education in law and years of experience with legal issues in the environmental field, Wolf Eagle Environmental can provide litigation support and expert witness testimony for cases involving environmental contamination and human health exposure.” (See Ex. 5). However, Ms. Rich does not have any advanced education in law, and neither does anyone else who works with her at Wolf Eagle Environmental. (See Ex. 3: p. 58, line 14 – p. 59, line 25).

Even more specifically with regard to the claims made in this case, Ms. Rich continues her practice of dishonesty. It is absolutely irrefutable that there is only one compressor on the well site in this case and it is completely enclosed in a 20 foot sound wall. Nonetheless, Ms. Rich testified in her deposition that she saw two compressors on the well site:

Q And where did you gain your understanding about this particular site?

A From my knowledge of the site from being able to look at the site.

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Q These two compressors are they both 3600s?

A It's my understanding. I do not know that for certain. Just by my observation they look like caterpillar 3600s.

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Q Both of them did?

A Again, it's my understanding, just from looking at them, that's what they looked like. They could have been something else, but they look like a caterpillar.

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Q But you're able to see enough of the compressors to know, to be able to try to categorize them as a caterpillar 3600?

A Yes.

(See Ex. 3: p. 109, line 11 – p. 110, line 18).

The Range well site, with its completely enclosed compressor, is shown below.



Unless Ms. Rich has x-ray vision, there is no way she saw any compressor at the Range well site.

In addition to her dishonesty, Ms. Rich is anything but unbiased. She admits she solicited the Plaintiffs' business as a potential expert in this case. (*See* Ex. 3: p. 72, line 12 – p. 73, line 25). She admits to placing YouTube videos on the web in which she videos gas drilling facilities, and is heard in the videos proclaiming that “the wolf is on the prowl.”<sup>1</sup> (*See* Ex. 3: p. 71, line 1 – p. 72, line 9). Of course, this is a reference to her company, Wolf Eagle Environmental. The only deposition (other than in this case) that she has ever given as a designated “expert” is in a case pending in the 48<sup>th</sup> District Court. (*See* Ex. 3: p. 5, line 23 – p. 8,

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<sup>1</sup> *See e.g.*, <http://www.youtube.com/watch?v=-iJ8kUvCyew>

line 7; p. 203, lines 1 – 4). She has provided a similar report in that case, her purported “methodologies” and the conclusions are similar, and they are fundamentally flawed and unreliable, just as they are in this case. The same attorneys representing the plaintiffs in this case represent the plaintiffs in the matter pending in the 48<sup>th</sup> District Court. (*See* Ex. 3: p. 5, line 23 – p. 7, line 13). Simply put, Ms. Rich is a self-proclaimed “wolf on the prowl,” seeking to devour unsuspecting courts, juries, and litigants with her unreliable hocus-pocus “opinions.” She is the antithesis of an unbiased scientist who engages in reliable testing techniques and who accurately reports the findings in their proper context—the opposite of the kind of expert testimony that should be admitted.

#### **B. Rich’s Lack of Qualifications**

Ms. Rich’s wholesale lack of qualifications is evident from a review of her background and the fact that she has been repeatedly dishonest about her qualifications and other matters. (*See* Ex. 3: p. 40, lines 2 – 12; p. 42, line 2 – p. 43, line 17; p. 47, line 4 – p. 48, line 9; *See* Ex. 4: p. 26). Ms. Rich claims to have graduated from high school in about 1975, when she became a part time model and actress. (*See* Ex. 3: p. 26, line 14 – p. 29, line 8). Although she claims to have been employed in several clerical-type jobs, she maintains that she continued to work as a model and actress until about 1989. (*See* Ex. 3: pp. 29 – p. 32). She also claims to have attended a number of community colleges and four year institutions from about 1975 through 1995, when she claims to have obtained an undergraduate degree from the University of Nebraska. (*See* Ex. 3: p. 9, line 9 – p. 13, line 9). Ms. Rich admits that she was unemployed from about 1990 through about 2005, when she asserts that she received a master’s degree in public health from the University of North Texas Health Science Center. (*See* Ex. 3: p. 31, line 9 – p. 39, line 7). No doubt sensing the ability to make money by creating a public scare and outcry against local

