

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

FEDERAL ENERGY REGULATORY COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 3:15-cv-00452 (MHL)
v.)	
)	
POWHATAN ENERGY FUND, LLC, HOULIAN "ALAN" CHEN, HEEP FUND, INC., and CU FUND, INC.)	
)	
Defendants.)	
)	

**NOTICE OF OBJECTION REGARDING MONITORING ANALYTICS, LLC'S
WITHHOLDING OF DOCUMENTS RESPONSIVE TO DEFENDANTS' SUBPOENA**

In accordance with Paragraph 21 of the Court's December 21, 2020 Initial Pretrial Order (ECF No. 160) and Section 20 of the Consent Protective Order entered by the Court on March 22, 2021 (ECF No. 170), Defendants Powhatan Energy Fund, LLC, Houlian "Alan" Chen, HEEP Fund, Inc., and CU Fund, Inc. (collectively, "Defendants") hereby file this Notice of Objection regarding Monitoring Analytics, LLC's ("Monitoring Analytics") withholding of documents responsive to Defendants' December 7, 2020 subpoena ("Subpoena").

Monitoring Analytics is withholding responsive documents from production without a valid claim of privilege or protection. Despite repeated requests, Monitoring Analytics has not provided the information required under Federal Rule of Civil Procedure 45(e)(2)(A) that would allow Defendants to fully assess any claims of privilege or protection. However, Monitoring Analytics has confirmed that it is withholding hundreds of responsive or potentially responsive documents because they contain confidential information. Monitoring Analytics has no grounds

for its blanket refusal to produce such documents, particularly in light of the Consent Protective Order entered by the Court on March 22, 2021 (ECF No. 170). Monitoring Analytics has also suggested that it is withholding these documents based on relevance. However, Defendants' Subpoena sought information relevant to the parties' claims and defenses, in accordance with Federal Rule of Civil Procedure 26(b)(1), and Monitoring Analytics' relevance objection is inconsistent with both the governing provision of the Federal Power Act, 16 U.S.C. § 823b(d)(3)(B), and the Court's December 28, 2017 Memorandum Opinion (ECF No. 89). Finally, Monitoring Analytics has indicated that it may attempt to proffer "alternative grounds" for withholding certain documents. Because Monitoring Analytics has failed to explain how such alternative grounds justify its withholding of specific documents, as required by Federal Rule of Civil Procedure 45(e)(2)(A), Defendants think that Monitoring Analytics has waived any alternative claims of privilege or protection. To the extent any alternative claims of privilege or protection are not deemed waived, Defendants reserve the right to object to such claims once they are articulated. Defendants hereby certify that they have made a good faith effort to resolve this discovery dispute with Monitoring Analytics.

Respectfully Submitted,

/s/ Patrick R. Hanes

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Dated: April 16, 2021

/s/ Robert W. Warnement

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*Counsel for Houlian Chen, HEEP Fund, Inc.,
and CU Fund, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, I filed the foregoing motion with the Clerk's Office, using the CM/ECF system, which will send a notification of such filing to counsel of record in this matter.

/s/ Robert W. Warnement
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