

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MOUNTRAIL

NORTHWEST JUDICIAL DISTRICT

SARAH VOGEL, individually and for all)
those similarly situated,)
Plaintiff,)

Case No. 31-2013-CV-00163

v.)

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

MARATHON OIL COMPANY, an Ohio)
corporation,)
Defendant.)

PARTIES

1. Plaintiff Sarah Vogel (“Plaintiff”) brings this action for herself and all those similarly situated. Plaintiff is a resident of Bismarck, North Dakota.
2. Marathon Oil Company (“Defendant”) is a corporation incorporated under the laws of Ohio with its principal offices at 5555 San Felipe Street, Houston, Texas. Defendant can be served with process by serving its registered agent in the State of North Dakota, CT Corporation System, 314 E Thayer Avenue, Bismarck, North Dakota 58501-4018.
3. Defendant is the operator of an oil well classified as a “horizontal” well, the Elk USA 11-17H well, located in the NWNW of Section 17, Township 150 North, Range 92 West, Mountrail County, having API number 33-061-01404-00-00 (“Elk USA 11-17H Well”).
4. Plaintiff owns mineral interests from which oil and gas are being produced from the Elk USA 11-17H Well and is entitled to royalties from production from the Elk USA 11-17H Well.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this case and personal jurisdiction over Defendant.
6. Venue is proper in Mountrail County, North Dakota under N.D.C.C. § 28-04-05 because Defendant does not reside in the state and this action is brought in the county the cause of action arose.

BACKGROUND

7. The Elk USA 11-17H Well was spudded on October 24, 2010. It began to produce hydrocarbons on or about May 22, 2011.
8. Defendant pays or should pay royalties to Plaintiff from the Elk USA 11-17H Well.
9. The oil and gas production from the Elk USA 11-17H Well is from the Van Hook-Bakken Pool.
10. The Elk USA 11-17H Well produced oil and gas, and flared all or some of the gas produced from first production in May 2011 through August 2013. For the months since first production, the Elk USA 11-17H Well has produced and sold oil and produced, sold and flared gas in the following quantities as reported by Defendant to the North Dakota Industrial Commission, Department of Mineral Resources, Oil & Gas Division (the “Industrial Commission” or “NDIC”):

Production Month	Days of Production	BBLs Oil Produced	BBLs Oil Sold	MCF of Gas Produced	MCF of Gas Sold	MCF of Gas Vented or Flared
May-11	9	8053	7355	6897	0	6846
Jun-11	30	16798	16773	16234	0	16057
Jul-11	31	17151	17346	16551	0	16367
Aug-11	31	13296	12921	12850	0	12689
Sep-11	30	11952	12117	11572	0	11402
Oct-11	31	13195	12973	12781	0	12595
Nov-11	26	9825	9884	9510	0	9375
Dec-11	31	8621	8635	8411	0	8226
Jan-12	31	8456	8416	8254	0	8068
Feb-12	19	3678	3913	3604	0	3514
Mar-12	28	6877	6840	6733	0	6573
Apr-12	28	7343	7540	7168	0	7006
May-12	31	7910	7645	7732	0	7546
Jun-12	30	6895	6803	6920	0	6740
Jul-12	29	7198	7425	7031	0	6872
Aug-12	24	2696	3246	429	0	288
Sep-12	21	6088	5686	2575	907	1543
Oct-12	31	9463	9230	6336	4303	1861
Nov-12	30	6700	6769	4361	3018	1169
Dec-12	26	7294	7171	3559	1504	1912
Jan-13	31	6680	6668	4307	2280	1842

Feb-13	28	5507	5770	4169	3351	650
Mar-13	31	6146	6259	3659	1457	2016
Apr-13	30	5793	5028	3543	1865	1498
May-13	31	5913	6546	4433	2232	2015
Jun-13	30	5781	5650	4628	3651	797
Jul-13	30	5266	5540	3761	1029	2561
Aug-13	1	7038	6675	1136	29	921

11. Gas flared in wells such as the Elk USA 11-17H Well within one year of first production is governed by the provisions of subsection 1 of N.D.C.C. § 38-08-06.4, providing:

As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well.