natural gas drilling, she created a company called Wolf Eagle Environmental and Engineering, LLC in about 2005, and began making YouTube videos of oil and gas activities and announcing on the videos that “the wolf is on the prowl.” (See Ex. 3, p. 39, lines 1 – 7; p. 71, line 17 – p. 72, line 9). She also began holding herself out as an “expert” in natural gas air emissions (even though she admits that she does not do any of the actual air testing herself and does not even understand the limits of reliability of the testing she hires others to do). She also claims to have completed course work at UTA toward a Ph. D., and claims to be working on a thesis in which she plans to advocate that natural gas air emissions are capable of being “fingerprinted.” (See Ex. 3: p. 15). Not surprisingly, even though her theories have never been peer reviewed or verified, she nonetheless identifies the “fingerprints” of natural gas production even when the underlying data does not support any such conclusion, and even when all the variables she admits have to be considered, have not been properly considered or analyzed. (See Ex. 3: p. 15; pp. 207 – 209).

**C. Rich has Never Been Qualified as an “Expert” by Any Court**

Ms. Rich has never been qualified by any Court as an expert, and she has never testified in any court proceeding as an expert. (See Ex. 3: p. 5, line 23 – p. 8, line 7; p. 203, lines 1 – 4). It would inject reversible error into this proceeding to allow her to provide any opinion testimony in this case.

**II. Range’s *Daubert*<sup>2</sup> challenge to Rich’s testimony**

**A. Standard of review**

As this Court is no doubt well aware, before admitting an expert’s testimony as evidence under TEX. R. EVID. 702, the Court must exercise its responsibility to ensure that the expert is

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<sup>2</sup> See *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579 (1993).

sufficiently qualified, and that the expert's opinions are relevant and reliable. *See E.I. Du Pont De Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995). Rule 702 requires, as a precondition to admissibility, that (1) the purported expert is qualified as an expert; (2) the expert's testimony has a reliable basis in the knowledge and experience of the relevant discipline; and (3) the expert's testimony is relevant. *Houghton v. Port Terminal R.R. Ass'n*, 999 S.W.2d 39, 47 (Tex. App.—Houston [14th Dist.] 1999, no pet.). If the purported expert or his opinions do not satisfy each of these requirements, then the expert's testimony is inadmissible and is, in fact, no evidence. *Robinson*, 923 S.W.2d at 557.

In *Robinson*, the Texas Supreme Court established the following factors which should be considered in determining whether expert testimony is reliable:

- (1) the extent to which the theory has been or can be tested;
- (2) the extent to which the technique relies upon the subjective interpretation of the expert;
- (3) whether the theory has been subjected to peer review and/or publication;
- (4) the technique's potential rate of error;
- (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- (6) the non-judicial uses which have been made of the theory or technique.

*Robinson*, 923 S.W.2d at 557. Even in cases in which the testimony might not fit neatly into the *Robinson* factors, a court still must find that the testimony is reliable. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 727 (Tex. 1998); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). At a minimum, the expert opinion should be based on more than subjective belief or unsupported speculation and there should not be too great an analytical gap between the data and the opinion proffered. *Kerr-McGee Corp. v. Helton*, 133 S.W.3d 245, 254 (Tex. 2004) (“Expert testimony is also unreliable if the court concludes that ‘there is simply too great an analytical gap between the data and the opinion proffered.’”) (*quoting Gammill*, 972 S.W.2d at 726).

**B. Rich is not qualified to testify as an expert in this case with regard to air emissions from natural gas production facilities.**

As set forth under Section I, and for the additional reasons explained below, Ms. Rich is not qualified to give expert testimony with regard to air emissions from natural gas production facilities as she has been designated to do in this matter, and her opinions should be excluded.

**C. Rich's opinions are inadmissible because they are neither reliable nor relevant.**

Plaintiffs have the burden to prove that Rich's testimony is admissible. *Robinson*, 923 S.W.2d at 557. Plaintiffs cannot meet their burden of proof because Rich's opinions are designed to support her pre-ordained conclusions and Plaintiff cannot establish that her opinions are reliable.

