

Tonya Pointer

Cause No. DC-16-07867

ADDAX MINERALS FUND, LP, ADDAX MINERALS FUND 2012, LP, ADDAX MINERALS, LLC, ADDAX PRODUCTION, LLC, CHEROKEE HORN MINERALS, LLC, SPRINGBOK ENERGY PARTNERS, LLC, PALO ARGENTA PARTNERS – A LLC, PALO BARNETT ROYALTY FUND, LP, CATTIE MINERALS, LLC, PALO COWTOWN ROYALTY PARTNERS, LP, PALO COWTOWN ROYALTY PARTNERS II, LP, HARKEY PPI MINERALS ACQUISITION I, LP, JAS PALO PARTNERS I, LP, JAS PALO PARTNERS II, LP, JD HARKEY ENERGY, LP, PALO OPPORTUNITY FUND I, LLC, PALO-PERRYMAN ROYALTY FUND I, LP, PALO PETROLEUM, INC., PALO-ROI ROYALTY FUND I, LP, PALO ROYALTIES, LLC, PALO STRATEGIC PARTNERS, LLC, PALO TRINITY ROYALTIES, LP, TRINITY MINERALS, SARATOGA OIL, LTD., JVR LA O&G, LTD., BRETT G. TAYLOR ROYALTY TRUST, KIMBELL ART FOUNDATION, THE ROACH FOUNDATION, LOWRY ENERGY PARTNERS, MSW ROYALTIES, LLC, RIVERCREST ROYALTIES, LLC, BRAZOS MINERALS II, L.L.C, J.C. PACE, LTD., BGT INVESTMENTS, LLC, ROACH LA ENTERPRISES, LTD., and WESTSIDE ENERGY LLC,

Plaintiffs,

v.

CHESAPEAKE OPERATING, L.L.C., f/k/a CHESAPEAKE OPERATING, INC., CHESAPEAKE EXPLORATION, L.L.C., as successor by merger to CHESAPEAKE EXPLORATION, L.P., and TOTAL E&P USA, INC.,

Defendants.

IN THE DISTRICT COURT OF  
DALLAS COUNTY, TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**JURY TRIAL DEMANDED**

## **PLAINTIFFS' ORIGINAL PETITION**

Addax Minerals Fund, LP, Addax Minerals Fund 2012, LP, Addax Minerals, LLC, Addax Production, LLC, Cherokee Horn Minerals, LLC, Springbok Energy Partners, LLC, Palo Argenta Partners – A LLC, Palo Barnett Royalty Fund, LP, Cattie Minerals, LLC, Palo Cowtown Royalty Partners, LP, Palo Cowtown Royalty Partners II, LP, Harkey PPI Minerals Acquisition I, LP, JAS Palo Partners I, LP, JAS Palo Partners II, LP, JD Harkey Energy, LP, Palo Opportunity Fund I, LLC, Palo-Perryman Royalty Fund I, LP, Palo Petroleum, Inc., Palo-ROI Royalty Fund I, LP, Palo Royalties, LLC, Palo Strategic Partners, LLC, Palo Trinity Royalties, LP, Trinity Minerals, Saratoga Oil, Ltd., JVR LA O&G, Ltd., Brett G. Taylor Royalty Trust, Kimbell Art Foundation, The Roach Foundation, Lowry Energy Partners, MSW Royalties, LLC, Rivercrest Royalties, LLC, Brazos Minerals II, L.L.C., J.C. Pace, Ltd., BGT Investments, LLC, Roach La Enterprises, Ltd., Westside Energy LLC, (collectively, the “royalty plaintiffs”) file this original petition against Chesapeake Operating, L.L.C., formerly Chesapeake Operating, Inc., Chesapeake Exploration, L.L.C., as successor by merger to Chesapeake Exploration, L.P. (collectively, the “Chesapeake entities”), and TOTAL E&P USA, Inc. (collectively, the “Chesapeake defendants”) for damages, equitable relief, declaratory relief, and attorney’s fees regarding royalty underpayments and/or nonpayment.

### **I. DISCOVERY**

1. Pursuant to Texas Rule of Civil Procedure 190.4, the royalty plaintiffs expect to conduct discovery under a Level 3 tailored-discovery plan.

### **II. CLAIM FOR RELIEF**

2. The royalty plaintiffs seek monetary relief over \$1,000,000 in addition to nonmonetary relief.

### **III. NEED FOR ACTION**

3. The royalty plaintiffs hold royalty and/or mineral interests under oil and gas leases covering more than 5400 mineral acres, involving over 725 producing gas wells in over 280 established units, located in Tarrant County, Johnson County, and Ellis County. In violation of their express and/or implied duties to the royalty plaintiffs, the Chesapeake defendants, as lessees, operators, and working interest owners, have underpaid and/or failed to pay royalty payments whether by agreeing to unreasonable and excessive gathering fees, basing payments on below-agreed prices, effectively deducting contractually forbidden costs from the royalty plaintiffs' royalties, and not paying royalties on all volumes produced from the relevant leases. Such underpayments violate the express language of the relevant leases. Additionally, or alternatively, the Chesapeake defendants' actions violate the relevant leases' implied covenants.