In other words, a producer *may* flare gas within the first year of production and avoid paying royalties on that gas *if* it fully complies with applicable rules and orders of the Industrial Commission concerning production of oil and gas. The corollary of that rule is that if a producer fails to comply with those rules and orders, it may not flare gas within the first year of production and avoid paying royalties on that gas.

12. The Industrial Commission has provided the following rules concerning the flaring of gas in the Elk USA 11-17H Well:

- a. NDIC Order No. 16582 in Case No. 14306 dated May 5, 2011 (“Order 16582”); NDIC Order No. 16581 in Case No. 14573 dated August 30, 2011 (“Order 16581”); NDIC Order No. 17196 in Case No. 14946 dated August 30, 2011 (“Order 17196”); NDIC Order No. 17306 in Case No. 15056 dated August 30, 2011 (“Order 17306”); NDIC Order No. 17045 in

Case No. 14770 dated September 29, 2011 (“Order 17045”) ; NDIC Order No. 17851 in Case No. 15605 dated December 1, 2011 (“Order 17851”); NDIC Order No. 17947 in Case No. 15692 dated December 1, 2011 (“Order 17947”); and NDIC Order No. 18398 in Case No. 16134 dated May 7, 2012 (“Order 18398”) (collectively “NDIC Elk USA Orders”).

b. As stated in Paragraphs 1 and 2 of Order 16582, the Industrial Commission has ordered as follows:

(1) All current wells and all wells hereafter completed in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate until June 30, 2011.

(2) After June 30, 2011, all wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells is not to exceed an average of 200 barrels per day for a period of 60 days, after that, oil production from such wells is not to exceed an average of 150 barrels per day for a period of 60 days, thereafter, oil production from such wells is not to exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions are removed, and the wells are allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

c. As stated in Paragraph 112 of Order 16851, the Industrial Commission has ordered as follows:

All wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head

equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells shall not exceed an average of 200 barrels per day for a period of 60 days; after that, oil production from such wells shall not exceed an average of 150 barrels per day for a period of 60 days; thereafter, oil production from such wells shall not exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions shall be removed, and the wells shall be allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

- d. As stated in Paragraph 112 of Order 17196, the Industrial Commission has ordered as follows:

All wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells shall not exceed an average of 200 barrels per day for a period of 60 days; after that, oil production from such wells shall not exceed an average of 150 barrels per day for a period of 60 days; thereafter, oil production from such wells shall not exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions shall be removed, and the wells shall be allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

- e. As stated in Paragraph 112 of Order 17306, the Industrial Commission has ordered as follows:

All wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells shall not exceed an average of 200 barrels per day for a period of 60 days; after that, oil production from such wells shall not exceed an average of 150 barrels per day for a period of 60 days; thereafter, oil production from such wells shall not exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions shall be removed, and the wells shall be allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

- f. As stated in Paragraphs (1) and (2) of Order 17045, the Industrial Commission has ordered as follows:

(1) All current wells and all wells hereafter completed in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate until December 31, 2011.

(2) After December 31, 2011, all wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells is not to exceed an average of 200 barrels per day for a period of 60 days, after that, oil production from such wells is not to exceed an average of 150 barrels per day for a period of 60 days, thereafter, oil production from such wells is not to exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions are removed, and the wells are allowed to produce

at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

g. As stated in Paragraphs 116 and 117 of Order 17851, the Industrial

Commission has ordered as follows:

(116) All wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate until December 31, 2011.