**(1) Rich's opinions are based on her subjective, pre-determined conclusions.**

Ms. Rich's actions and admissions demonstrate that her opinions were established before she did anything in this case. After all, she readily admits that she is trying to prove her "fingerprinting" theory for a dissertation, and if the data does not fit her theory, she is willing to change the data. (*See Ex. 3: p. 14, line 23 – p. 15, line 25*). For example, in her report, Ms. Rich identified the wind as being from the east/southeast (which would cause the wind to carry any air particles from the Range well site toward the outside air sample canister). (*See Ex. 2*).

However, several months later in her deposition, she testified that the wind was from the west/southwest (which would cause the wind to carry any well site air particles away from the outside air sample canister). (*See Ex. 3: p. 227, lines 10 – 15*). Since the outside air sample test did not positively identify anything harmful that Ms. Rich could link to the Range well site, she apparently changed the wind direction after the fact so she would have an excuse as to why the

outside air test does not support, and in fact undermines, her conclusions. As shown above, Ms. Rich is not above altering the facts to suit her purposes. After all, she is a “wolf on the prowl” and she does not need any scientifically reliable data to enable her to howl her conclusions. Ms. Rich has demonstrated that she will find the “fingerprint” of natural gas emissions (which, according to her, varies from case to case depending on a multitude of factors which she does not test) whether the data supports it or not, and her predetermined, claim supportive and insupportable conclusions must be excluded. (*See* Ex. 3: p. 215, line 7 – p. 222, line 24); *See also Coastal Transport Co., Inc. v. Crown Central Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004).

Ms. Rich has provided reports to other landowners in which she reaches conclusions that are based on unreliable sampling, unreliable methodologies, and unreliable analysis, just as she has done in this case. For example, the City of Fort Worth hired Industrial Hygiene and Safety Technology, Inc. (“IHST”) to review a report by Ms. Rich at Wolf Eagle Environmental. (*See* Ex. 6: p. 4). IHST concludes, among other things, that Ms. Rich treats ESLs<sup>3</sup> as “ambient air standards, and imply that exceeding these values results in a hazardous condition, in contradiction of the TCEQ’s clear definition.” (*See* Ex. 6: p. 7). She does the same thing in this case. (*See* Ex. 2; *see also* Ex. 9, p. 2). IHST concludes that Wolf Eagle “inappropriately compare the sampling results to both Short-Term and Long-Term ESLs.” (*See* Ex. 6: p. 7). She does the same thing in this case. (*See* Ex. 2; *see also* Ex. 9, p. 2). IHST also concluded that Ms. Rich’s work did not employ “sufficient controls or generated sufficient data to link detected contaminants directly to gas well activities, nor to demonstrate a significant health hazard.” (*See* Ex. 6: p. 8). The same is true in this case. (*See* Ex. 9). IHST also found that portions of her

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<sup>3</sup> TCEQ ESLs (“Effects Screening Levels”) are extremely conservative, low levels. TCEQ ESLs are not air quality standards, as Ms. Rich infers. (*See* Ex. 9, p. 2).

report were “misleading” and “preposterous and irresponsible.” (*See* Ex. 6: p. 8). Her report in this case is also “misleading” and “preposterous and irresponsible.”

Ms. Rich also prepared a report in connection with a well site in Denton, Texas, and her work was discredited in that study as well. Environmental Resources Management—retained by Range to evaluate the report—critiqued her work in that matter, and concluded:

In summary, Wolf Eagle study near the Rayzor Unit 1H site in Denton, Texas was fatally flawed in its design and data analysis. The conclusions and contentions included in the Wolf Eagle report are not based on scientific principles, accepted sampling methods and data analysis methodologies and are invalid.

(*See* Ex. 7: p. 15). Environmental Resources Management also noted that Ms. Rich and Wolf Eagle Environmental repeat the same flawed methodology and reach flawed conclusions tying whatever is found in the air to oil and gas activities.

