IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

(1) THEODORE M. KEY, (2) THOMAS E. WHEELER, and (3) FITZGERALD FARMS, LLC, on behalf of themselves and all others similarly situated, Plaintiffs,	CIVIL ACTION
v.	No. 19-cv-424-RAW
(1) EXXON MOBIL CORPORATION; (2) EXXONMOBIL OIL CORPORATION; and (3) XTO ENERGY, INC., Defendants.	

PLAINTIFFS' CLASS ACTION COMPLAINT

Theodore M. Key ("Key"), Thomas E. Wheeler ("Wheeler"), and Fitzgerald Farms LLC ("Fitzgerald Farms"), on behalf of themselves (collectively "Plaintiffs") and the Class and Subclass of all other persons similarly situated, file this Class Action Complaint against Exxon Mobil Corporation, ExxonMobil Oil Corporation, and XTO Energy, Inc. (collectively "Defendants"), and allege and state as follows:

SUMMARY OF ACTION

1. Plaintiffs, the Class, and Subclass bring claims against Defendants concerning Defendants' actual, knowing, and willful underpayment or non-payment of royalties on gas from wells through improper accounting methods (such as not paying royalty based on the starting price for gas products but instead taking improper deductions) and by failing to account for and pay royalties on gas used off the lease, all as more fully described below.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over these state-law claims pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2), because this is a class action involving more than 100 class members, the parties are minimally diverse, and the amount in controversy exceeds $5 million.

3. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants transact business within this District and have agents within this District, and a substantial part of the events giving rise to these claims occurred in this District.

THE PARTIES

4. Each Plaintiff is a successor-in-interest to a lessor under an oil and gas lease which entitles Plaintiff to the payment of royalty on gas produced under the lease from the lessee.

5. The Defendants are successors-in-interest to the lessees under the oil and gas leases with Plaintiffs and are obligated to pay Plaintiffs royalty on gas produced under the leases.

6. The succession of each lease from the original lessor and lessee to the current lessor Plaintiff and lessee Defendant is described below.

THE WHEELER LEASE

7. Plaintiff Thomas A. Wheeler owns royalty interest in the Perry Rowe Unit 2, a gas well drilled pursuant to an oil and gas lease covering the North half of the Southeast Quarter of Section 30, Township 7 North, Range 20 East in Latimer County, Oklahoma, dated November 28, 1960 and executed by his deceased father, Virgil C. Wheeler, and Humble Oil & Refining Company. **Exhibit 1**, Wheeler Lease.

8. Plaintiff Thomas A. Wheeler is the successor in interest to Virgil C. Wheeler under the Wheeler Lease; and Defendant Exxon Mobil Corporation is the successor in interest to Humble Oil & Refining Company.

a. Upon Virgil C. Wheeler's death in 1976, Plaintiff Thomas A. Wheeler inherited his father's royalty interest under the Wheeler Lease and all choses in action including prior underpayment of royalties.

b. Effective January 1, 1973, Humble Oil & Refining Company merged into Exxon Corporation. **Exhibit 2,** Humble-Exxon Merger.[1] Exxon Corporation assumed all the rights, assets, and liabilities of Humble Oil & Refining Company, which included the obligations of Humble, as lessee, under the Wheeler Lease and many other leases throughout the United States. Ex. 3.

c. On November 30, 1999, Lion Acquisition Subsidiary Corporation, a wholly owned subsidiary of Exxon Corporation, merged into Mobil Oil Corporation, with Mobil Corporation[2] being the surviving corporation of the merger and thereby becoming a wholly owned subsidiary of Exxon Corporation. Effective at the same time, Exxon Corporation changed its name to Exxon Mobil Corporation—the Defendant.

9. Exxon Corporation drilled and produced the Perry Rowe Unit 2 well in November, 1988, and began paying royalties to Plaintiff Thomas Wheeler. In late 1999 or 2000, Exxon Mobil

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[1] As Exhibit 2 shows, Exxon Mobil paid Plaintiffs' royalties under the Wheeler Lease for years. And Exxon Mobil's wholly owned subsidiary XTO Energy, Inc. currently pays Plaintiff Wheeler royalties under the Wheeler Lease. *See* Ex. 5, *infra.*

[2] At the time of the merger, one of Mobil Corporation's subsidiaries was Mobil Oil Corporation, and thus a sub-sub of Exxon Mobil Corporation. On June 1, 2001, Mobil Oil Corporation changed its name to ExxonMobil Oil Corporation—the Defendant.

Corporation paid royalties to Plaintiff until 2006, when XTO took over payment of royalties on this well. *See* ¶¶ 20-23, *infra.*

10. The Perry Rowe Unit 2 is subject to orders issued by the Oklahoma Corporation Commission, numbers 51331 (issued March 22, 1963), 59943 (issued September 3, 1965) and 62498 (issued May 10, 1966).

11. Defendant Exxon Mobil Corporation has acknowledged Plaintiff Wheeler's right to be paid as a successor in interest to Virgil C. Wheeler under the Wheeler Lease and has paid royalty to Plaintiff Thomas A. Wheeler.

12. For example, in October 2006, Exxon Mobil Corporation, "acting on behalf of itself and/or its affiliates," paid, adjusted, reversed, and rebooked amounts related to royalty paid to Plaintiff Wheeler on gas produced over eleven months between March 2005 and January 2006 from the "Perry Rowe UT/ROY SHARE2-INA, LATIMER, OK." **Exhibit 3,** Exxon Mobil Check Stub to Thomas A. Wheeler.

13. The Wheeler Lease permits the lessee or its assignees, including Defendant Exxon Mobil Corporation, acting on behalf of itself and/or its affiliates, to explore for, drill, mine, operate for and produce oil or gas or both from the North half of the Southeast Quarter of Section 30, Township 7 North, Range 20 East in Latimer County, Oklahoma alone or commonly with neighboring land known as a pool or unit. Ex. 1.

14. For this privilege, the Wheeler Lease requires the lessee, including the Defendants as successor by merger to the original lessee Humble Oil and Refining Company, to pay lessor royalty on the oil and gas produced from the land.

15. The Wheeler Lease obligates the lessee, Exxon Corporation, to pay royalty of "one-eighth (1/8) of the proceeds received by lessee at the well for all gas (including all substances

contained in such gas) produced from the leased premises and sold by lessee; if such gas is used by lessee off the leased premises or used by lessee for the manufacture of casinghead gasoline or other products, to pay to lessor one-eighth (1/8) of the prevailing market price at the well for the gas so used." Ex. 1, ¶ "2nd."

16. The gas royalty clause expressly obligated Defendants to pay Plaintiff royalty on all constituents (*i.e.*, gas and "all substances contained in such gas") produced from the leased premises, which Plaintiff Wheeler alleges Defendants did not do. This Complaint refers to this clause as the "**All Constituents Clause**."

17. The gas royalty clause expressly obligated Defendants to pay royalty on gas used off the leased premises or used for the manufacture of other products, which Plaintiff Wheeler alleges Defendants did not do. This Complaint refers to this clause as the "**Off-Lease Use Clause**."

18. In addition, Oklahoma law implies the duty to market into every oil and gas lease. This duty imposes upon lessees a duty to provide a marketable product available to market. Lessees may not pass along the costs the lessees incur in making a product marketable. And because raw gas must typically undergo field processes — such as gathering, compressing, dehydrating, transporting, and processing (GCDTP services)—to make the gas marketable, lessees generally bear the costs associated with performing such services. This Complaint refers to this duty as the "**Implied Duty to Market**" or "**IDM**."

19. Oklahoma law also implies into every oil and gas lease the mutual benefit rule, which requires the lessee to market the gas and constituent products for the mutual benefit of the lessor and lessee and to obtain the best reasonable price available. This rule is violated if the lessee uses an affiliated entity to service or sell the gas to obtain revenue for itself and not for the benefit of the royalty owner. This Complaint refers to this duty as the "**Mutual Benefit Rule**."

20. In 2006, Defendants transferred interests in the Wheeler Lease and operation of the Perry Rowe Unit 2 well to Defendant XTO Energy, Inc. **Exhibit 4**, Transfer of Interest to Defendant XTO Energy. Pursuant to this transfer of interest, Defendant XTO Energy paid royalty to Plaintiff Wheeler from 2006 to 2010.

21. On June 25, 2010, Exxon Mobil acquired XTO Energy, Inc. by merging a wholly owned subsidiary of ExxonMobil with and into XTO, with XTO continuing as the surviving corporation and as a wholly owned subsidiary of ExxonMobil.[3] Exxon's acquisition of XTO, the largest natural gas producer in the United States in 2009, was valued at $41 billion.[4] As a result of the merger, XTO became a wholly owned subsidiary of Exxon Mobil Corporation.

22. As a result of the merger, Defendant XTO Energy, as a wholly-owned subsidiary of Exxon Mobil Corporation and "acting on behalf of itself and/or its affiliates," has paid and currently pays Plaintiff Wheeler royalty under the Wheeler Lease for gas produced from the Perry Rowe Unit 2-30 well in Latimer County, Oklahoma. **Exhibit 5,** Check Stub from XTO.

23. XTO eventually settled a state-wide class action in Oklahoma to gain a release back to May 2002, but not before. Plaintiff Wheeler still has a cause of action for underpayment by Defendant Exxon Mobil from November 1988 to May 2002, and can represent the Class both during, forward, and backward of those dates and the Oklahoma Well Subclass before May 2002.