4. The royalty plaintiffs seek the protection of this Court (a) to obtain complete production, pricing, sales, and services information, so that the royalty plaintiffs can quantify the full extent of the Chesapeake defendants' underpayments and/or nonpayment, (b) to recover the deficiency in the Chesapeake defendants' royalty underpayments and/or nonpayment, and (c) to obtain a declaration on the application of the relevant lease provisions and all appropriate relief.

### **IV. PARTIES**

#### **The royalty plaintiffs**

5. Addax Minerals Fund, LP is a Texas limited partnership. Addax Minerals Fund, LP's general partner is Addax Minerals Fund GP, LLC, a Texas limited liability company.

6. Addax Minerals Fund 2012, LP is a Texas limited partnership. Addax Minerals Fund 2012, LP's partners are Addax Minerals Fund 2012 GP, LLC, a limited liability company organized under Texas law with Addax Minerals as its sole member.

7. Addax Minerals, LLC is a limited liability corporation organized under Texas law with Ryan G. Watts as its sole member. Ryan G. Watts is an individual and Texas resident.

8. Addax Production, LLC is a limited liability corporation organized under Texas law with Ryan G. Watts as its sole member. Ryan G. Watts is an individual and Texas resident.

9. Cherokee Horn Minerals, LLC is a limited liability company organized under Texas law with Thomas D. Barrow, Carl G. McCalsin, Jr., Scott O. Shaver, and Watts Family Investments, LLC, as its only members. Thomas D. Barrow, Carl G. McCalsin, Jr., and Scott O. Shaver are individuals and Texas residents. Watts Family Investments, LLC, is a Texas limited liability corporation.

10. Springbok Energy Partners, LLC is a limited liability corporation organized under Texas law with Ryan G. Watts as its sole member. Ryan G. Watts is an individual and Texas resident.

11. Palo Argenta Partners – A, LLC is a limited liability company organized under Texas law with James P. Graham as its sole manager and Richard V. Brown, Gary S. Weber, Dallas Natural Gas Company, James P. Graham, J-Bo Continuation Trust, T-Bo Continuation Trust and James P. Graham as its only members. Richard V. Brown, Gary S. Weber and James P. Graham are individuals and Texas residents. Palo Petroleum, Inc. and Dallas Natural Gas Company are Texas corporations. J-Bo Continuation Trust is a grantor trust established by and for the sole benefit of James C. Graham, an individual and Texas resident, with a trustee who is an individual and resident of Texas. T-Bo Continuation Trust is a grantor trust established by and for the sole benefit of Tyler R. Graham, an individual and Texas resident, with a trustee who is an individual and Texas resident.

12. Palo Barnett Royalty Fund, LP is a limited partnership with Palo Barnett Royalty Fund GP, LLC as its general partner. Palo Barnett Royalty Fund GP, LLC is a limited liability

corporation organized under the laws of Texas with Palo Petroleum Inc., a Texas corporation, as its only member.

13. Cattie Minerals, LLC is a Texas limited liability corporation. Cattie Minerals, LLC, was organized under Texas law with Philip M. Lang, a Texas resident, as its only member.

14. Palo Cowtown Royalty Partners, LP is a Texas limited partnership. Palo Cowtown Royalty Partners, LP's general partner is Palo Cowtown Royalty GP, LLC, a Texas limited liability company.

15. Palo Cowtown Royalty Partners II, LP is a Texas limited partnership. Palo Cowtown Royalty Partners II, LP's general partner is Palo Cowtown Royalty GP, LLC, a Texas limited liability company.

16. Harkey PPI Minerals Acquisition I, LP is a Texas limited partnership. Harkey PPI Minerals Acquisition I, LP's general partner is Harkey / UDF Energy Series 1, a series of Harkey / UDF Energy Master GenPar, LLC, a Texas limited liability company.

17. JAS Palo Partners I, LP is a Texas limited partnership. JAS Palo Partners I, LP's general partner is JAS Palo Partners GP, LLC a Texas limited liability corporation.

18. JAS Palo Partners II, LP is a Texas limited partnership. JAS Palo Partners II, LP's general partner is JAS Palo Partners GP LLC, a Texas limited liability corporation.

19. JD Harkey Energy, LP is a Texas limited partnership. JD Harkey Energy, LP's general partner is JD Harkey Energy GenPar, LLC, a Texas limited liability corporation.