(117) After December 31, 2011, all wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells shall not exceed an average of 200 barrels per day for a period of 60 days; after that, oil production from such wells shall not exceed an average of 150 barrels per day for a period of 60 days; thereafter, oil production from such wells shall not exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions shall be removed, and the wells shall be allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

h. As stated in Paragraphs 117 and 118 of Order 17947, the Industrial

Commission has ordered as follows:

(117) All wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate until December 31, 2011.

(118) After December 31, 2011, all wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum

efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells shall not exceed an average of 200 barrels per day for a period of 60 days; after that, oil production from such wells shall not exceed an average of 150 barrels per day for a period of 60 days; thereafter, oil production from such wells shall not exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions shall be removed, and the wells shall be allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

- i. As stated in Paragraphs 1 and 2 of Order 18398, the Industrial Commission has ordered as follows:

- (1) All current wells and all wells hereafter completed in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate through July 31, 2012.

- (2) After July 31, 2012, all wells in the Van Hook-Bakken Pool shall be allowed to produce at a maximum efficient rate for a period of 60 days commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run; after that, oil production from such wells is not to exceed an average of 200 barrels per day for a period of 60 days, after that, oil production from such wells is not to exceed an average of 150 barrels per day for a period of 60 days, thereafter, oil production from such wells is not to exceed an average of 100 barrels of oil per day; if and when such wells are connected to a gas gathering and processing facility the foregoing restrictions are removed, and the wells are allowed to produce at a maximum efficient rate. The Director is authorized to issue an administrative order allowing unrestricted production at a maximum efficient rate

for a period not to exceed 120 days, commencing on the first day oil is produced through well-head equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

13. Under Order 16581, Order 16582, Order 17196 and Order 17306, all wells in the Van Hook-Bakken Pool, including the Elk USA 11-17H Well, could be produced at the maximum efficient rate through June 30, 2011 and for the first 60 days of production, which for the Elk 11-17H Well was May 22, 2011 through July 21, 2011. Order 16581, Order 16582, Order 17196 and Order 17306 thereafter, limited oil production to an average of 200 barrels of oil per day for 60 days; thereafter, an average of 150 barrels per day for the next 60 days; and thereafter at an average of 100 barrels per day unless the Industrial Commission entered administrative orders allowing unrestricted oil production for up to 120 days. The next administrative order allowing maximum efficient rate oil production was Order 17045 dated September 29, 2011 permitting production at the maximum efficient rate through December 31, 2011. So from July 22, 2011 through September 19, 2011 oil production from the Elk USA 11-17H Well was limited to an average of 200 barrels of oil per day; and from September 20, 2011 through September 28, 2011, an average of 150 barrels of oil per day.
14. From July 22, 2011 through September 19, 2011, a time when no further administrative orders were in effect permitting production at maximum efficient rate, Defendant reported to the NDIC that it exceeded the applicable daily average limit of 200 barrels of oil by more than 198 barrels per day, and also reported to the NDIC that it flared all gas produced from the Well during that time.
15. From September 20, 2011 through September 28, 2011, a time when no further administrative orders were in effect permitting production at maximum efficient rate,

Defendant reported to the NDIC that it exceeded the applicable daily average limit of 150 barrels of oil by more than 248 barrels per day, and also reported to the NDIC that it flared all gas produced from the Well during that time.

16. Under Order 17045, Order 17851 and Order 17947, all wells in the Van Hook-Bakken Pool, including the Elk USA 11-17H Well, could be produced at the maximum efficient rate through December 31, 2011.

17. From January 1, 2012 through May 6, 2011, a time when no further administrative orders were in effect permitting production at maximum efficient rate, Defendant reported to the NDIC that it exceeded the applicable daily average limit of 100 barrels of oil, and also reported to the NDIC that it flared all gas produced from the Well during that time.

18. Upon information and belief, the Elk USA 11-17H Well was not connected to a gas gathering and processing facility until August 2012.