THE KEY LEASE

24. Plaintiff Theodore M. Key is a citizen of Tennessee. Key owns royalty interest in the Perry Rowe Unit 2, a gas well drilled pursuant to an oil and gas lease covering the North half of the Southeast Quarter of Section 30, Township 7 North, Range 20 Ease in Latimer County,

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[3] Exxon Mobil Corp., Annual Report (Form 10-K/A), at 1 & 101 (Feb. 28, 2011).

[4] https://www.xtoenergy.com/Company/Who-we-are/Our-history (last accessed Nov. 6, 2019).

Oklahoma, dated November 20, 1960 and executed by Key's grandparents, Theodore Schneider and Geneva Wheeler Schneider, and Humble Oil & Refining Company. **Exhibit 6,** the Key Lease.

25. Key, along with his two siblings, each inherited one-third of the royalty interest under the Lease as shown in the attached Exxon Division Order dated October 27, 1992. **Exhibit 7**, 1992 Division Order.

26. Plaintiff Key is the successor in interest to the lessors Theodore Schneider and Geneva Wheeler Schneider under the Key Lease, which includes all choses in action including prior underpayment of royalties.

27. Defendant Exxon Mobil Corporation is the successor in interest to the lessee Humble Oil & Refining Company under the Key Lease. *See* ¶¶ 8b-c, *supra.*

28. Pursuant to the Key Lease and 1992 Division Order, Defendants have acknowledged Plaintiff's right to be paid as a successor in interest and have paid royalty to Plaintiff Key as the attached check stub shows. **Exhibit 8**, Exxon Mobil Check Stub to Theodore M. Key.

29. Exxon Corporation drilled and produced the Perry Rowe Unit 2 well in November, 1988. From 1988 until October 1992, Exxon Corporation paid royalties to Plaintiff Key's predecessors in interest. Around the time of the October 1992 Division Order and until sometime in 1999, Exxon Corporation paid royalties to Plaintiff Key directly. And in late 1999 or 2000, Exxon Mobil Corporation paid royalties to Plaintiff Key until 2006, when XTO took over payment of royalties on this well. *See* ¶¶ 20-23, *supra.*

30. The Perry Rowe Unit 2 is subject to orders issued by the Oklahoma Corporation Commission, numbers 51331 (issued March 22, 1963), 59943 (issued September 3, 1965) and 62498 (issued May 10, 1966).

31. The Key Lease permits the lessee or its assignees, including Defendant Exxon Mobil Corporation, acting on behalf of itself and/or its affiliates, to explore for, drill, mine, operate for and produce oil or gas or both from the North half of the Southeast Quarter of Section 30, Township 7 North, Range 20 East in Latimer County, Oklahoma alone or commonly with neighboring land known as a pool or unit. Ex. 6.

32. For this privilege, the Key Lease requires the lessee, including the Defendants as successor by merger to the original lessee Humble Oil and Refining Company, to pay lessor royalty on the oil and gas produced from the land.

33. The Key Lease obligates the lessee to pay royalty of "one-eighth (1/8) of the proceeds received by lessee at the well for all gas (including all substances combined in such gas) produced from the leased premises and sold by lessee; if such gas is used by lessee off the leased premises or used by lessee for the manufacture of casinghead gasoline or other products, to pay to lessor one-eighth (1/8) of the prevailing market price at the well for the gas so used." Ex. 6, ¶ "2nd."

34. The Lease contains an All Constituents Clause ("all substances combined in such gas), the Off-Lease Use Clause, the IDM and the Mutual Benefit Rule. *See* ¶¶ 16-19, *supra.*

35. As a result of the 2010 merger, Defendant XTO Energy, as "An ExxonMobil Subsidiary," has paid and currently pays Plaintiff Key royalty under the Key Lease for gas produced from the Perry Rowe Unit 2-30 well in Latimer County, Oklahoma. **Exhibit 9,** XTO Letter to Key.

36. XTO eventually settled a state-wide class action in Oklahoma to gain a release back to May 2002, but not before. Plaintiff Key still has a cause of action for underpayment by

Defendant Exxon Mobil from November 1988 to May 2002, and can represent the Class both during, forward, and backward of those dates and the Oklahoma Well Subclass before May 2002.

THE FITZGERALD LEASE

37. Plaintiff Fitzgerald Farms, LLC is a limited liability company. Fitzgerald Farms owns royalty interests pursuant to an oil and gas lease dated January 26, 1937 between Frances L. Fitzgerald, a widow, and Missouri Valley Gas Corporation covering 640 acres in Section 17, Township 6 North, Range 14 ECM in Texas County, Oklahoma. **Exhibit 10,** Fitzgerald Lease.

38. Plaintiff Fitzgerald Farms, LLC is the successor in interest to the lessor Frances L. Fitzgerald under the Fitzgerald Lease; and Defendant ExxonMobil Oil Corporation is the successor in interest to Missouri Valley Gas Corporation.

a. Upon Frances L. Fitzgerald's death on February 1, 1978, her son J. W. Fitzgerald succeeded to the royalty interest.

b. Exxon Mobil, on behalf of ExxonMobil Oil, paid royalty to J. W. Fitzgerald on gas produced from the Fitzgerald #1 under the Fitzgerald Lease. Exxon Mobil also paid royalty to J.W. Fitzgerald for gas produced from the Mackey #1, Markham #1, Miller Z #1 wells in Texas County, Oklahoma and Moorhead UT Well #3 in Stevens County, Kansas. *See* **Exhibit 11,** Exxon Mobil Check Stub to J.W. Fitzgerald.

c. In 2011, J. W. Fitzgerald and his wife JoAnne Fitzgerald formed Fitzgerald Farms, LLC and contributed certain assets including the royalty interest in the Fitzgerald Lease.

d. As a result of the transfer of interests from J.W. Fitzgerald to Fitzgerald Farms, LLC, Exxon Mobil, on behalf of ExxonMobil Oil, paid royalty to Plaintiff Fitzgerald Farms, LLC under the Fitzgerald Lease.

e. Missouri Valley Gas Corporation was a division or subsidiary of Republic Natural Gas Company, which drilled the Fitzgerald 1 well in 1937 and obtained the first production on May 4, 1937 under the Fitzgerald Lease.

f. Mobil Oil Corporation purchased Republic Natural Gas Company in 1961.[5]

g. Thereafter, from 1961 to 1999, Mobil Oil Corporation operated the Fitzgerald 1 well and paid royalty to the lessors, including Plaintiff Fitzgerald Farms' predecessors-in-interest under the Fitzgerald Lease.

h. Pursuant to the 1999 merger between Mobil Oil Corporation and Exxon Corporation, Defendant ExxonMobil Oil Corporation succeeded to the lessee's rights and obligations under the Fitzgerald Lease. It operated the Fitzgerald #1 well and paid royalty to the lessors, including Plaintiff Fitzgerald Farms' predecessors-in-interest under the Fitzgerald Lease.

i. Exxon Mobil transferred the wells to XTO Energy, Inc. in 2013, which paid royalty to Plaintiff Fitzgerald Farms. **Exhibit 8**, Check Stub – XTO.

39. The Fitzgerald Lease permits the lessee or its assignees, including Defendants ExxonMobil Oil Corporation and XTO, both of which are wholly owned subsidiaries of Defendant Exxon Mobil Corporation, to explore for, drill, mine, operate for and produce oil or gas or both from 640 acres in Section 17, Township 6 North, Range 14 ECM in Texas County, Oklahoma, alone or commonly with neighboring land known as a pool or unit. Ex. 10.

[5] *Morgan v. Mobil Oil Corp.,* 556 F.Supp. 108, 109 (D.Kan. 1983) (identifying Missouri Valley Gas Corporation as a predecessor in interest to an oil and gas lease acquired by Republic Natural Gas Company and later by Mobil Oil Corporation); *Mobil Oil Corp. v. Flag-Redfern Oil Co.,* 1973 OK CIV APP 5, 522 P.2d 651, 653 ("In 1961, Mobil purchased the assets of Republic Natural Gas Company and thus acquired ownership of the two leases which are the subject of this action.").

40. For this privilege, the Fitzgerald Lease requires the lessee, including Defendants, to pay lessor royalty on the oil and gas produced from the land.

41. The Fitzgerald Lease obligates the lessee to pay royalty of "one-eighth (1/8) of the proceeds from the sale of such gas, as such, for gas from wells where gas only is found" Ex. 10, ¶ 4.

42. With no language expressly authorizing any deductions from royalty, the Fitzgerald Lease contains all of the implied duties within the IDM under Oklahoma law. *See* ¶¶ 16, 18-19, *supra.*

43. The Fitzgerald Unit 110 2 (also known as the Fitzgerald #1 well) was the well drilled under this lease in 1937; it is subject to Order 143591 issued by the Oklahoma Corporation Commission on July 28, 1978.

44. XTO eventually settled a state-wide class action in Oklahoma to gain a release back to May 2002, but not before. Plaintiff Fitzgerald Farms still has a cause of action for underpayment by Defendant ExxonMobil Oil from 1937 to May 2002, and can represent the Class both during, forward, and backward of those dates and the Oklahoma Well Subclass before May 2002.

PARTIES – THE DEFENDANTS

45. Before November 1999, Exxon Corporation was an entirely separate company from Mobil Corporation. The two companies did not share any operations in Oklahoma. They were supposed to compete against each other to obtain leases in Oklahoma, and they each had their own royalty owners.