20. Palo Opportunity Fund I, LLC is a limited liability company organized under Texas law with Palo Petroleum, Inc., a Texas corporation, as its sole manager. Palo Opportunity Fund I, LLC's members are Diane Carrera, David and Julie Hollowell, husband and wife, Joyce P. Williams, Jamie Bertrand, James P. Graham, J-Bo Continuation Trust, Joseph Lee Young, Mugdock Tavern Investments and TCBG Management, LLC. Diane Carrera, David Hollowell, Julie Hollowell, Joyce

P. Williams, Jamie Bertrand, James P. Graham and Joseph Lee Young are individuals and Texas residents. J-Bo Continuation Trust is a grantor trust established by and for the sole benefit of James C. Graham, an individual and Texas resident, with a trustee who is an individual and Texas resident. TCBG Management, LLC is a Texas limited liability corporation. Mugdock Tavern Investments is a Texas partnership.

21. Palo-Perryman Royalty Fund I, LP is a Texas limited partnership. Palo-Perryman Royalty Fund I, LP's general partner is Palo-Perryman Fund I GP, LLC, a Texas limited liability corporation.

22. Palo Petroleum, Inc. is a corporation incorporated under Texas law with a principal place of business at 5944 Luther Lane, Suite 900, Dallas, Texas 75225.

23. Palo-ROI Royalty Fund I, LP is a Texas limited partnership. Palo-ROI Royalty Fund I, LP's only partner is Palo-ROI Royalty Fund GP, LLC, a Texas limited liability company.

24. Palo Royalties, LLC is a Texas limited liability corporation. Palo Royalties, LLC was organized under Texas law. Palo Royalties, LLC's only member and manager is Palo Petroleum, Inc., a Texas corporation.

25. Palo Strategic Partners, LLC is a Texas limited liability corporation. Palo Strategic Partners, LLC was organized under Texas law. Palo Strategic Partners, LLC's members are Palo Petroleum, Inc., Diversity Petroleum, LP and Strategic Energy Income Fund II L.P. Palo Petroleum, Inc. is a Texas corporation. Diversity Petroleum, LP is a Texas limited partnership. Strategic Energy Income Fund II L.P. is New York limited partnership.

26. Palo Trinity Royalties, LP is a Texas limited partnership. Palo Trinity Royalties, LP's general partner is Palo Trinity Royalties GP, LLC, a Texas limited liability company.

27. Trinity Minerals is a Texas partnership.

28. Saratoga Oil, Ltd. is a Texas limited partnership. Saratoga Oil, Ltd.'s general partner is Pass Creek Oil, LLC, a Texas limited liability company.

29. JVR LA O&G, Ltd. is a Texas limited partnership. JVR LA O&G, Ltd.'s general partner is Roach LA Enterprises ILC, a Texas limited liability company.

30. Brett G. Taylor Royalty Trust, is a trust established by and for the sole benefit of Brett G. Taylor, an individual and resident of Texas, with a trustee, who is an individual and resident of Texas.

31. Kimbell Art Foundation is a nonprofit corporation organized under Texas law with its principal place of business in Texas.

32. The Roach Foundation is a non-profit corporation organized under Texas law with its principal place of business in Texas.

33. Lowry Energy Partners is a Texas general partnership organized under the laws of Texas. Its members, Charles L. Lowry, Jere G. Hayes, Stephen L. Hays, Stewart W. Hayes, Scott E. Hayes, Leonard D. Lowry, Brad Lowry and Stan Lowry, are individuals and Texas residents.

34. MSW Royalties, LLC is a Texas limited liability company. MSW Royalties, LLC, was organized under the laws of Texas with Mitchell S. Wynne, an individual and Texas resident, as its only member.

35. Rivercrest Royalties, LLC is a limited liability company organized under Delaware law. MSW Royalties, LLC's members are Robert D. Ravnaas, Bryan H. Lawrence, and Peter A. Liedel. Robert D. Ravnaas, Bryan H. Lawrence, and Peter A. Liedel are individuals and Texas residents.

36. Brazos Minerals II, L.L.C. is a Texas limited liability company. Brazos Minerals II, L.L.C. was organized under Texas law. Brazos Minerals II, L.L.C.'s managers are J. Zane Meekins, Tom G. Hardman, Mary Ann Giordano, Ken Mueller, W. Todd Brooker, Augustin Presas, Eliberto

Quinonez, Matt Regan, and Kellie Jordan. Brazos Minerals II, L.L.C.'s managers are individuals and Texas residents.

37. J.C. Pace, Ltd. is a Texas limited partnership. J.C. Pace, Ltd.'s general partner is JCP Holding, L.P., a Texas limited partnership.

38. BGT Investments, LLC is a Texas limited liability company. BGT Investments, LLC was organized under Texas law with Brett G. Taylor, an individual and Texas resident, as its only member.

39. Roach La Enterprises, Ltd. is a Texas limited partnership. Roach La Enterprises, Ltd.'s general partner is Roach LA Enterprises, I L.C., a Texas limited liability company.