19. Defendant reported to the NDIC that the Elk USA 11-17H Well produced over 124,073 Mcfs of gas during the first year of production (May 22, 2011 – May 21, 2012). Defendant failed to fully comply with rules as provided by the Industrial Commission that would have allowed it to flare gas in the first year of production without having to pay royalties on the flared gas, and as a result, Defendant owes royalties on the value of that flared gas. Gas flared within the first year of production that was flared in violation of rules as provided by the Industrial Commission exceeded 54,745 Mcfs of gas.

20. Gas flared from wells such as the Elk USA 11-17H Well after one year from first production is governed by the provisions of subsection 2 of N.D.C.C. § 38-08-06.4, providing:

2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:

- a. Capped;
- b. Connected to a gas gathering line;
- c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;
- d. Equipped with a system that intakes at least seventy-five percent of the gas and natural gas liquids volume from the well for beneficial consumption by means of compression to liquid for use as fuel, transport to a processing facility, production of petrochemicals or fertilizer, conversion to liquid fuels, separating and collecting over fifty percent of the propane and heavier hydrocarbons; or
- e. Equipped with other value-added processes as approved by the industrial commission that reduce the volume or intensity of the flare by more than sixty percent.

21. Based on current reported production information, the Elk USA 11-17H Well has flared 34,876 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
May-12	2191
Jun-12	6740
Jul-12	6872
Aug-12	288
Sep-12	1543
Oct-12	1861
Nov-12	1169
Dec-12	1912
Jan-13	1842
Feb-13	650
Mar-13	2016
Apr-13	1498
May-13	2015
Jun-13	797
Jul-13	2561
Aug-13	921

22. Any permitted flaring of the gas from the Elk USA 11-17H Well was to cease after one year, and any gas flared from the well thereafter is in violation of subsection 2 of N.D.C.C. § 38-08-06.4.

23. Subsection 6 of N.D.C.C. § 38-08-06.4 exempts a producer from the requirements of subsections 1 and 2 of N.D.C.C. § 38-08-06.4 under certain conditions:

A producer may obtain an exemption from this section from the industrial commission upon application that shows to the satisfaction of the industrial commission that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available and that equipping the well with an electrical generator to produce electricity from gas or employing a collection system described in subdivision d of subsection 2 is economically infeasible.

24. Defendant has not applied for nor been granted an exemption under subsection 6 of N.D.C.C. § 38-08-06.4 for gas flared from the Elk USA 11-17H Well for the production months Plaintiff alleges violated subsections 1 and 2 of N.D.C.C. § 38-08-06.4 as set forth above.

25. Subsection 4 of N.D.C.C. § 38-08-06.4 allows royalty owners to recover royalties on the value of gas flared in violation of N.D.C.C. § 38-08-06.4:

For a well operated in violation of this section, the producer shall pay royalties to royalty owners upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2.

26. The North Dakota Industrial Commission, in its discretion, may enforce the requirements of N.D.C.C. § 38-08-06.4 as provided in subsection 5:

The industrial commission may enforce this section and, for each well operator found to be in violation of this section, may determine the value of flared gas for purposes of payment of royalties under this section and its determination is final.