46. On November 30, 1999, Lion Acquisition Subsidiary Corporation, a subsidiary of Exxon Corporation, merged into Mobil Corporation. Exxon Corporation changed its name to

Exxon Mobil Corporation.[6] Mobil Corporation survived the merger as Mobil Corporation and became a wholly owned subsidiary of Exxon Corporation.

47. On June 1, 2001, Mobil Oil Corporation, a subsidiary of Mobil Corporation, changed its name to ExxonMobil Oil Corporation. ExxonMobil Oil Corporation is simply the new name for Mobil Oil Corporation.

48. Defendant Exxon Mobil Corporation ("Exxon Mobil") is a for profit business corporation organized under New Jersey law and headquartered in Irving, Texas. Exxon Mobil can be served with process by service on its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, Oklahoma 73159-7653.

49. Defendant ExxonMobil Oil Corporation ("ExxonMobil Oil") is a for profit business corporation organized under New York law and headquartered in Irving, Texas. ExxonMobil Oil can be served with process by service on its registered agent, The Prentice-Hall Corporation System, Oklahoma, Inc., 10300 Greenbriar Place, Oklahoma City, Oklahoma 73159-7653.

50. Defendant XTO Energy, Inc. ("XTO") is a for profit business corporation organized under Delaware law and headquartered at the ExxonMobil campus in Spring, Texas. XTO Energy may be served with process by serving its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, Oklahoma 73159-7653.

51. ExxonMobil Oil and XTO are both wholly owned subsidiaries of Defendant Exxon Mobil Corporation.[7]

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[6] Agreement and Plan of Merger, attached as Exhibit 2.1 to Exxon Corporation, (Form 8-K) (Dec. 1, 1998), available at https://www.sec.gov/Archives/edgar/data/34088/0000950103-98-001038.txt (last accessed Nov. 11, 2019).

[7] There are numerous Exxon Mobil Corporation entities, but they are all under the same corporate umbrella. https://www.sec.gov/Archives/edgar/data/34088/000003408819000010/xomexhibit21.htm (last accessed Nov. 6, 2019).

52. Defendants, acting on behalf of themselves and their affiliates, and current and past employees, agents, representatives, attorneys, or others acting on their behalf and all those to whose prior leasehold interests they have succeeded to and for whom they are legally liable whether by merger, assignment, or otherwise—such as Standard Oil Company of Ohio, Standard Oil Company of New Jersey (or "Jersey Standard" which eventually became Exxon Corporation in 1972), Standard Oil Company of New York (or "Socony" which eventually became Mobil), Humble Oil & Refining Company (which became Exxon Company, U.S.A. in 1972), Superior Oil Company (acquired by Mobil Corp. in 1984 and now is a wholly owned subsidiary of ExxonMobil), Magnolia Oil Company and Magnolia Petroleum Company (eventually were incorporated into the Mobil division of Socony-Vacuum, which later became Mobil Oil Corporation), General Petroleum Corporation of California, Vacuum Oil Company, Socony-Vacuum Oil Company, Socony Mobil Oil Company (eventually became Mobil Corporation in 1963 and then changed its name to Mobil Oil Corporation in 1966), Mobil Exploration & Producing, U.S. Inc., Mobil Natural Gas, Inc., Mobil Exploration and Producing North America, Inc., Mobil Producing Company, Mobil Producing Texas & New Mexico, Inc., Mobil Oil Company, Gilmore Oil Company of California, General Petroleum Corporation, Republic Natural Gas, Northern Natural Gas Producing Company, and Missouri Valley Gas—shall herein collectively be known as "Defendants."

53. The acts charged in this Complaint as having been done by Defendants were authorized, ordered, or done by officers, agents, affiliates, employees, or representatives, while actively engaged in the conduct or management of Defendants' business or affairs, and within the scope of their employment or agency with Defendants.

CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Federal Rule 23(a), (b)(2), and (b)(3) on behalf of the following class (the "Class") and Subclass (the "Subclass" or "Oklahoma Well Subclass"):

> All last successors in interest to royalty owners in wells where Defendants or their predecessors-in-interest were the operator (or a working interest owner that marketed its share of gas and directly paid royalties to the royalty owners), payable under any lease that contains an express provision stating that royalty will be paid on gas used off the leased premises (Express Off-Lease-Use Clause). These Class claims relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate) from the first production month to the last production month in which Defendants, or any one of them, operated or separately marketed gas or any of its constituents from the well.
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> **Oklahoma Well Subclass**: All last successors in interest to royalty owners in Oklahoma wells where Defendants or their predecessors-in-interest were the operator (or a working interest owner who marketed its share of gas and directly paid royalties to the royalty owners) from first date of production to April 30, 2002.[8] The Subclass claims relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).
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> Excluded from the Class and Subclass are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendants, their affiliates, predecessors, and employees, officers, and directors; (4) any entity and their affiliates) that produces, gathers, processes, or markets gas; (5) the claims of royalty owners to the extent covered by arbitration clauses or prior settlement agreements, if any, still in effect at the time suit was filed herein;[9] (6) overriding royalty owners and others whose interest was

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[8] A prior class action settlement released royalty underpayment claims commencing with production month May 2002 and ending with production month May 31, 2017. *See* Settlement Agreement, *Chieftain Royalty Company v. XTO Energy, Inc.,* No. 6:11-cv-00029-JTM-SPS (E.D. Okla.), at ¶ 1.4 (Exhibit A to Doc. #197). So the claims of the Oklahoma Subclass, which Plaintiff Fitzgerald Farms represents, begin with the first production month and end with production month April 2002.

[9] This exclusion applies only to the released claims of royalty owners bound by a prior settlement. For example, certain royalty owners in one production unit released claims related to the underpayment of royalty in *Weber v. Mobil Oil Corp.,* Case No. CJ-2001-53 (Okla. Dist. Ct., Custer Cnty.), and *Mannering v. ExxonMobil Corp.,* Case No. CIV-1305-L (W.D. Okla.) for gas

carved out from the lessee's interest; (7) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendants at the time suit is filed herein; (8) royalty owners only to the extent they take gas in-kind, if any; and (9) royalty owners only to the extent receiving royalty payments for wells operated by Defendants but marketed by others.

55. The members of the Class and Subclass are so numerous and geographically dispersed that joinder of all members is impracticable.

56. Defendants operate or have operated thousands of Class and Subclass Wells that produce gas. Defendants hold a working interest in these Wells, with at least one, and usually multiple, royalty owners for each well.

57. Defendants have within their possession or control records that identify all persons to whom they or those for whom they are legally responsible have paid royalties on gas produced from Class and Subclass Wells during the Class Periods.

58. The questions of fact or law common to Plaintiffs, the Class, and Subclass include, without limitation, one or more of the following:

a. Whether the Express Off-Lease Use Clause in the Leases of the members of the Class require payment of royalty on gas used off the leased premises and whether Defendants failed to pay royalty on the gas used off the leased premises.

b. Whether Plaintiffs and members of the Oklahoma Well Subclass are beneficiaries of the implied Marketable Condition Rule (MCR), which requires Defendants to sever the gas from the ground and to prepare the gas for market at Defendants' sole expense.

i. If so, whether: 1) the Midstream Costs of gathering, compression, dehydration, treatment, and processing (GCDTP) are costs associated with preparing the gas for market such that none of them should have been deducted from royalties but all of them were; or 2) whether the market for gas occurs before GCDTP are incurred such that the Class's claim is only for excessive deductions of Midstream Costs.

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production before August 2, 2012. The settlements do not apply to their claims after August 2, 2012 to present. So, those claims would be included in the Class and Subclass in this case.

ii. If not, whether the Subclass members were party to a lease that expressly allows deduction of all of the GCDTP Midstream Costs ("Express Deduction Lease" or "ED Lease"), such that these Class members have a claim only for excessive deductions of Midstream Costs, and if so, whether the Midstream Costs actually deducted were excessive in amount.

c. Whether Defendants paid royalty to Plaintiffs and members of the Class and Subclass for all valuable constituents coming from their wells and which inured to Defendants' benefit either: 1) through credit toward the Midstream Costs; or 2) by contractual consideration in-kind to a midstream company (such as drip condensate, helium, liquefied nitrogen, some percentage of residue, some percentage of fractionated NGLs, plant fuel, or FL&U).

d. Whether Defendants and those for whom they are legally responsible paid royalty to Plaintiffs and members of the Class based on a starting price below what Defendants or their affiliates received in arm's-length sales transactions.

e. Whether Class-wide and Subclass-wide damages can be calculated for Plaintiffs' theories of liability.

59. Plaintiffs are typical of other Class and Subclass members because Defendants paid royalty to Plaintiffs and other Class and Subclass members using a common method. Defendants paid royalty based on the net revenue Defendants received under their gas contracts which terms of which royalty owners neither know nor approve. The contracts are for services necessary to place the gas and its constituent parts into marketable condition, as the gas is not marketable at the wellhead, so the products can be sold into recognized, active, and competitive commercial markets.

60. Plaintiffs will fairly and adequately protect the interests of the members of the Class and Subclass. Plaintiffs are royalty owners to whom Defendants paid royalty. The Wheeler Lease contains Express Off-Lease-Use Clause. Plaintiffs understand their duties as Class and Subclass representatives. Plaintiffs have retained counsel competent and experienced in class action and royalty owner litigation.

