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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA, by and through the  
13 CALIFORNIA CORPORATIONS  
COMMISSIONER,

14 Petitioner,

15 vs.

16 MID AMERICA ENERGY, INC. and GARY  
M. MILBY, President,

17 Respondents.

Case No.: GIC 879831

PETITION FOR ORDER TO COMPEL  
COMPLIANCE WITH SUBPOENA DUCES  
TECUM AND SETTING AN ORDER TO  
SHOW CAUSE RE: SAME

(GOV. CODE, §§ 11187-11188; CORP.  
CODE, § 25531)

Hearing Date:  
Hearing Time:  
Dept:  
Judge:

19  
20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 YOU ARE HEREBY NOTIFIED that on the date and time and in the Department set forth  
22 above, Petitioner, Preston DuFauchard, California Corporations Commissioner for the State of  
23 California, acting in the name of the People of the State of California, will submit the following  
24 PETITION FOR ORDER TO COMPEL COMPLIANCE WITH SUBPOENA DUCES TECUM  
25 AND SETTING AN ORDER TO SHOW CAUSE RE: SAME, pursuant to Corporations Code  
26 section 25531 and Government Code sections 11187 and 11188, and accompanying Points and  
27 Authorities and evidence in support thereof:  
28

1           Petitioner, the California Corporations Commissioner (“Commissioner”), by and through his  
2 attorney, ALEX M. CALERO, Corporations Counsel, alleges:

3           1.       Petitioner is head of the California Department of Corporations (“Department”).

4           2.       The Department is the California agency responsible for administering and enforcing  
5 the Corporate Securities Law of 1968 (Corp. Code, §§ 25000 et seq.) (“CSL”) which regulates the  
6 offer and sale of securities in the State of California. A “certificate of interest or participation in an  
7 oil, gas or mining title or lease” and an “investment contract” are specifically enumerated as a  
8 “security” and are therefore within the jurisdiction of the Commissioner. (Corp. Code, § 25019.)

9           3.       Pursuant to such responsibility, the Commissioner, as the head of the Department, is  
10 expressly authorized to conduct investigations into the possible violation of the CSL, require the  
11 production of any documents relevant or material to an inquiry, subpoena witnesses, and administer  
12 oaths. (Corp. Code, § 25531, subs. (a) & (c); Gov. Code, §§ 11180 & 11181, subs. (a) & (e).)

13           4.       On May 5, 2006 as the result of a lawful investigation, the Commissioner issued upon  
14 MID AMERICA ENERGY, INC., a Nevada corporation, GARY M. MILBY, the company president,  
15 (collectively “RESPONDENTS”) and other parties a Desist and Refrain Order for the offer and sale  
16 of unqualified, nonexempt securities in the State of California and fraud in the offer and sale of said  
17 securities. (A true and correct copy of the Desist and Refrain Order is attached to the Memorandum  
18 of Points and Authorities as Exhibit A.)

19           5.       On or about July 24, 2006 RESPONDENTS stipulated to the May 5, 2006 Desist and  
20 Refrain Order and to the jurisdiction of the Department regarding the subject matter of that action.  
21 (A true and correct copy of the Stipulation to the Desist and Refrain Order is attached to the  
22 Memorandum of Points and Authorities as Exhibit B.)

23           6.       Petitioner is informed and believes that RESPONDENTS continue to offer and sell  
24 unqualified, nonexempt securities, in the form of limited liability partnership units in oil and gas well  
25 projects and investment contracts, in the State of California. The offer and sale of said securities may  
26 be in violation of the CSL, the May 5, 2006 Desist and Refrain Order and stipulation thereto.

27           7.       On November 3, 2006, the Commissioner, by and through his agents Alex M. Calero,  
28 Corporations Counsel, and Jon Wroten, Corporations Examiner, issued upon RESPONDENTS a

1 Subpoena Duces Tecum, pursuant to Corporations Code section 25531 and Government Code  
2 sections 11180 – 11182, requesting documents relevant to the Department’s investigation.

3 8. The Subpoena Duces Tecum, establishing a December 4, 2006 date of production, was  
4 sent via certified mail return receipt requested to Respondent MID AMERICA ENERGY, INC.’s  
5 agent for service of process and to RESPONDENTS’ last known business address. (A true and  
6 correct copy of the Subpoena Duces Tecum and Proof of Service are attached to the Memorandum of  
7 Points and Authorities as Exhibit C.) RESPONDENTS failed to comply with the Subpoena.

8 9. On December 11, 2006, the Department sent, via certified mail return receipt  
9 requested, a letter to RESPONDENTS notifying them of their failure to comply with the Subpoena  
10 and extended the date of production to January 2, 2007. The letter sent to RESPONDENTS’ new  
11 business address, was confirmed received on December 14, 2006. (A true and correct copy of the  
12 December 11, 2006 notice and Proof of Service are attached to the Memorandum of Points and  
13 Authorities as Exhibit D.)

14 10. As of the date of this Petition, RESPONDENTS have failed to produce the documents  
15 requested in the Subpoena Duces Tecum. Further, RESPONDENTS have failed to contact the  
16 Department to seek an extension of time or indicate that the requested documents are forthcoming.

17 WHEREFORE, Petitioner respectfully requests that this Court:

18 1. Set an Order to Show Cause hearing, pursuant to Government Code section 11188, as  
19 to why Respondents, MID AMERICA ENERGY, INC. and GARY M. MILBY, have failed to  
20 complied with the Subpoena Duces Tecum, and

21 2. Order Respondents, MID AMERICA ENERGY, INC. and GARY M. MILBY to  
22 produce the documents requested in the Subpoena Duces Tecum.

23 Dated: February 8, 2007

24 PRESTON DuFAUCHARD  
25 California Corporations Commissioner

26 By: \_\_\_\_\_  
27 ALEX M. CALERO  
28 Corporations Counsel  
Attorney for the People of California