Wolf Eagle has also prepared similar reports for other oil and gas facilities in the Barnett Shale area. In each of these reports the basic methodology followed by Wolf Eagle is similar.... However, other consultants or agencies have provided similar critiques of the methodology followed by Wolf Eagle. For example, the TCEQ also noted Wolf Eagle’s flawed methodology reflected in Wolf Eagle’s report for Dish, Texas and, in particular, of the inappropriateness of Wolf Eagle’s using TIC concentrations for health assessments and the inappropriate comparison of 24-hour air samples to long-term ESLs.

In the Wolf Eagle report of the Rayzor site, as with the other reports done by Wolf Eagle in the area (e.g., the report for the Town of Dish), Wolf eagle has stated that the compounds detected are associated with oil and gas activities and implied that exposure to chemicals at levels above short or long term ESLs are associated with health effects.

(*See* Ex. 7: p. 14).

The simple truth is that Ms. Rich enters every situation with a pre-ordained conclusion that there is an issue with natural gas drilling no matter what the data reveals, and her flawed

methodology and insufficient data is no impediment to her providing an opinion, no matter how preposterous or irresponsible it is.

**(2) Rich's opinions are not reliable.**

The only air particulates contained in Ms. Rich's report that purportedly exceed TCEQ ESL levels (levels that are extremely conservative and safe) are shown in her report as "Tentatively Identified Compounds," but the purported identification and quantity of those compounds are unreliable, as explained by true experts—Mr. Richard Bost and Ms. Kirby H. Tyndall—in their affidavits (*see* Exhibits 1, 8, and 9), and as explained in the IHST report referenced above (*see* Ex. 6). Ms. Rich's methodology is also fundamentally flawed and her conclusions are nothing more than her speculation and innuendo. Mr. Richard Bost, a leading well recognized expert in environmental air quality, states the following about Ms. Rich's opinions and conclusions in this case:

1. The sampling performed did not follow accepted methods established by the US Environmental Protection Agency (EPA) for conducting background and source specific air monitoring assessments.
2. Contrary to Ms. Rich's contention, air dispersion modeling cannot accurately predict actual exposure concentrations without adequate empirical source data and ambient monitoring data. Such data was not collected or obtained as part of the Wolf Eagle study.
3. It is not possible to assess statistically the accuracy and reproducibility of the information collected since only two samples were collected on only one day; indeed the two Wolf Eagle study samples were not collected at downwind locations of the alleged source.
4. The Wolf Eagle report by Ms. Rich is not based on an objective analysis but rather reflects bias in its unsubstantiated contentions and conclusions. Most noteworthy is the report's contention that the constituents reported as present or potentially present in the ambient air and indoor air samples collected by Wolf Eagle are associated with natural gas emissions; yet there is no basis provided for this contention and indeed the constituents reported in general are not associated with natural gas based on TCEQ and Range Resources testing of the natural gas from the Barnett Shale formation.

5. Ms. Rich's contention that "tentatively identified compounds and estimated concentrations" can be used for assessing health effects is not based on accepted methods and indeed is not supported by scientific studies of the ability of laboratories to reliably identify and estimate constituents and their concentration without running standards.
6. It is totally inappropriate to compare single samples with "effects screening levels (ESLs)" which were developed for screening purposes and are not health-based ambient air standards.

(See Exhibit 1).

Ms. Kirby Tyndall, another recognized expert in air quality and a toxicologist in the air quality division at the Texas Natural Resources Conservation Commission (now the Texas Center on Environmental Quality) from 1994 through 1996, also came to the conclusion that Ms. Rich's opinions and conclusions are highly misleading and scientifically unsupportable:

1. Setting aside the numerous errors and flaws in Alisa Rich's sampling procedures and methodology, and setting aside the inherent unreliability of the tentatively identified compounds on which much of the Rich Report is based, the measured concentrations of compounds reflected in the lab results in the Rich Report do not raise any health concerns. According to current TCEQ standards, the reported compounds in the quantities identified in the Rich Report pose no health risks or concerns at all.
2. According to the Texas Commission for Environmental Quality, Air Monitoring Concentration Values (AMCVs) are the appropriate comparison standards for use in ambient air studies. Effect Screening Levels ("ESLs") are not appropriate to use as a standard in ambient air monitoring. Instead, ESLs are set at extremely conservative levels and are only used in connection with TCEQ's air permitting process. ESLs have no connection to possible health effects.
3. The conclusion in the Rich Report regarding what AERMOD computer generated dispersion modeling may have indicated is pure speculation and based on flawed data.
4. The sampling design of the Wolf Eagle Study was fatally flawed. In turn, the laboratory results presented by Rich, and all analyses based on those results, are not reliable.
5. The Rich Report does not account for the naturally occurring background conditions at the sampling sites and does not rule out other probable sources for the compounds found in the lab analysis.

6. TICs are inherently unreliable and the identification of TICs are uncertain both in terms of identifying specific compounds and in identifying the concentration of those compounds. As to identification of TICs, the EPA has concluded that “assigned identities may be inaccurate, and quantification is certainly inaccurate.” The EPA has further stated that “estimates regarding the quantity of TICs are highly uncertain and could be orders of magnitude higher or lower than the actual concentration.

(See Exhibit 9).

In addition to her wholesale flawed methodology, Ms. Rich admits that she is unable to calculate the rate of error associated with her conclusions because she is not a “lab rat”:

Q So, according to your testimony, there's a 30 percent chance that these are identified inaccurately?

A No, sir; not according to my testimony. According to the laboratory procedures, there is a 70 percent confidence in the presence of those chemicals, and the proper identification of those chemicals.

Q So there's a 30 percent rate of error?

A I would not know that, sir. I know that there's a 70 percent accuracy.

Q Well, it takes a hundred percent to be completely accurate, doesn't it?

A In science we actually don't allow a hundred percent, but we'll go with that.

Q So, if there's a 70 percent accuracy factor, there's a 30 percent inaccuracy factor, right?

A I would not state that, sir. That's -- that's something the laboratory might be able to say. I'm going to hand you not

a lab --laboratory -- we call them lab rats. I'm not a lab rat.

The lab could give you an opinion on that.

(See Ex. 3: p. 122, line 16 – p. 123, line 13). Ms. Rich also admits that she has no idea about the rate of rate of error in connection with the alleged quantity of the “tentatively identified compounds”:

Q What's the -- what's the error -- rate of error in connection with determining the quantity found?

A I do not know. You'd have to speak to the lab on their procedures on that.

Q So, you just don't know?

A That is something that would be qualified by the laboratory, not by us.

Q So, your answer is, you don't know what the rate of error is for the quantity found for these TIC's?

A You would have to ask the lab that. That is correct.

(See Ex. 3: p. 170, line 14 – p. 171, line 1).

Ms. Rich and Wolf Eagle Environmental fail every single factor for determining whether purported expert testimony should be allowed, and therefore she should be excluded from offering opinions about natural gas drilling and production from testifying in this case.

**(3) Rich offers no relevant opinions.**

Ms. Rich's opinions essentially boil down to this: (1) the air tests reveal that certain compounds were in the air on the day of testing, (2) certain compounds were found inside the house that were not detected outside the house, (3) certain compounds inside the house must be

derived from the well site, even though she did no testing to rule out other possible sources and (4) all the compounds are below the TCEQ ESL levels except a few of the “Tentatively Identified Compounds,” and those are the compounds Ms. Rich wants to talk most about even though their identification and quantification are unreliable. In short, Ms. Rich wants to fill the courtroom with a bunch of big chemical names and insinuate that the Plaintiffs must be suffering some harm from the well site (as she does in her report) even though the data supports no such conclusion. In fact, when pinned down in her deposition, Ms. Rich admits that she has no evidence that Plaintiffs are being harmed from any activity at the well site:

Q Well, have you done any kind of study or come up with any kind of protocol in this case to address the probability of increased risk or adverse human health impacts from the additive effect of simultaneous multiple chemical exposures?