27. The North Dakota Industrial Commission has not exercised its discretion provided in subsection 5 of N.D.C.C. § 38-08-06.4 as to the flared gas from the Elk USA 11-17H Well for the production months Plaintiff alleges violated subsections 1 and 2 of N.D.C.C. § 38-08-06.4 as set forth above.
28. Plaintiff is entitled to sue for and recover royalties under the provisions of N.D.C.C. § 38-08-06.4 for flared gas from the Elk USA 11-17H Well for the production months Plaintiff alleges violated subsections 1 and 2 as set forth above.
29. Defendant has not paid royalties for the 34,876 Mcfs of gas flared from the Elk USA 11-17H Well after the first year of production.
30. Likewise, Defendant has not paid royalties for the 54,745 Mcfs of gas produced and flared from the Elk USA 11-17H Well during the first year of production in violation of subsection 1 of N.D.C.C. § 38-08-06.4 and rules/orders of the NDIC .
31. Defendant continues to produce oil and gas from the Elk USA 11-17H Well and will continue to flare gas from such well in violation of the provisions of N.D.C.C. § 38-08-06.4.
32. Plaintiff is entitled to royalties for future gas flared from the Elk USA 11-17H Well.
33. The provisions of N.D.C.C. § 38-08-06.4 were enacted in part to mitigate the adverse health and environmental effects on the air of North Dakota caused by the flaring of gas from oil wells in the State of North Dakota and to prevent the destruction of the gas, a valuable natural resource of the State of North Dakota.
34. Plaintiff has suffered the loss of royalties due for gas flared from the Elk USA 11-17H Well in violation of subsections 1 and 2 of N.D.C.C. § 38-08-06.4 as set forth above.

Plaintiff will suffer the loss of royalties in the future for gas flared from the Elk USA 11-17H Well in violation of subsections 2 of N.D.C.C. § 38-08-06.4.

35. Gas produced from an oil well within the State of North Dakota is a use of the reservoir energy from the reservoir from which the gas is produced.
36. Gas from an oil well in North Dakota is improperly produced if produced in violation of the laws and regulations of the State of North Dakota, including the orders of the Industrial Commission.
37. Flaring of gas from an oil well in North Dakota, if improperly produced, constitutes waste as provided in N.D.C.C. § 38-08-02.
38. The waste of gas being produced from an oil well in North Dakota is prohibited as provided in N.D.C.C. § 38-08-03.
39. Pursuant to N.D.C.C. § 38-08-06, the Industrial Commission determines the amount of oil and gas that may be produced within a given district without waste as defined in N.D.C.C. § 38-08-02 and such amount is designed not to exceed the reasonable market demand for such oil and gas.
40. Defendant is required, pursuant to N.D.C.C. § 38-08-06.3, to provide an information statement that will allow the royalty owner to clearly identify the amount of oil or gas sold and the amount and purpose of each deduction made from the gross amount.
41. Defendant operates over 29 oil wells from which gas is produced in North Dakota in counties including Mountrail County. Those wells are or were operated with gas being flared in violation of N.D.C.C. § 38-08-06.4 and the Industrial Commission's orders on flaring within one year of first production.

42. On information and belief, Defendant does not pay royalties for all or a portion of the gas flared from the oil wells it operates.
43. The number of royalty owners, and royalty owners who are not paid royalties for gas flared in oil wells operated by Defendant in violation of N.D.C.C. § 38-08-06.4 and the Industrial Commission's orders on flaring within one year of first production exceeds one hundred.
44. Plaintiff brings this Complaint on her own behalf and as a representative of all similarly situated persons against Defendant for its failure to pay royalties on gas flared from oil wells operated by Defendant as further alleged in this Complaint. Plaintiff seeks for herself and as a representative of all similar situated persons declaratory relief as well as money damages as further alleged in this Complaint.
45. For purposes of this case, the term "Flared Gas" means the following: Natural gas and associated natural gas liquids entrained in such natural gas flared during the past six (6) years from each oil well in North Dakota operated by Defendant classified by the Industrial Division as a "Horizontal" or "Horizontal Re-entry" wellbore, for which at least one of the following conditions applies:
- a. gas flared from a well one year after first production without applying for and obtaining a flaring exemption as provided for under subsection 6 of N.D.C.C. § 38-08-06.4 (the "North Dakota Anti-Flaring Statute");
 - b. gas flared from a well within the first year of production under an order issued by the Industrial Commission limiting the maximum barrels of oil to be produced per day until the well is connected to a gathering system and processing plant, and

despite that order, Defendant reported to the NDIC that it exceeded that maximum oil production allowable during at least part of the first year; or