40. Westside Energy LLC is a Texas limited liability company. Westside Energy LLC was organized under Texas law with Robert D. Ravnaas, an individual and Texas resident, as its only member.

### **The Chesapeake defendants**

41. Chesapeake Operating, L.L.C. is a limited liability company organized under Oklahoma law with Chesapeake Energy Corporation as its sole member. Chesapeake Energy Corporation is a corporation organized under Oklahoma law with its principal place of business in Oklahoma. Chesapeake Operating, L.L.C. may be served through its agent for service of process CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

42. Chesapeake Exploration, L.L.C. is a successor by merger to Chesapeake Exploration, L.P. Chesapeake Exploration L.L.C. is a limited liability company organized under Oklahoma law. Chesapeake Exploration, L.L.C. is made up of three members, Chesapeake Operating, L.L.C. (discussed above), Chesapeake E&P Holding Corporation, and Chesapeake Appalachia, L.L.C. Chesapeake E&P Holding Corp. is a corporation organized under Oklahoma law with its principal place of business in Oklahoma. Chesapeake Appalachia, L.L.C. is a limited liability company with



Chesapeake Energy Corporation as its sole member. Chesapeake Energy Corporation is a corporation organized under Oklahoma law with its principal place of business in Oklahoma. Chesapeake Exploration, L.L.C. may be served through its agent for service of process CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

43. TOTAL E&P USA, Inc. (“TOTAL”), is a Delaware corporation with its principal place of business in Houston, Texas. It is a non-operating working interest owner in the royalty plaintiffs’ leases. TOTAL may be served through its agent for service of process CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

## V. VENUE

44. Venue is proper in Dallas County, Texas for the following reasons:

a. Pursuant to Texas Civil Practice and Remedies Code § 15.002(a), “all or a substantial part of the events or omissions giving rise to the claim occurred” in Dallas County, Texas.

b. Venue is also proper in Dallas County, Texas, because the Chesapeake defendants and the royalty plaintiffs have contracted in writing, the performance of which is due in Dallas County, Texas.

c. No mandatory venue provision exists which would cause venue to lie outside of Dallas County, Texas. Venue is therefore proper pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.003, 15.005 15.035.

## VI. JURISDICTION

45. Pursuant to Article V, Section 8 of the Texas Constitution and the Texas Government Code §§ 24.007 and 24.008, this Court has subject matter jurisdiction over this action because the amount in controversy exceeds the Court’s jurisdictional limits.

46. This Court has personal jurisdiction over all of the Chesapeake defendants because each of the Chesapeake defendants purposefully availed itself of the privilege of engaging in activities in Texas. Each of the Chesapeake defendants actively conducts business in Texas.

## VII. FACTS

### **The Gathering Agreement's above-market costs**

47. Between 2009 and 2012, Chesapeake Energy (the parent company of the Chesapeake entities) sold most its midstream assets, consisting mostly of gathering lines running from individual wells to delivery points into interstate transmission lines, to a New York fund called Global Infrastructure Partners (“GIP”) for more than \$4.6 billion.

48. The first step in the spin off took place in September 2009, when Chesapeake Energy contributed its Barnett Shale midstream assets (among other assets) for \$588 million. Initially, Chesapeake Energy and GIP kept an equal stake in the spun-off entity, Chesapeake Midstream (later called Access Midstream). Chesapeake Energy's officers and employees held key management and operating positions in the new entity. Later, Chesapeake Energy contributed other midstream assets and sold its remaining stake in Access Midstream to GIP.<sup>1</sup>

49. In September 2009 (concurrent with the spin-off of Chesapeake Energy's Barnett Shale midstream assets), GIP secured an exclusive, long-term (20-year) agreement (the “Gathering Agreement”) with the Chesapeake entities, their parent, Chesapeake Energy, and other related entities for the benefit of the spun-off entity, Chesapeake Midstream, that covered nearly all of the Chesapeake defendants' production from the Barnett Shale. The Gathering Agreement required the Chesapeake defendants to move gas from their Barnett Shale production, including the Chesapeake

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<sup>1</sup> GIP subsequently sold Access Midstream to another entity. But the transaction's ramifications and the Gathering Agreement's oppressive terms continue to impact the royalty plaintiffs to this day.

defendants' wells in which the royalty plaintiffs have royalty and overriding royalty interests, exclusively into the Chesapeake Midstream/Access gathering system.

50. As part of this transaction, the Chesapeake defendants agreed to pay excessive, unreasonable gathering charges (the "Barnett Gathering Fees") to Chesapeake Midstream/Access. These Barnett Gathering Fees form the core of the excessive charges that the Chesapeake defendants deduct from the monthly royalty and overriding royalty interest owner payments.