61. This action is properly maintainable as a class action. Common questions of law or fact exist as to all members of the Class and Subclass, and those common questions predominate over any questions solely affecting individual members of such Class and Subclass. *See* ¶ 58, above. There is no need for individual Class or Subclass members to testify in order to establish Defendants' liability to or damages sustained by Plaintiffs and members of the Class and Subclass.

62. Class action treatment is appropriate in this matter and is superior to the alternative of numerous individual lawsuits by members of the Class and Subclass. Class action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense, and effort on the part of those individuals, witnesses, the courts, and/or Defendants. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative forum exists for the fair and efficient adjudication of the claims of all Class and Subclass members.

63. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by all or some members of the Class or Subclass. Joinder of all Class or Subclass members would be either highly impracticable or impossible. And the amounts at stake for individual Class or Subclass members, while significant in the aggregate, would be insufficient to enable them to retain competent legal counsel to pursue claims individually. In the absence of a class action in this matter, Defendants will likely retain the benefit of their wrongdoing.

GAS INDUSTRY BACKGROUND

64. The members of the Class and Subclass own royalty interests in wells that produce gas and constituents that are transformed into marketable products and sold into the established commercial markets for those products.

65. Defendants' method for calculating royalty to the members of the Class and Subclass is subject to uniform accounting procedures and implied marketable product law for the Subclass.

66. For the Subclass, Oklahoma law requires the lessee, such as Defendants, to bear all of the costs of placing gas and its constituents into "Marketable Condition" products.

67. Gas and its constituent parts are marketable products only when they are in the physical condition to be bought and sold in a commercial marketplace.

68. Only after a given product is marketable does a royalty owner in Oklahoma have to pay its proportionate share of the reasonable costs to get a higher enhanced value or price for that particular product.

69. With respect to leases containing Express Off-Lease Use Clauses for the Class, Defendants owed a duty to pay royalty on all gas used off the leased premises.

The Lessor-Lessee Relationship

70. The lessor owns minerals, including oil and gas; the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter a lease that allows the lessee to take the minerals from the lessor's land. The usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better seismic

technology, and increased efficiency of drilling rigs, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue.

71. But the oil-and-gas companies have used undisclosed internal accounting practices to try to keep for themselves as much of the well revenue as possible. These accounting practices are at the heart of every oil-and-gas royalty case.

72. Rather than adopting transparency in their royalty calculation formula, Defendants, like most lessees, have guarded their production and accounting processes as confidential or proprietary, thereby depriving the royalty owners of information necessary to understand how Defendants calculate royalties. Consequently, the royalty owner is unaware of the lessee's actual practices, thereby enabling the lessee to breach the oil and gas lease without accountability.

73. With respect to leases with Express Off-Lease Use Clauses, Defendants do not disclose the amount or volume of gas used off the leased premises for which royalty is owed. Indeed, the uniform check stubs used by Defendants throughout the country provided no indication that gas was being used off-lease without paying any royalty on that gas even though it came from Plaintiffs' and the Class members' lands.

74. If and when one or more of the royalty owners learn of these "breaches," the royalty owner has only three—all poor—options: (1) confront the lessee and maybe get paid while the lessee continues to retain improperly garnered gas revenues from thousands of other unknowing royalty owners; (2) do nothing since the "breaches" result in only a modest yearly loss and the expense of individual litigation would exceed the recovery, if any; or (3) file a class action lawsuit which will persist for years and likely will not recover the full loss. In short, if the lessee breaches, it may never be held accountable; and if a royalty owner complains, the lessee will still come out ahead because an individual case is not worth much and a class action rarely requires 100%

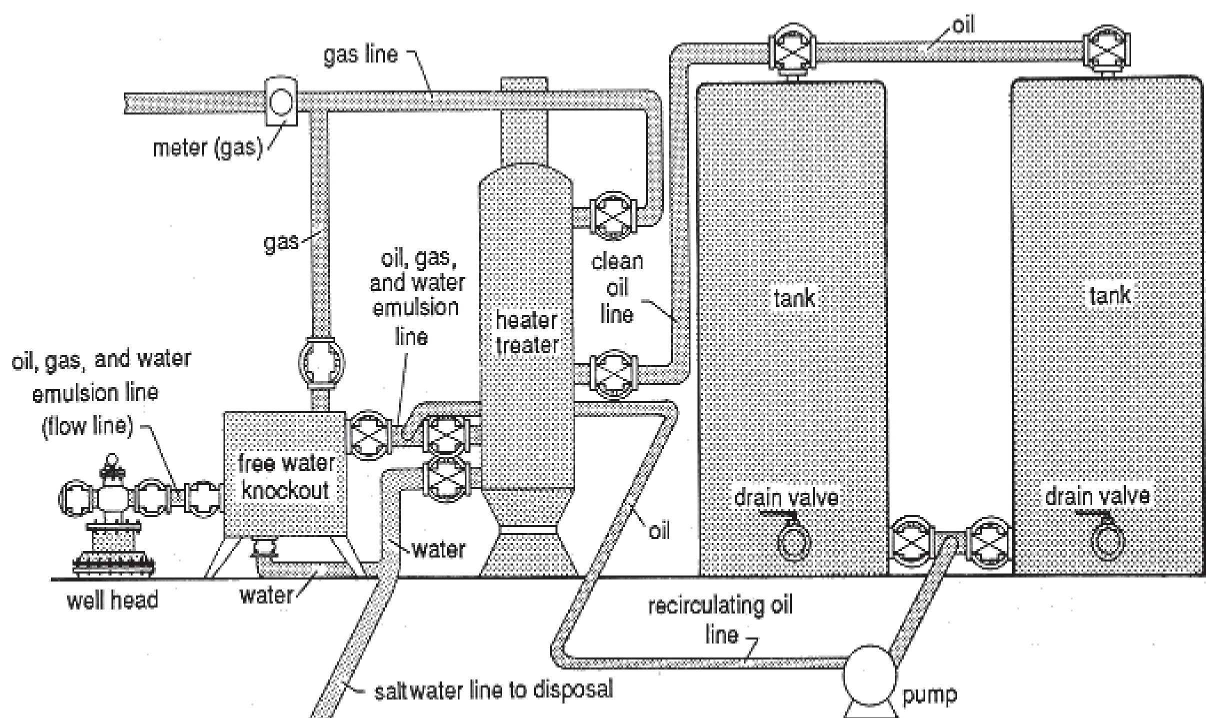
repayment to royalty owners plus-prejudgment interest, plus attorneys' fees and expenses. The class action is the best of the three options, hence the filing of this class action lawsuit.

Residue Gas, Helium, Nitrogen, and Natural Gas Liquids Production

75. The Class and Subclass members' gas, including the gas from Plaintiffs' wells, is gathered from each well, dehydrated and compressed, through underground gathering lines crossing many miles of land to processing plants where the raw gas is transformed into two primary products—methane and fractionated natural gas liquids ("NGLs"). Once homogenized as fungible products, the residue gas and NGLs are sold in their respective commercial markets.

Wellhead (Basic Separation and Gas Measurement)

76. The diagram below illustrates the gas conditioning process.



See http://www.kgs.ku.edu/Publications/Oil/primer13.html

77. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, etc., all mixed together in the gas stream.[10] After the stream comes out of the ground, it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due to the low technology, the separator is not expensive (the "separation cost"). The gaseous mixture (with helium, nitrogen, NGLs, and other gaseous substances) passes from the separator into the gas line.[11] The remaining fluid goes through the heater-treater where heat, gravity segregation, chemical additives and electric current break down the mixture more clearly in oil and water. The heater-treater is installed, maintained, and takes fuel to operate (the "heater-treater cost"). The water is drained off and sent for saltwater disposal. The oil that is separated at the wellhead is collected in a tank, then usually trucked out and sold (the payment of oil royalties is not at issue in this lawsuit).