- c. gas flared within the first year of production even though Defendant reported the well was physically connected to a gathering system and processing plant.
46. Plaintiff is entitled to declaratory relief under N.D.C.C. § 32-23-01 and requests the Court enter an order declaring Defendant's creation of Flared Gas attributable to Plaintiff's interests as alleged in the Complaint without payment of royalties to be a violation of the North Dakota Anti-Flaring Statute.
47. Plaintiff is entitled to and therefore requests the Court, pursuant to N.D.C.C. § 32-23-01, grant declaratory relief that Defendant's creation of Flared Gas and future Flared Gas attributable to Plaintiff's interests as alleged in this Complaint without payment of royalties is illegal and requiring Defendant's payment of royalties for Flared Gas and future Flared Gas attributable to Plaintiff's interests as alleged in this Complaint.
48. Plaintiff seeks to certify the following Class: All persons, including individuals, estates, trusts, corporations, partnerships, and other business entities owning royalty interests in North Dakota:
- a. From which there has been Flared Gas; and
 - b. Defendant has not paid royalties for the Flared Gas.
- The Class definition excludes:
- i. Defendant; its officers, directors and employees; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant;

- ii. any federal, state, or municipal governmental entity, and any agencies or subdivisions thereof;
- iii. Indian tribes;
- iv. any person who has given a valid release concerning the claims asserted in this suit;
- v. individuals or entities that are indicated to be working interest owners by Defendant's business records; and
- vi. the district judge assigned to this case, his current spouse, and all persons (and their current spouses) within the third degree of relationship to such district court judge and his spouse.

49. The requirements of Rule 23(a) of the North Dakota Rules of Civil Procedure are met.

50. Class members are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiff, but it is clear that the number greatly exceeds the number to make joinder possible or practicable.

51. Common questions of law and fact predominate over the questions affecting only individual class members. Some of the common legal and factual questions include:

- a. Whether Defendant flared natural gas in violation of the North Dakota Anti-Flaring Statute;
- b. Whether Defendant flared gas in the first year of production as permitted under rules of the Industrial Commission;
- c. Whether Defendant's failure to comply with maximum oil production limitations set forth in orders of the Industrial Commission negated Defendant's right to flare gas during the first year of production without paying royalties on the Flared Gas;

- d. Whether a well is in fact “connected” to a gas gathering and processing facility for purposes of the North Dakota Anti-Flaring Statute when gas does not enter a gathering system and is instead flared at or near the well;
 - e. Whether Defendant must pay the Class royalties on Flared Gas;
 - f. Whether the Class is entitled to declaratory relief adjudicating that Defendant is required to pay royalties on the value of Flared Gas and future Flared Gas;
 - g. Whether Defendant is guilty of conversion of Flared Gas;
 - h. Whether Defendant has committed waste of North Dakota’s valuable natural resources; and
 - i. Whether Defendant should cease flaring gas flared in violation of North Dakota law.
52. The class members have been damaged by Defendant’s misconduct. The class members are within the class of persons entitled to be paid royalties for violations of subsections 1 and 2 of N.D.C.C. § 38-08-06.4, and they are entitled to recover royalties on the value of the Flared Gas.
53. Plaintiff’s claims are typical of the claims of the other class members. Plaintiff is a royalty owner in a well with Flared Gas operated by Defendant, and Plaintiff has not been paid some or all of the royalties on that Flared Gas despite Defendant’s obligation to pay such royalties.
54. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is familiar with the basic facts underlying the class members’ claims. Plaintiff’s interests do not conflict with the interests of the other class members that she seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intends to and will prosecute this action vigorously.

55. The class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and the class members. Individual litigation of the legal and factual issues raised by the conduct of Defendant would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale and comprehensive supervision by a single court.
56. Defendant has acted or refused to act on grounds that apply generally to the class, so that final declaratory relief is appropriate respecting the class as a whole. Specifically, Plaintiff seeks an order declaring Defendant's creation of Flared Gas attributable to Class's interests without payment of royalties to be a violation of North Dakota Anti-Flaring Statute; declaring that Defendant may not create future Flared Gas attributable to Class's interests without payment of royalties and requiring Defendant to pay royalties for Flared Gas attributable to Class's interests.