A That was not within the scope of this project.

(See Ex. 3: p. 126, lines 12 – 18).

Q. You haven't provided any opinions in your report about any of these chemicals causing anything in terms of health, or otherwise, related to your clients in this case, have you?

A Oh, no, sir. I'm not a medical doctor.

Q You're not qualified to give any testimony about whether any of these things are causing or have caused any issues with the health of any of your clients in this case, being the Laws true?

A I am not aware of any health effects – I'm sorry -- I am not aware of any kind of health effects that the Laws are having, nor

would I offer an opinion of whether these chemicals were affecting the Laws' health.

(See Ex. 3: p. 147, lines 10 – 23).

Q Just to make it clear, you're not giving any testimony; you're not going to give any testimony in this case, that any of these chemicals that are contained in your report have caused or are causing any harm whatsoever to the Laws?

A No, sir. I know nothing of the Laws' conditions, and I am not testifying that I would make that assumption. That is something that a medical doctor would have to do.

(See Ex. 3: p. 158, lines 15 – 23).

To prove a trespass by an alleged “air contaminant,” the plaintiffs must show that the alleged air contaminant has caused “actual and substantial damages.” TEX. CIV. PRAC. & REM. CODE § 75.002(h). By her own admission, Ms. Rich is unable to link anything in the air to any harm to the Plaintiffs, and therefore any testimony she seeks to provide would be misleading and irrelevant. Certainly, there is no evidence of any “actual and substantial damages” caused by anything that has occurred at the well site. Moreover, the nuisance cause of action asserted by plaintiffs requires a causal link between the conduct complained of and any harm or damage and, as shown above, Ms. Rich simply cannot provide any such testimony. *Mathis v. Barnes*, 316 S.W.3d 795, 801 (Tex. 2010); *Walton v. Phillips Petroleum Co.*, 65 S.W.3d 262, 270 (Tex. App.—El Paso 2001, pet. denied)(holding that because plaintiff failed to produce some evidence of causation, he failed to establish that the defendant caused the nuisance). Plaintiffs have refused to produce any medical records in this case and they have not designated any medical

doctors as experts in this case. There is no causal link between any activities at the well site and any harm or damage, there is no evidence of any actual and substantial damage to Plaintiffs or their property, and Ms. Rich's testimony is wholly unreliable and irrelevant, and therefore it should be excluded.

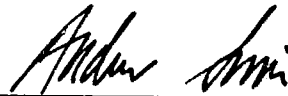
**(4) There is too great an analytical gap in Rich's analysis**

Rich's methodology and opinions are rejected by the scientific community. She offers nothing that will be useful to the Court or jury because her opinions are not based on scientifically sound data and analysis, but are subjective conclusions that are based only on her "say-so," and that results in a huge analytical gap between accepted scientific methodology and scientifically reliable data on the one hand, and her pre-determined, subjective, and unsupported conclusions on the other. *See Coastal*, 136 S.W.3d at 232; *Helton*, 133 S.W.3d at 254. Ms. Rich did no testing of any kind to rule out many possible sources of air particles, yet concludes that they must be from the well site—even particles that are not generated from oil and gas production. (*See Ex. 3: p. 131, line 20 – p. 136, line 23; p. 155, line 16 – p. 157, line 25; p. 248, line 12 – p. 252, line 22*). There is a huge analytical gap between Ms. Rich's conclusions and any scientifically reliable data, and she should be excluded from testifying in this case.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Range requests the Court grant this Motion and exclude the testimony and opinions of Alisa Rich, and for such other and further relief, whether in law or in equity, to which Range may show itself to be justly entitled.

Respectfully submitted,



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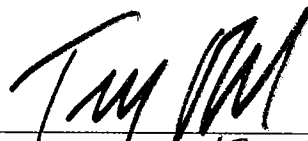
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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this instrument was served upon the attorneys of record of all parties to this cause (and to each other party who is not represented by an attorney of record) by electronic transmission, facsimile, or certified mail, return receipt requested, on April 5, 2011.



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Andrew D. Sims / Troy D. Okruhlik