51. In addition to these onerous terms, the Chesapeake defendants also agreed to minimum volume commitments and aggressive escalator clauses, increasing the Barnett Gathering Fees annually regardless of gas prices or demand for gathering or Barnett Shale production, in order to guarantee GIP (or the beneficiary of the Gathering Agreement) an outsized, above-market rate of return. Taken together, the Chesapeake defendants agreed to pay, and Chesapeake Midstream (later Access Midstream) has charged, excessive, above-market Barnett Gathering Fees since 2009.

52. The Chesapeake defendants agreed to pay these excessive, above-market Barnett Gathering Fees in order to obtain over \$4 billion (and over \$500 million from the Barnett Shale Chesapeake Midstream/Access Midstream spin-off alone) at a time when the parent company, Chesapeake Energy, needed cash. To make matters worse, Chesapeake Energy structured the deal to get millions in gathering charges rebated, or kicked back to itself, for back office support.

53. In September 2009, Chesapeake Energy's CEO, Aubrey McClendon, stated the Barnett Shale midstream asset sale was "the first step in unlocking the embedded value in [Chesapeake's] midstream assets and further execut[ion] of its monetization program." And he correctly predicted that Chesapeake Midstream (later Access Midstream) would "serve as an attractive vehicle for monetizing additional Chesapeake gathering systems." In plain English, McClendon confirmed that Chesapeake intended to build up its midstream assets in the Barnett Shale and, then, sell them for a large profit, thereby extracting value from the leasehold and

transferring that value to the operator (or the operator's parent entity). The onerous terms in the Gathering Agreement, including the Barnett Gathering Fees, were a cost of that plan.

54. The Gathering Agreement corresponds directly to the sale of Chesapeake Energy's Barnett Shale midstream assets. Such a long-term contract, with such onerous terms, did not benefit the leasehold. But the long-term contract did benefit the Chesapeake defendants and their parent company. By committing production capacity to their affiliated gathering system for 20 years, the effective life of the wells, the Chesapeake defendants made the midstream assets more valuable because a gas-gathering system that has wells committed to it for a 20-year period—particularly under such onerous terms—is more valuable than a pipeline without such capacity guarantees or such terms. And the lessors, including specifically, the royalty plaintiffs, bore the burden of that deal in the form of above-market Barnett Gathering Fees for the next 20 years.

55. In late 2009, the Chesapeake entities sold 25% of their Barnett Shale assets to the French oil and gas conglomerate, TOTAL. TOTAL agreed to pay Chesapeake \$2.25 Billion for this position in the Barnett Shale. TOTAL agreed to the terms of the Gathering Agreement and has operated under the Gathering Agreement.

### **Firm transportation fees**

56. A firm transportation charge (also called a demand charge) is an upfront fee that an operator pays to a pipeline in order to secure future space on a pipeline for the delivery of its gas to distant markets. When the producer actually ships the gas, it typically incurs a charge for the transportation itself (called a commodity charge). However, the reservation fee is non-refundable and will typically not be recovered by the operator unless it is able to resell the capacity it reserved through payment of the firm transport charge. An operator may be able to forgo paying firm transportation charges, but its access to pipeline capacity will then be subject to the needs of other, higher priority customers.

57. The Chesapeake defendants, through affiliates, make speculative “long” purchases of pipeline capacity for transportation of the royalty plaintiffs’ gas in the future (often years in advance). The Chesapeake defendants did this by committing to send a minimum volume of gas to the pipeline in the future and pays charges—firm transport/demand charges—based on that minimum volume commitment. The Chesapeake defendants agreed to pay these premium charges (the “Firm Transportation Fees”) in order to reserve space on the pipelines. As a result, the Chesapeake defendants incur the Firm Transportation Fees for pipeline space that is not used in connecting with the sale of gas produced from the royalty plaintiffs’ leases. Nevertheless, the Chesapeake defendants deduct these Firm Transportation Fees from the royalty plaintiffs’ royalty payments whether or not the minimum monthly volume commitment was met. As such, the Chesapeake defendants impose the Firm Transportation Fees for pipeline capacity that was not used to transport gas from the royalty plaintiffs’ leased property to the point of sale.

58. TOTAL agreed to the terms of the transportation agreements that the Chesapeake entities and their affiliates obtained. As such, TOTAL has also imposed the Firm Transportation Fees from the royalty plaintiffs’ royalty payments as described above.

### **The imposition of the Barnett Gathering Fees and the Firm Transportation Fees**

59. The royalty plaintiffs own the royalty interests in over 8,000 leases with the Chesapeake defendants (or their successors in interest). As of the time of filing, these leases and subleases were valid, enforceable contracts. The Chesapeake defendants, as operator and lessee, produce gas from the royalty plaintiffs’ mineral interests with over 650 producing gas wells.