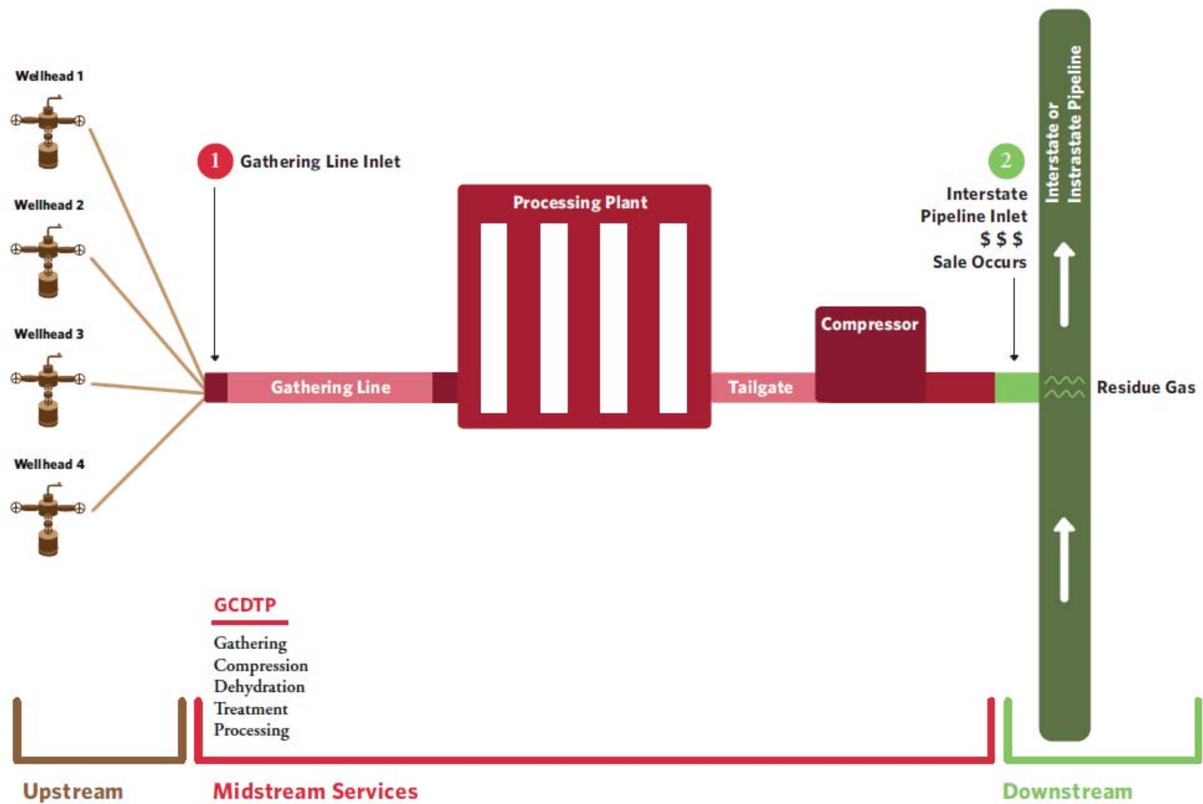
78. Because production over time depletes the pressure of a well, on rare occasion, on-lease compressors are installed to suction gas out of the well or to move the gaseous mixture down the gathering lines. But when these compressors are installed, their use requires fuel (the "on-lease compression" or "vacuum compression" cost) to operate.

79. The gaseous mixture produced from a single well cannot be processed economically, so the mixtures from many wells are "gathered" together through gathering lines

[10] Hydrocarbons can vary in chemical makeup (from simple methane to complex octane) and in form (from pure gaseous state to liquid condensate). The non-hydrocarbon makeup of the well-stream that includes natural gas can also include gases such as helium, sulfur, carbon dioxide, and nitrogen. This mixture of many gaseous elements and substances is often referred to as the "gas stream" or just "gas."

[11] A minute portion of this raw gas may be used on a few leased lands to heat the farmhouse pursuant to a free gas clause in the lease, but this not a true sale. Some producers sell less than 3% of the raw gas from a particular well to an on-lease irrigator during the summer months for agricultural purposes, but this is not the economic market for which the wells are drilled or the gas produced. House and irrigation gas do not receive off-lease services or deductions for such services that are in dispute here, and have nothing to do with the case.

and delivered to a processing plant for transformation into marketable products and sale into commercial markets. This results in a gathering cost (G). The below diagram provides an overview of the midstream-services deduction process—all of which occur to a commingled gas stream aggregated from many wells. Defendants do not improperly deduct from royalty any of the costs before the gathering line inlet; but, as to the Oklahoma Subclass they improperly deduct the costs after the gathering line inlet (#1 on the diagram) and before the interstate pipeline (#2 on the diagram), the market in which Defendants chose to participate when selling the gas produced from the wells within the Class and Subclass.



Midstream Services (GCDTP) Deductions

80. As the gaseous mixture from each well enters the gathering line, it flows into a meter run where the mixture is measured for both volume (in Mcf) and quality (Btu content)

(combined, "gas measurement," in MMBtu). The meter run must be constantly maintained to record accurate measurements.

81. Gathering pipelines are usually made of metal that could be corroded by water vapor (and other corrosive gases) in the gaseous mixture, so a glycol dehydrator is used to remove the water vapor. This results in a dehydration cost (D).

82. Gas will not move downstream from the well unless it is pressurized sufficiently to overcome the in-line back pressure and friction in the gathering line. So large gas compressors are installed to move the gas from the gathering line inlet to the processing plant. These compressors are expensive and require fuel to operate. This results in a compression cost (C).

83. The gathering pipelines themselves cost money to lay and maintain, though most have been in place for decades. Gas condensate (gas condensed into liquid as it cools and is pressurized) ("Drip Condensate") is collected at points along the gathering lines as a result of cleaning or "pigging the line" and is captured for fractionation and sale later. Generally lessees, like Defendants, pay no royalty on the revenue generated from the sale of the drip condensate.

84. Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas ("L&U"). Lessees, like Defendants, pay no royalty on the volume of L&U.

Natural Gas Processing

85. Once the gas mixture from multiple wells (and often from multiple gathering systems) is gathered, the mixture enters the inlet of the processing plant where the mixture will be transformed into methane and mixed NGLs.

86. Lessees, such as Defendants, use gas processing plants that either they or a third-party own. Usually an unrelated third party owns the processing plant, but the plant may also be owned in whole or in part by a lessee.

87. The plant removes impurities that remain in the mixture, such as carbon dioxide, nitrogen, or sulfur, before the mixture can be processed. This incurs a "treatment cost" (T).

88. The final cost, processing (P), involves services to transform the gas mixture into methane gas (also called "residue gas"), NGLs raw make, and in the Panhandle of Oklahoma, crude helium.

a. Methane must meet the quality standards for long-haul pipeline transmission set by the Federal Energy Regulatory Commission ("FERC") which is called "pipeline quality gas."

b. The raw make NGLs are used as a feedstock in the petrochemical and oil refining industries; they are a more valuable commodity than methane. To separate the NGLs from the gaseous mixture, they are cooled to temperatures lower than minus 150°F (the "Cryogenic or cooling process"). The NGLs move into a liquids pipeline and processed by a fractionator into their marketable products: ethane, propane, butanes, and pentanes plus. In the gas contracts, this process incurs a "T&F" or "fractionation" fee, even though lessees sometimes give away the NGLs in keep-whole agreements as consideration for other services the midstream company provides.

c. Helium is processed into Grade A helium at new processing plants or into crude helium (contaminated with nitrogen) at older plants, which is then processed into Grade A helium at a nearby helium processor (often only a few hundred feet away).

89. This total processing system involves expensive equipment and requires fuel to operate (collectively, the "processing charge" and/or "plant fuel"). Lessees, like Defendants, do not pay royalty on gas used as plant fuel, even though the gas comes from Class Wells.

90. At the tailgate of the processing plant, at least two products emerge: (1) residue gas (or methane gas) and (2) NGLs (usually a mixture of NGLs, known as "raw make" or "Y" grade). In helium-rich production areas, Grade A or crude helium, along with liquefied nitrogen also emerges. But none of these products are commercially marketable at that point.

Marketable Condition for the Products

91. *Methane Gas*. Methane gas (or residue gas) is commercial quality (a/k/a "pipeline quality") at the tailgate of the processing plant only after it is further pressurized to enter the transmission line by a booster compressor (the "booster compression" cost).

92. *NGLs*. The raw mixture of NGLs at the tailgate of the processing plant is not commercially marketable. It must be fractionated into commercially marketable products (ethane, propane, butane, isobutene, natural gasoline, etc.). In computing royalty for NGLs, Defendants improperly deduct processing fees and/or other costs (such as transportation and fractionation, T&F) needed to reach commercially-marketable fractionated NGLs.

93. *Drip Condensate*. Drip Condensate is recovered on the gathering lines and at the inlet to the processing plant and is essentially in marketable condition when collected. Defendants pay no royalty on the Drip Condensate they take from the gas produced from the Class Wells.

94. *Other Products*. In some areas of the country (e.g., in the Hugoton Field, which stretches across Southwest Kansas, the Oklahoma Panhandle, the Texas Panhandle, and into parts of Wyoming), helium is produced in commercial quantities and recovered, along with liquefied nitrogen. Other areas of the country produce sulfur and carbon dioxide in commercial quantities.

When such products are available in commercial quantities, processing and treatment plants recover these valuable constituents but lessees pay little or nothing to the royalty owners. Royalty owners should be paid for the gas and all constituents taken.

Sale of Products

95. While the Lessee may sell a small percentage of the gas produced on the leased premises as irrigation gas to power equipment that waters crops during the several months growing season or for other limited local uses, selling irrigation gas to farmers or for local use is not the primary business purpose for which the Lessee/Producer produces as much gas as possible from the ground. *See* n.11, *supra.*

96. The Lessee/Producers' primary business is to sell, either directly or indirectly, the marketable products produced from the raw gas in the commercial marketplace in an arm's length transaction for the best price available.