**FIRST CAUSE OF ACTION: ACTION FOR ROYALTIES ATTRIBUTABLE TO
FLARED GAS IN VIOLATION OF N.D.C.C. § 38-08-06.4.**

57. For her First Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
58. Defendant operated the Elk USA 11-17H Well so that 34,876 Mcfs of gas was flared after the one-year period from the date of first production from the well.
59. Defendant owes Plaintiff for royalties attributable to gas flared from the Elk USA 11-17H Well for those periods following one year after the day of first production from the well.
60. Defendant operated the Elk USA 11-17H Well within one year of first production so that 54,745 Mcfs of gas were flared during the time periods alleged above in violation of the

applicable N.D.I.C. Orders.

61. Defendant owes Plaintiff for royalties attributable to gas flared from the Elk USA 11-17H

Well for time periods alleged above, including for all gas flared in the first year.

SECOND CAUSE OF ACTION: DECLARATORY RELIEF AGAINST DEFENDANT FOR PAST AND FUTURE FLARED GAS FROM THE ELK USA 11-17H WELL.

62. For her Second Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

63. Plaintiff believes and therefore alleges that Defendant has flared gas and likely will continue to flare gas from the Elk USA 11-17H Well without paying required royalties on the value of the Flared Gas, as required under subsection 4 of N.D.C.C. § 38-08-06.4.

64. Plaintiff is entitled to declaratory relief adjudicating that Defendant is obligated to pay royalties on the value of all Flared Gas and future Flared Gas from the Elk USA 11-17H Well flared in violation of section 4 of N.D.C.C. § 38-08-06.4.

65. Plaintiff is entitled to the declaratory relief as permitted under N.D.C.C. ch. 32-23-01.

THIRD CAUSE OF ACTION: CONVERSION OF GAS FLARED WITHOUT PAYMENT OF ROYALTIES.

66. For her Third Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

67. Plaintiff is entitled to royalties for gas flared from the Elk USA 11-17H Well during the first year of production as alleged above and gas flared thereafter through the present.

68. Defendant has not paid and refuses to pay royalties to Plaintiff for gas flared from the Elk USA 11-17H Well during the first year of production and for gas flared thereafter through the present.

69. Defendant's actions constitute a tortious detention of personal property due to Plaintiff in defiance of the rights of Plaintiff.

70. Plaintiff is entitled to the highest value of the gas flared for the time during which royalties were not paid as well as fair compensation for the time and money Plaintiff has expended and will expend to obtain the compensation due to Plaintiff.

FOURTH CAUSE OF ACTION: COMMON LAW WASTE OF GAS FLARED WITHOUT PAYMENT OF ROYALTIES.

71. For her Fourth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

72. The flaring of gas from the Elk USA 11-17H Well as described in the allegations of the *Background* of the Complaint constitutes an unreasonable or improper use, abuse, mismanagement, or omission of duty by Defendant touching Plaintiff's rights in the mineral estate from which production from the Elk USA 11-17H Well is taken ("Common Law Waste").

73. The laws of North Dakota require Defendant to use and manage production of gas from oil wells in North Dakota in compliance with North Dakota laws and the Industrial Commission's orders, including those set forth in the allegations of the *Background* of the Complaint.

74. Defendant's flaring of gas from the Elk USA 11-17H Well as previously alleged in this Complaint constitutes Common Law Waste for which Plaintiff is entitled to compensation, including that provided in N.D.C.C. § 32-17-22.

FIFTH CAUSE OF ACTION: CLASS CLAIMS FOR ROYALTIES ATTRIBUTABLE TO FLARED GAS IN VIOLATION OF N.D.C.C. § 38-08-06.4.