60. As to all of these wells, Chesapeake Energy Marketing, L.L.C. (“Chesapeake Marketing”), an affiliate of Chesapeake Operating and Chesapeake Exploration, sells the gas to third-party purchasers under a series of agreements and, from those monthly sales data, computes a weighted average sales price (the “WASP”). Chesapeake Marketing incurs the costs associated with

bringing gas from the point where it takes possession of the gas to the point of sale, including the Barnett Gathering Fees and the Firm Transportation Fees. Chesapeake Marketing pays Chesapeake Operating (Chesapeake Exploration's agent) a wellhead (or a gathering tailgate) price, which reflects the WASP less the costs incurred by Chesapeake Marketing. And Chesapeake Operating pays the royalty plaintiffs' royalties based on that wellhead (or gathering tailgate) price.

61. TOTAL owes twenty-five percent of the royalty plaintiffs' gas pursuant to the Total/Barnett Shale Transaction. TOTAL also sells its gas at the wellhead to an affiliate, TOTAL G&P, which then sells the gas further downstream. In marketing the royalty plaintiffs' gas downstream, TOTAL G&P incurs post-production costs such as the Barnett Gathering Fees and the Firm Transportation Fees. TOTAL also nets back its royalty price using the Barnett Gathering Fees and the Firm Transportation Fees for the purpose of paying TOTAL's royalty to the royalty plaintiffs.

62. When the Chesapeake defendants use the Barnett Gathering Fees and the Firm Transportation Fees to net back from third-party prices to wellhead prices, they undervalue the market value of the gas. And, when the Chesapeake defendants use the Barnett Gathering Fees and the Firm Transportation Fees to calculate proceeds, they undervalue proceeds. In either event, the Chesapeake defendants use of the Barnett Gathering Fees and the Firm Transportation Fees to calculate royalties results in underpayment of royalties owed to the royalty plaintiffs.

### **The royalty plaintiffs' leases and units**

63. The royalty plaintiffs' mineral interests have been pooled by the Chesapeake defendants. At present, the royalty plaintiffs are pooled in over 280 established units.

64. When paying proceeds of production due to royalty owners in any particular tract, the Chesapeake defendants use a formula in which they multiply lease royalty times the ratio that the acreage in the tract containing the mineral interest bears to the entire gross acreage within the

boundaries of the particular unit. Yet, within practically every unit operated by the Chesapeake defendants (particularly those in urbanized portions of the Barnett Shale), the gross acreage included within the boundaries of the unit includes a substantial number of tracts that are both unleased and unpooled.

65. The Chesapeake defendants are required to pay each royalty owner its lease royalty multiplied by the ratio that the acreage bears to the total of pooled acreage, rather than the total of all gross acreage (pooled and unpooled) within the outer boundaries of the unit. The Chesapeake defendants, however, use the gross acreage as the denominator for their calculations. By improperly increasing the denominator (i.e., using total gross acreage rather than total pooled acreage), the Chesapeake defendants artificially decrease the net revenue interest in production for every lessor. The Chesapeake defendants' practice has caused underpayments to the royalty plaintiffs and resulted in an improper windfall to the Chesapeake defendants.

### **Tolling and Limitations**

66. The royalty plaintiffs and Chesapeake have entered into a Tolling Agreement effective as of September 28, 2016, tolling the statute of limitations with respect to any and all claims by the royalty plaintiffs related to the alleged underpayment and/or nonpayment of royalties. This agreement terminates after June 30, 2016, so this suit was timely under the tolling agreement.

67. In the alternative, the Chesapeake defendants' improper cost deductions and underpayment of royalties and overriding royalties are not apparent from the information provided in their royalty statements, as those statements fail to properly reflect and misleadingly reflect the deductions that are actually being taken as well as the true, "effective" gas prices. As a result of the manner and method of the Chesapeake defendants' reporting and remittance of royalties and overriding royalties, as well as discrepancies with their filings with the Texas Railroad Commission and Texas Comptroller of Public Accounts, the Chesapeake defendants' breaches of the leases and

other wrongful conduct have been inherently undiscoverable; these breaches and other wrongful conduct are objectively verifiable. The Chesapeake defendants' fraudulent concealment, ongoing fraudulent activity, and the discovery rule toll limitations as to all causes of action set forth herein.

68. In the alternative, the Chesapeake defendants are estopped from asserting limitations as a defense because by words and conduct the Chesapeake defendants induced the royalty plaintiffs to delay filing claims beyond the applicable statute of limitations.

69. In the alternative, the Chesapeake defendants by fraud have induced the royalty plaintiffs to delay filing claims beyond the applicable statute of limitations.

70. In the alternative, because of the duty of utmost good faith and fair dealing owed by the Chesapeake defendants and as otherwise required by Texas law, the royalty plaintiffs' claims should be tolled by the discovery rule.