97. Virtually all gas produced is sold into the interstate or intrastate pipeline system. As Exxon recognized in other litigation against it, there is no other viable market for the gas. In a filing before the Kansas Supreme Court, Exxon explained the importance of the interstate and intrastate pipeline system in establishing the markets for gas from the Hugoton field which covers acreage in both Kansas and Oklahoma:

> At the time the [Hugoton] field was discovery there was virtually no market for the gas. The field was located far from this country's major industrial areas and population centers. The extremely limited local markets which did exist, like the City of Liberal, could only consume a minute fraction of the available gas.
>
> Gas was at the time virtually worthless. . .
>
> In 1930, the first interstate pipeline to serve the Kansas Hugoton field was laid by Panhandle Eastern Pipe Line Company. That line connected the Hugoton field with the great industrial regions of the upper midwest, including Indianapolis and Detroit. Shortly thereafter, Northern Natural

> Pipeline Company laid its line from the Hugoton field to Omaha, Nebraska, which was later extended northward.
>
> Although these initial pipelines created markets for some Hugoton gas, the supply from the rich field still overwhelmed the demand. The pipelines took only what they needed, and their requirements were so low that the Hugoton acreage remained largely undeveloped. In addition, the interstate pipelines initially tended to buy gas only from leases they owned.
>
> In the 1940's other interstate pipelines laid lines to the Hugoton field. Kansas Nebraska Natural Gas Company laid its line to northern Kansas and Nebraska in the early 1940's; Kansas-Colorado Utilities laid a line to Colorado in the same period; Colorado Interstate Gas Company laid a line from Lakin, Kansas, in the Hugoton Field, to Denver in 1947; and Cities Service Gas Company laid its line to Kansas City, Missouri, and beyond, in 1949.
>
> **These interstate pipelines created a market for the Kansas gas where none had existed before.** The interstate pipelines **stimulated and sustained** the development of the Hugoton area, which began in earnest in the late 1940's. The vast reserves of the Hugoton area, which otherwise would have remained untapped, could, after the interstate pipelines created a market, be exploited for the mutual benefit of the producer and the royalty owners. However, **no market other than the interstate market ever developed which was capable of consuming the Hugoton field's tremendous production. A lessee producer faced with the implied covenant to diligently market gas therefore had no other market in which to sell his product.** As a result, **90-95% of the gas in the Hugoton area acreage was dedicated to the interstate market during the 1930's through the early fifties.**
>
> **Thus, the producer in Kansas, to satisfy his implied covenant to diligently market gas, had no choice other than to sell that gas in the interstate market** and that market necessarily involved long-term contracts and federal regulation. The royalty owners whose leases are subject to all applicable local, state and federal rules and regulations, knew that the only available market was the interstate market; they acquiesced in the sales and accepted their royalties.

Excerpts from Br. of Joint Appellants, *Matzen v. Cities Service Oil Co.,* No. 82-54,534-AS, at 4-7 (Kan.) (citations omitted; emphasis added) (signed by counsel for Mobil Oil Corporation, Magnolia Petroleum Company, Socony Mobil Oil Company, Inc., predecessor entities of Defendants), attached as **Exhibit 14.**

98. The description of historical markets for gas applies with equal force today. The interstate and intrastate pipelines provide the connection between the "virtually worthless" raw gas produced in the field and the valuable gas products sold into the commercial markets for delivery and use in distant places.

99. To facilitate the sale of the valuable marketable products into the interstate or intrastate pipeline markets, the producer contracts with a midstream service provider. The producer delivers the comingled raw gas stream to that service provider who will run the gas through its plant to put the gas products into the condition necessary for sale into the commercial markets.

100. In exchange for providing the services, the producer agrees to compensate the midstream provider for its services in one of three ways: (1) allowing the midstream provider to deduct a fee for its services from the revenue generated by the sale of the gas products into the market ("Fee-for-Service"); (2) allowing the midstream service provider to keep some of the marketable products produced, usually NGLs, to sell for its own account ("Keepwhole"); or (3) allowing the midstream service provider to keep a percentage of the revenue generated from by the sale of the gas products into their respective markets ("Percentage of Proceeds" or "Percentage of Index").

101. No money changes hands between the Lessee/Producer and the midstream service provider until the residue gas is sold at the Index pool, the fractionated NGLs at OPIS, and any other marketable products at the prices established by their respective commercial markets. Lessees attempt to obscure this fact with self-serving language in gas-marketing contracts about title transfer or even by creating a wholly owned affiliate to manufacture a fictitious "sale" before the gas reaches commercial quality for sale.

102. The "starting price" for gas products is always achieved, as it must be, at a commercial market price. All of the gas contracts express the commercial market price in one of two ways: (a) a market price, called an "Index" price for residue gas and "OPIS" price for fractionated NGLs, or (b) a "weighted average sales price" or "WASP" achieved at the same residue Index market or OPIS market. The difference stems from Defendants' market power to, over time, obtain above "Index" or "OPIS" price in the arm's length sale. Whichever starting price is used in an arm's length transaction, that price is the highest and best reasonable price for the valuable gas products. If Other Products are also produced, they are and must be also priced in a commercial market.

103. Affiliate gas contracts are not arm's-length sales in a commercial market. Instead, the later arm's-length sale by the affiliate in the commercial market is the true sale that should be used as the "starting price" for marketable condition gas products.

a. Some lessees contract with affiliated gathering companies or other affiliated gas service providers before the products (residue gas and/or NGLs) are in Marketable Condition in an effort to: (1) artificially, and improperly, create a commercial market where none truly exists so they may justify deducting costs from royalty, or not paying for all of the gas or constituent products produced; (2) charge "marketing fees" to royalty owners even though the lessee is already obligated under the lease to prepare the gas for market and market the gas and constituent products; and/or (3) pay on the lower lessee/affiliate sale price and not the higher affiliate/third party price.

b. WASP involves a pool of sales transactions to third parties (and/or affiliates) and combines the prices paid by those third parties (and/or

affiliates) to arrive at a "weighted average sales price." Lessees can manipulate this process by using lower lessee/affiliate sales prices for part of the pool price, rather than all third-party arm's length sale prices.

104. Fictitious "sales" (also known as sham sales or conditional sales) are created by lessees to pass off a non-commercial market sale as if it should be the starting point for royalty payments. But none of these efforts comport with economic reality or are in good faith with respect to royalty owners. For instance:

a. Anything of value can be sold at any place and in any condition.

b. Gas and other minerals can and are routinely sold in the ground, but they are not in marketable condition.

c. Gas could be sold at the bottom of the hole when it is severed from the surrounding rock and enters the downhole pipe. Although a contract driller might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his drilling services, that agreement does not make the transaction a real market sale.

d. Gas could be sold "at the wellhead" when the gas is severed from the surface. Although a contract operator might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his well operating services, that transaction does not make it a real market sale.

e. Gas also could be sold at the gathering line inlet when the gas enters the gathering line and changes custody. Although a contract gatherer might be willing to accept some percentage of the future sale of gas in the real

marketplace as compensation for his gathering services, that transaction does not make it a real market sale.

f. Gas also could be sold at the processing plant inlet when the gas changes custody to the processing plant. Although a contract processor might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his processing services, that transaction does not make it a real market sale.

g. The lessee could simply pay for all these services with monetary fees or in-kind contributions of all or part of the valuable constituents. But the structure of the transaction does not change the fact that the services are necessary to prepare the gas and valuable constituents for the first real sale into the commercial market—Index or OPIS.

h. Nor does a contract saying title transfers at a custody transfer point create a sale of marketable products in a real commercial market. Some gas contracts with Midstream companies that provide GCDTP services purport to do that, but other parts of the gas contract demonstrate that it is a poorly attempted legal sleight of hand as (i) the risk of loss that usually passes with a true title transfer and market sale does not happen; (ii) the cost of future downstream services that usually passes with a true title transfer and market sale does not happen; (iii) the starting price that would occur with a true title transfer and market sale does not happen. Indeed, the paper title transfer is unnecessary to receiving the Midstream services as the gas could (and

sometimes does) receive the exact same Midstream services without the paper title transfer.

i. All the gas contracts implicitly recognize this paper title transfer fiction, as the starting price for gas products always is at the Index and OPIS market pool as previously described.

j. Midstream services providers are not buyers and resellers of raw gas. They are service providers that convert raw gas into pipeline quality gas so it can enter the Index or OPIS market pools. Indeed, they are called Midstream servicers, not Midstream purchasers.

The Many Different Ways Defendants Underpay Royalty Owners

105. The extraordinarily large dollars at stake and the one-sided nature of the gas lessor-lessee relationship constantly tempt lessees to wrongfully retain gas revenues. All payment formulas, all affiliate and non-affiliate contractual relationships, and all calculations are firmly kept in the exclusive control of lessees, *and* they involve undisclosed accounting and operational practices. As a result, there are many ways that royalty owners are underpaid on their royalty interests, and they never know it. The common thread through all these schemes is that they are typically buried in the internal lessee accounting systems or royalty-payment formulas.

106. Defendants represent the royalty calculation on the form of a monthly check stub it sends each royalty owner. *See* Exhibits 2, 5, 7 and 8. The check stub shows each royalty owner's interest and taxes (which are not in dispute here), and volume, price, deductions, and value, all of which are disputed here—and all of which are falsely represented on the check stubs.

107. Defendants underpay royalty to Plaintiffs and other Class and Subclass Members in one or more of the following ways:

a. *Residue Gas*. The starting price paid for residue gas should be an arm's length, third party market sales price for residue gas at pipeline quality. All of Defendants' gas contracts will show this to be true. But instead of paying on that gross competitive price, Defendants pay on a net price after directly taking or allowing midstream companies to indirectly take Midstream Services deductions (both monetary fees and in-kind volumetric deductions).

b. *NGLs*. The starting price paid for fractionated NGLs should be an arm's length, third party market sales price for ethane, propane, normal butane, iso-butane, and pentane plus (a/k/a natural gasoline). All of Defendants' gas contracts will show this to be true. But instead of paying on that gross competitive price, Defendants pay royalty (i) for only some of the NGLs produced (some is lost and unaccounted for in the gathering process, lost in plant fuel or compression fuel); (ii) after deducting processing fees and expenses (often keeping in-kind a Percentage of the Proceeds ("POP") of the fractionated NGLs as payment for the processing services); and (iii) after reducing payment by T&F.

c. *Drip Condensate*. Plaintiffs and Class and Subclass Members' wells produce heavy hydrocarbons that condense in the pipeline. Defendants, or a third-party on behalf of Defendants (gatherers and/or processors), recover those hydrocarbons for sale. Defendants fail to pay any royalty for that Drip Condensate.

d. *Other Products*. Helium is contained in the well-stream produced from Plaintiffs' and many Subclass Members' wells, but Defendants: (i) fail to pay royalty for all of the helium produced (some is lost and unaccounted for in the gathering and processing process); (ii) deduct processing fees and costs even though the helium is not yet in commercial grade; and (iii) pay at a lower than commercial Grade A price. Often, Defendants do not pay any royalty at all for Helium, liquid nitrogen, or other products taken from Plaintiffs' and the Subclass Members' wells.

e. *Affiliate Transactions*. Defendants entered into non-arm's-length transactions with their midstream affiliates, the terms of which were designed to deprive Plaintiffs and the Subclass Members of their rightful royalties, while simultaneously generating unlawful profits for Defendants.

f. *Off-Lease-Use Volumes*. Defendants pay no royalty on gas used off the leased premises even where the Leases contain Express Off-Lease-Use Clauses.

108. Defendants underpay all other Subclass Members from whom Defendants are legally entitled to deduct post-production Midstream Services Costs, by taking excessive deductions under Midstream Services Contracts that allow excessive monopoly charges for GCDTP services.

109. Defendants further underpay Plaintiffs and all Class members by failing to pay royalties on gas used off the leased premises—including field fuel, L&U, drip condensate, plant fuel, and POP % retained—despite express contractual obligations to do so.

ACTUAL, KNOWING AND WILLFUL
UNDERPAYMENT OR NON-PAYMENT OF ROYALTIES

110. The underpayment and non-payment of royalties have been done with Defendants' actual and willful knowledge and intent.

Kansas Royalty Owner Settlements by Defendants

111. In 1984, while federally regulated prices controlled the sale of gas production, Mobil Corporation settled eight individual and class action lawsuits pending against it in Kansas state and federal courts. The plaintiffs alleged that Mobil underpaid their royalty by basing the payments on the lower federally regulated prices for natural gas rather than the "market value" of the gas as their leases required.[12] To resolve the claims, the plaintiffs and Mobil entered a class settlement that specified the method by which Mobil would pay royalties under "market value" leases after January 1, 1993, the date of complete federal deregulation of prices at which a producer could sell natural gas. The settlement agreement containing the royalty payment methodology is known as the "1984 ["market value" lease] Settlement Agreement." That Agreement defined "market value" of natural gas produced under the leases subject to the Agreement as "the price paid to Mobil pursuant to Mobil's sales contacts for such natural gas (and gas plant products, where applicable)" and identified two gas contracts with standards that exemplified satisfaction of Mobil's duty "to obtain the highest price obtainable for such natural gas (and plant products, where applicable)."

112. In March 1996, three years after "complete deregulation," royalty owners sued Mobil again for underpaying royalty by failing to honor the methodology set forth in the 1984

[12] Many cases during federal price regulation involved only "market value" leases because the price set by the federal government was not a "market" for determining "market value." These "market value" cases, however, did not address the implied duties involved in the Oklahoma Subclass here and also did not involve the express duty to pay for gas used off the lease.

["market value" lease] Settlement Agreement. *Farrar v. Mobil Oil Corp.,* No. 01-CV-12 (Kan. Dist. Ct. Stevens Cnty.). Mobil had been deducting certain costs and expenses associated with midstream services, including downstream compression, from royalty despite its agreement in the 1984 Settlement Agreement to pay royalty on the price paid to Mobil pursuant to Mobil's sales contracts. In 2012, the district court in *Farrar* granted summary judgment to the certified class on its breach of contract claim. It ordered an accounting so that each member of the Class could "recoup any and all deductions, both monetary and volumetric, from the price paid to Mobil for the sale of gas and liquids produced pursuant to such leases, from March 5, 1996 to date, plus prejudgment interest". It further enjoined Mobil from deducting any amount, both monetary and volumetric from the price paid to Mobil for the sale of gas and plant products produced under the market value leases.

113. In 2012, ExxonMobil, including its parent and all subsidiaries and affiliates, settled those claims and all other lease underpayment claims of royalty owners in Kansas wells for approximately $54 million in *Hershey v. ExxonMobil Oil Corp.,* No. 6:07-cv-1300-JTM-KMH (D. Kan.) (settlement of certified class action for royalty underpayment on gas produced from Kansas wells between January 1, 1988 to March 31, 2011) and *Lenz v. ExxonMobil Oil Corp.,* No. 2008-CV-37 (Kan. Dist. Ct. Stevens Cnty.) (class action for payment of royalties on helium processed at the Bushton Plant and later the National Helium Plant beginning in 2000 and extending to August 2006). The settlement resolved *Hershey, Lenz,* and *Farrar* and established a royalty payment method stating the method by which royalties shall be calculated and paid in the future until and unless ExxonMobil and each royalty owner executed a separate writing expressly referencing Section 4 of the *Hershey* Settlement Agreement which was supported by adequate legal consideration.

Federal Royalty Owner Settlements by Defendants

114. In a 2004 declaration filed in qui tam litigation against many oil and gas producers for underpaying royalty on government leases, the whistleblower declarant, a member and officer of the Natural Gas Supply Association from 1978 to 1987 who attended many meeting with industry executives, quoted Judd Miller, a vice president in charge of natural gas at Exxon Mobil Corporation as saying, "royalty owners are supposed to get screwed."[13] The declaration goes on to report on candid discussions about royalty owners being "easy pickings" for the oil and gas companies.[14] The declaration details the myriad ways the oil and gas companies, including Exxon, actually, intentionally, knowingly, and willfully underpaid royalties.[15] Rather than detail what is set forth in 59 pages, Plaintiffs incorporate the document by reference.

115. Despite ultimately settling the federal qui tam litigation, Exxon continued taking advantage of private royalty owners involved in this case who lacked the depth of knowledge, experience, and access to industry insiders of the federal qui tam whistleblower.[16] More royalty litigation followed.

Oklahoma Royalty Owner Settlements by Defendants

116. Royalty owners in the Putnam Oswego Unit sued Mobil Oil Corporation and several subsidiary corporations for conduct related directly or indirectly to the creation of the Unit on November 1, 1968, the operation of the Unit, the use of the Plan of Unitization to change the

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[13] Declaration of Harrold E. "Gene" Wright in Opposition to Defendants' Joint Motion to Dismiss for Lack of Jurisdiction, *United States of America, ex rel. Wright v. Chevron U.S.A., Inc., et al.*, No. 5:03CV-264 (E.D. Tex., Texarkana Div. June 1, 2004), at 11, ¶57 (Doc. #520), attached as **Exhibit 13**.

[14] *Id.* at 12, ¶ 58.

[15] *Id.* at 14-16, ¶¶69-77; *id.* at 35-38, ¶¶156-162.

[16] *Id.* at 1-12.

basis of the royalty valuation, and the failure to pay royalty upon the transfer or sale of the Unit interests to subsequent owners. The Oklahoma Supreme Court affirmed the contested class certification of the tort claims for fraud, deceit, constructive fraud and punitive damages against Mobil Oil in *Weber v. Mobil Oil Corporation, et al.*, 243 P.3d 1 (Okla. 2010). The case then settled for $30 million to the settlement class for the release of claims beginning with the formation of the Unit in November 1968 until the judgment became final and not subject to appeal in August 2012.

117. And in 2018, Defendant XTO settled royalty owner underpayment claims class-wide for gas produced from Oklahoma wells between May 1, 2002 and May 31, 2017 in *Chieftain v. XTO Energy, Inc.*, No. 6:11-cv-00029-JTM-SPS (E.D. Okla.).[17] The settlement also implemented new procedures and policies for calculating and paying royalty with respect to production from class wells on the Ardmore Loop.[18] These procedures and policies generally exempt the royalty owners in these class wells from deductions (except as set forth elsewhere in the settlement agreement and/or when the lease language expressly allows and/or expressly prohibits the deductions), and royalties are paid on the royalty owner's proportionate share of the wellhead metered gas based on statements from the purchasers of the residue gas and NGLs minus the fees for cryogenic processing and for transportation on interstate or intrastate pipelines after the processing plant tailgate.[19] Processing plant fuel and lost and unaccounted for volumes are paid based on the residue gas price or value determined at the tailgates of the processing plants on the Ardmore Loop where the gas was processed.[20] These policies and procedures remain in effect

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[17] Settlement Agreement, *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. 6:11-cv-00029-JTM-SPS (E.D. Okla. Nov. 21, 2017), at 32, ¶¶ 1.4, 1.5 (Doc. # 197).

[18] *Id.* at ¶ 2.4.

[19] *Id.*

[20] *Id.*

until: (i) Oklahoma law changes (by statute or common law), or (ii) a material part of the Ardmore Loop gathering system, processing plants, or transportation pipelines are no longer available to Defendant for the class wells connected to the Ardmore Loop; and they have no effect if a well or wells in the Ardmore Loop are no longer paying in commercial quantities.[21] This settlement is the reason the Subclass begins April 1, 2002 and extends back in time to the first date of production for the Class Wells.