## **VIII. CONDITIONS PRECEDENT**

71. All conditions precedent to the royalty plaintiffs' claim for relief either have been performed or have occurred.

## **IX. CAUSES OF ACTION**

### **Count 1—Breach of Contract (Express Obligations)**

72. The royalty plaintiffs incorporate by reference all preceding paragraphs.

73. The relevant leases are valid, enforceable contracts.

74. The royalty plaintiffs are the proper parties to sue to enforce the terms of the relevant leases. The royalty plaintiffs have performed, or have substantially performed, any and all necessary conditions precedent, dependent obligations, and/or dependent covenants owed under the relevant leases. The royalty plaintiffs are, and have been, entitled to performance, by the Chesapeake defendants, of their obligations under the relevant leases.



75. The Chesapeake defendants have materially breached their contractual obligations to the royalty plaintiffs, including the express terms contained within the relevant leases. Examples of such breaches include the following:

- a. Taking improper deductions from royalty payments;
- b. Paying royalties on improper prices for gas;
- c. Paying royalty payments based on incorrect net revenue interests;
- d. Underpaying royalties;
- e. Failing to pay royalties timely; and
- f. Breaching the standard of conduct required of lessee(s) in performing all expressed obligations, covenants, and conditions.

76. Such breaches of contractual obligations, singularly and/or in any combination thereof, have caused financial injuries to the royalty plaintiffs and/or benefits to the Chesapeake defendants, for which the royalty plaintiffs now seek all expectation-interest damages, consequential and incidental damages, lost profits, out-of-pocket losses, and future damages.

77. The royalty plaintiffs believe that the relevant terms of the leases at issue clearly and unambiguously provide the rights and obligations described in the preceding paragraphs. In the alternative, however, the royalty plaintiffs plead and allege both (a) that the relevant terms of the leases at issue are ambiguous as a matter of law and (b) that the interpretation of the relevant leases stated in the preceding paragraphs represents the correct and proper interpretation of the relevant leases.

#### **Count 2—Breach of Contract (Implied Covenants)**

78. The royalty plaintiffs incorporate by reference all preceding paragraphs.

79. The relevant leases are valid, enforceable contracts.

80. The royalty plaintiffs are the proper parties to sue to enforce the terms of the relevant leases. The royalty plaintiffs have performed, or have substantially performed, any and all necessary conditions precedent, dependent obligations, and/or dependent covenants owed under the relevant leases. The royalty plaintiffs are, and have been, entitled to performance, by the Chesapeake defendants, of their obligations under the relevant leases.

81. Each of the relevant leases gives rise to implied covenants that govern the conduct of the Chesapeake defendants. These implied covenants are meant to protect and preserve the value of the royalty plaintiffs' royalties.

82. These implied covenants require lessees and working interest owners to act to conduct operations as a reasonably prudent operator in order to carry out the purposes of the oil and gas lease.

83. The Chesapeake defendants breached their duty to act as a reasonably prudent operator by failing to do the following, among other things:

- a. Produce and market reasonably; and
- b. Operate with reasonable care.

84. Such breaches of implied obligations, singularly and/or in any combination thereof, have caused financial injuries to the royalty plaintiffs and/or benefits to the Chesapeake defendants, for which the royalty plaintiffs now seek all expectation-interest damages, consequential and incidental damages, lost profits, out-of-pocket losses, and future damages.

**Count 3—Violation of the Texas Natural Resources Code for Failure to Properly Pay Royalties and Overriding Royalties.**

85. The royalty plaintiffs incorporate by reference all preceding paragraphs.

86. The Chesapeake defendants have failed to make proper royalty and overriding royalty payments due under the leases as required by Section 91.402, *et. seq.* of the Texas Natural

Resources Code. The Chesapeake defendants have underpaid the royalty plaintiffs' royalties and overriding royalties by:

- a. Deducting costs (production and post-production) from the royalty plaintiffs' royalty payments in contravention of the terms of the leases;
- b. Charging the royalty plaintiffs' royalties with deductions of costs that are excessive and unreasonable; and
- c. Failing to pay the royalty plaintiffs' royalties based on a reasonable fair market value of the gas production from the royalty plaintiffs' leases.

87. Because the Chesapeake defendants have underpaid the royalty plaintiffs' royalty and overriding royalty payments, the Chesapeake defendants have further failed to make proper royalty payments to the royalty plaintiffs under the leases within the statutorily prescribed time periods listed in Section 91.402 of the Texas Natural Resources Code.

**Count 4—Accounting**

88. The royalty plaintiffs incorporate by reference all preceding paragraphs.

89. The relevant leases impose on the Chesapeake defendants the duty to account to royalty plaintiffs with respect to royalty payments.

90. In the alternative, damages alone will not compensate the royalty plaintiffs for their collective loss of royalty payments consistent with the relevant leases; the facts and accounts presented are so complex that adequate relief may not be obtained at law; standard discovery procedures, such as requests for production, interrogatories, and subpoena duces tecum, may prove inadequate to provide plaintiffs with the information sought regarding royalty payments; and, under the relevant leases, royalty plaintiffs and the Chesapeake defendants have a contractual relationship with respect to royalty payments.