118. Defendants, with actual and willful knowledge and intent to deprive the royalty owners of royalty to which they were entitled, underpaid Plaintiffs, the Class and the Subclass royalty.

119. In addition to Defendants' own experience with royalty owner claims and settlements as described above, Defendants know that many other producers in Oklahoma have resolved the same claims for billions of dollars and have changed their royalty payment practices by stopping the improper deductions from royalty described here.

CAUSES OF ACTION

COUNT I
BREACH OF LEASE (including implied duties)

120. The allegations set forth above are incorporated herein by reference.

121. Plaintiffs and the other Class and Subclass Members entered into written, fully executed oil and gas leases with Defendants or the predecessors-in-interest for whom Defendants are legally responsible. Those leases include implied covenants requiring Defendants to prepare the gas and its constituent parts for market at Defendants' sole cost. The leases containing the Express Off-Lease-Use Clause further obligated Defendants to pay royalty on gas used off the

[21] *Id.*

leased premises, which they did not do. The leases also placed upon Defendants the obligation to properly account for and pay royalty interests to royalty owners under the mutual benefit rule and the implied duty to get the best reasonable price.

122. Defendants breached the terms of the leases, including the implied covenants, by their actions and/or inactions in underpaying royalty or not paying royalty on all products sold from the gas stream or all products used off the leased premises.

123. As a result of Defendants' breaches, Plaintiffs and the Class and Subclass have been damaged through underpayment of the actual amounts due.

124. Further Plaintiffs and members of the Class and Subclass are entitled to other damages provided by Oklahoma statute, including compound pre-judgment and post-judgment interest and punitive damages. *See* OKLA. STAT. tit. 52, § 570.1, *et seq.*

COUNT II
BREACH OF FIDUCIARY DUTY
(for Subclass Only)

125. The allegations set forth above are incorporated herein by reference.

126. Plaintiffs' wells and the wells of other members of the Subclass are subject to drilling and spacing orders under 52 OKLA. STAT. tit. § 87.1.

127. Members of the Subclass also have interests in Oklahoma wells that are subject to unitization orders under 52 OKLA. STAT. tit. §§ 287.1-287.15.

128. A fiduciary duty was created when Defendants or their predecessors in interest requested and received unitization orders from the Oklahoma Corporation Commission pursuant to those statutes.

129. The right to a fiduciary duty under Oklahoma law vested in Plaintiffs and members of the Subclass.

130. Royalty owners whose interests are subject to a drilling or spacing order assert a claim for breach of the implied duty to market only under 52 OKLA. STAT. tit. § 87.1(e).

131. The Oklahoma Corporation Commission appointed one or more of the Defendants as the unit operator for the unit in which the members of the Subclass have royalty interests.

132. Defendants breached their fiduciary duty to the members of the Subclass by failing to properly report, account for, and distribute gas royalties for the gas production from the wells within the unit.

133. As a direct and proximate result of Defendants' conduct in breaching their fiduciary duties, members of the Subclass are entitled to recover actual and punitive damages.

134. Plaintiffs and the Subclass are entitled to and do seek pre-judgment interest, post-judgment interest, attorneys' fees from the common fund, expenses, and costs.

COUNT III
FRAUD, DECEIT, AND CONSTRUCTIVE FRAUD

135. The allegations set forth above are incorporated herein by this reference.

136. Defendants made uniform misrepresentations and/or omissions on the monthly check stubs sent to Plaintiffs and members of the Class and Subclass. They made one or more material representations that were false and/or omitted to state one or more material facts needed to make what was stated not misleading.

137. Defendants knew when material representations were made on the check stubs that: a) the statements were false or misleading; b) the statements were made recklessly without knowledge of their truth; or c) the statements were made with the intent that Plaintiffs and members of the Class and Subclass would rely on them.

138. The check stubs reflected lower volume of gas than what was actually produced or sold, lower prices than those actually paid for the gas products sold in the market, fewer

constituents than what were actually produced or sold, and fewer monetary fees and in-kind volumetric deductions than were actually taken from the proceeds on the gas produced or sold.

139. Plaintiffs and the members of the Class and Subclass relied on the check stubs to accurately reflect and account for the actual volume of gas and all constituents produced, the actual disposition of all volumes of gas and all constituents, the actual gross market prices at which the gas products were sold, and the actual calculation of royalties that Defendants were to make under the leases. The check stubs appeared accurate based on the limited information provided to the Class and Subclass members by Defendants, but were not as shown by the gas contracts, monthly plant statements, and monthly pay decks which Defendants had but kept secret from Class and Subclass members. *See* Exhibits 2, 5, 7 and 8.

140. Plaintiffs reasonably and justifiably relied on the accuracy of the data shown on the monthly royalty payments from Defendants, and based on the same information provided and withheld from Class and Subclass Members a reasonable inference of reliance can be drawn, as shown by Plaintiffs and the Class and Subclass members: (a) cashing their royalty checks; (b) not questioning the accuracy of the check stubs; and, (c) not suing for the matters set forth herein before now. They also lacked the knowledge, experience, and access to information detailed above to even begin to question or suspect the accuracy of the data shown on the monthly royalty payment and Defendants' method for calculating royalty, and if they were to ever raise questions, could not meaningfully refute the excuses provided by Defendants.

141. Plaintiffs and the members of the Class and Subclass did rely on and/or are legally presumed to have relied upon these uniform written representations as being truthful and accurate, when they were neither true nor accurate. Plaintiffs and members of the Class and Subclass suffered injury and were underpaid as a result.

142. Defendants also concealed or failed to disclose facts about the price, volume, value, various products produced, and deductions, which Defendants had a duty to disclose to avoid presenting half-truths or misrepresentations.

143. Defendants undertook the duty to properly account by making the statements in check stubs on a monthly basis to royalty owners.

144. By speaking on the issue, Defendants had a duty to make full and fair disclosure of all relevant facts. This is especially so because Defendants had superior and/or specialized knowledge and/or access to information when compared to royalty owners.

145. Defendants knew that their representations or omissions on the monthly check stubs were at least ambiguous and created a false impression of the actual facts to the royalty owners.

146. Defendants knew the facts were peculiarly within Defendants' knowledge and that Plaintiffs and members of the Class and Subclass were not positioned to discover the facts pertaining to the proper volume, values, and constituents coming from their wells. Accordingly, having spoken on the subject matter, Defendants had a duty to make full and fair disclosure of all material facts such that its statements were not misleading, but did not.

147. Defendants were deceitful by suggesting, as a fact, that the volume, price, value, and other statements were as set forth on the monthly check stubs when those statements were not true. Defendants knew the statements were not true, had no reasonable grounds for believing they were true, or gave only such information as was likely to mislead for want of the communication of the non-disclosed facts.

148. The misrepresentations and omissions were intentionally made. They were intended to suggest that the price was a third-party commercial price without hidden deductions, the volumes were accurately measured without volumetric deductions, that royalty was paid on all

constituents produced from the well, and that deductions would be shown on the check stub when in fact they were not.

149. By creating and mailing misleading check stubs to Plaintiffs and members of the Class and Subclass, Defendants have fraudulently and deceitfully misled Plaintiffs and members of the Class and Subclass into believing that Defendants had paid them royalty on the full value of the production from their wells.

150. Defendants acted intentionally or recklessly in disregard of the rights and implied covenants of Plaintiffs and members of the Class and Subclass, on a uniform basis, by not properly paying royalty owners, by deceiving them with check stubs that were misleading, and by failing to correct Defendants' royalty payment practices such that punitive damages should be awarded and a finding should be made that Defendants acted intentionally and with malice toward Plaintiffs and the members of the Class and Subclass.

151. As a direct and proximate result of Defendants' tortious breach of implied covenant, deceit, and fraud, Plaintiffs and members of the Class and Subclass were underpaid monthly for royalties and are entitled to recover actual and punitive damages.

152. In addition, the money wrongfully obtained by Defendants as a result of what should have been paid to Plaintiffs and members of the Class and Subclass should be held in constructive trust along with monetary interest for Plaintiffs and the Class and Subclass.

153. Because Plaintiff and the Class and Subclass were deceived and did not have requisite information to reveal Defendants' scheme, they are entitled to tolling of any applicable statute of limitation periods. Because of Defendants' misrepresentations, omissions, and/or general scheme to conceal its underpayments, Plaintiffs and the members of the Class and Subclass did not become aware and could not have become aware through the exercise of reasonable diligence,

that such schemes were in existence. Therefore, Plaintiffs and members of the Class and Subclass are entitled to toll the applicable statutes of limitations, based upon the doctrines of fraudulent concealment, discovery rule, continuing conduct, and equitable estoppel.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class and Subclass seek:

1. An order certifying and allowing this case to proceed as a class action with Plaintiff as class representative for each class and the undersigned counsel as class counsel for each class;
2. An order requiring Defendants to pay Plaintiff and all Class and Subclass members' actual damages to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Defendants' breaches and/or unlawful conduct;
3. An order awarding punitive damages as determined by the jury and in accordance with Oklahoma law on each of Defendants' wrongful acts, as alleged in this Class Action Complaint.
4. An order requiring Defendants to pay the attorneys' fees and litigation expenses of the Plaintiff, Class, and Subclass from the common recovery fund; and
5. Such costs and other relief as this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all matters so triable.

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Respectfully submitted,

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