91. The royalty plaintiffs have strictly complied with the terms of the relevant leases and/or have not committed a material breach thereof. Further, the royalty plaintiffs come to the Court with clean hands.

92. The royalty plaintiffs, therefore, seek an accounting, whether under the relevant leases as a remedy or, in the alternative, as a cause of action in equity, as follows:

a. For past and present royalties on adequate value, all volumes, and all substances, at appropriate prices, and without any deductions for certain post-production costs, if any, in accordance with the royalty provisions of the relevant leases;

b. For future periodic accountings of the Chesapeake defendants' production, sales, and payment of royalties on natural gas and liquids, in accordance with the royalty provisions of the relevant leases; and

c. For future royalties determined by adequate value, all volumes, and all substances, at appropriate prices, and without any deductions for certain post-production costs, if any, in accordance with the royalty provisions of the relevant leases.

#### **Count 5—Declaratory Judgment**

93. The royalty plaintiffs incorporate by reference all preceding paragraphs.

94. The Chesapeake defendants have acted contrary to the obligations under the relevant leases. A substantial controversy of sufficient immediacy and reality exists between the royalty plaintiffs and the Chesapeake defendants so as to warrant this Court's declaration on the matters presented. The royalty plaintiffs and the Chesapeake defendants hold adverse legal interests.

95. The royalty plaintiffs seek a declaration as to the following rights and legal relations:

a. Whether the Chesapeake defendants took improper deductions from royalty payments;

- b. Whether the Chesapeake defendants paid royalties on improper prices for gas;
- c. Whether the Chesapeake defendants paid royalty payments based on incorrect net revenue interests;
- d. Whether the Chesapeake defendants underpaid royalties;
- e. Whether the Chesapeake defendants failed to pay royalties timely;
- f. Whether the Chesapeake defendants breached the standard of conduct required of lessee(s) in performing all expressed obligations, covenants, and conditions;
- g. Whether the Chesapeake failed to produce and market as a reasonably prudent operator;
- h. Whether the Chesapeake failed to operate with reasonable care as a reasonably prudent operator;
- i. Whether the Chesapeake defendants deducted costs (production and post-production) from the royalty plaintiffs' royalty payments in contravention of the terms of the leases;
- j. Whether the Chesapeake defendants charged the royalty plaintiffs' royalties with deductions of costs that are excessive and unreasonable; and
- k. Whether the Chesapeake defendants failed to pay the royalty plaintiffs' royalties based on a reasonable fair market value of the gas production from the royalty plaintiffs' leases.

**Count 6—Attorney's Fees**

96. The royalty plaintiffs incorporate by reference all preceding paragraphs.

97. As a result of Chesapeake's actions and the need to protect their interests, the royalty plaintiffs have retained the law firm of Burns Charest LLP to represent the royalty plaintiffs in this action. The royalty plaintiffs have agreed to pay the law firm of Burns Charest LLP's fees.

98. The royalty plaintiffs seek recovery of all reasonable and necessary attorney's fees and expenses pursuant to Chapters 37 and/or 38 of the Texas Civil Practices and Remedies Code.

99. Further, the royalty plaintiffs seek all reasonable and necessary attorney's fees and expenses pursuant for the Chesapeake defendants' failure to make such payments as required by Sections 91.403 and 91.406 of the Texas Natural Resources Code.

#### **X. REQUEST FOR JURY TRIAL**

100. The royalty plaintiffs request a jury trial on all issues for which a jury trial is permissible.

#### **XI. AGENCY**

101. Whenever it is alleged that any of the Chesapeake defendants committed any act, it is also meant that such party committed said act or acts jointly through his officers, directors, agents, employees, servants, or representatives, acting with full authority, by virtue of express, apparent, or implied agency, within the course and scope of any employment and/or with the full ratification of such of the Chesapeake defendants.

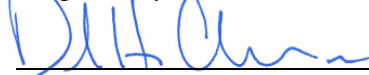
#### **XII. PRAYER**

102. The royalty plaintiffs pray that the Chesapeake defendants be cited to appear and answer herein and that, upon a final hearing or trial, the royalty plaintiffs have and recover judgment from the Chesapeake defendants as follows:

- a. Damages caused by the Chesapeake defendants' breach of the relevant leases in an amount to be proven at trial but exceeding the Court's minimum jurisdictional amounts;
- b. An accounting as described above;
- c. A declaration as described above;
- d. Reasonable and necessary attorney's fees;
- e. Pre- and post-judgment interest according to law;
- f. All costs of suit; and
- g. All such other and further relief, both general and special, at law or in equity, to which the royalty plaintiffs may show themselves justly to be entitled and for which it will ever pray.

Dated: June 30, 2016.

Respectfully submitted,



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