75. For her Fifth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

76. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) of the North Dakota Rules of Civil Procedure for the purposes of seeking remedies for the Proposed Class under this Fifth Cause of Action.
77. Defendant has operated or is operating oil wells in which Flared Gas occurs.
78. Defendant owes Proposed Class for royalties attributable to Flared Gas.
79. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Fifth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Fifth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.
80. The adjudication of the Proposed Class's claims under this Fifth Cause of Action will be fairly and efficiently accomplished as:
- a. the members of the Proposed Class have a common interest in obtaining royalties for Flared Gas;
 - b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant.
 - c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- d. the common questions of law or fact predominate over any questions affecting only individual members;
- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Fifth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of a class action would not pose unusual difficulties; and
- h. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

SIXTH CAUSE OF ACTION: CLASS CLAIMS FOR DECLARATORY RELIEF FOR PAST AND FUTURE FLARED GAS.

81. For her Sixth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
82. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking declaratory relief for the Proposed Class under this Sixth Cause of Action.
83. Plaintiff believes and therefore alleges that Defendant has flared and likely will continue to flare gas from some or all of the oil wells it operates in North Dakota, resulting in further Flared Gas (“Future Flared Gas”) and damage to the Class.
84. Plaintiff seeks and is entitled to declaratory relief adjudicating that Defendant is obligated to pay the Class royalties for past Flared Gas and Future Flared Gas if Future Flared Gas is produced.
85. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Sixth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will

fairly and efficiently provide for the adjudication of the Proposed Class's claims for declaratory relief under this Sixth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

86. The adjudication of the Proposed Class's claims under this Sixth Cause of Action will be fairly and efficiently accomplished as:

- a. the members of the Proposed Class have a common interest in requiring Defendant to pay royalties for the Flared Gas and Future Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
- c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. other means of adjudicating the claims and defenses are impracticable or inefficient;
- e. the claims under this Sixth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- f. the management of a class action would not pose unusual difficulties; and
- g. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

**SEVENTH CAUSE OF ACTION: CLASS CLAIMS
FOR CONVERSION OF FLARED GAS.**

87. For her Seventh Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
88. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of her claim for money damages for the Proposed Class under this Seventh Cause of Action.
89. The Proposed Class is entitled to compensation for Defendant's conversion of the Proposed Class's Flared Gas.
90. Defendant has not paid and refuses to pay royalties to the Proposed Class for Flared Gas.
91. Defendants' actions towards the Proposed Class constitute a tortious detention of personal property due to the Proposed Class in defiance of the rights of the Proposed Class.
92. The Proposed Class is entitled to the highest value of the Flared Gas as well as fair compensation for the time and money Plaintiff has expended and will expend to obtain the compensation due to the Proposed Class.
93. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.
94. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Seventh Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Seventh Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

95. The adjudication of the Proposed Class's claims under this Seventh Cause of Action will be fairly and efficiently accomplished as:

- a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's conversion of the Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
- c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. the common questions of law or fact predominate over any questions affecting only individual members;
- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Seventh Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of a class action would not pose unusual difficulties; and
- h. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

**EIGHTH CAUSE OF ACTION: CLASS CLAIMS
FOR COMMON LAW WASTE OF FLARED GAS.**

96. For her Eighth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
97. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of her claim for money damages for the Proposed Class under this Eighth Cause of Action.
98. The Proposed Class is entitled to compensation for Defendant's Common Law Waste of the Proposed Class's Flared Gas.
99. The flaring of Flared Gas constitutes an unreasonable or improper use, abuse, mismanagement, or omission of duty by Defendant touching the Proposed Class's rights in the mineral estate from which production of the Flared Gas occurs.
100. The laws of North Dakota require Defendant to use and manage production of gas from oil wells in North Dakota in compliance with North Dakota laws and the Industrial Commission's orders, including those set forth in the allegations of the Background of the Complaint.
101. Defendant's flaring of the Flared Gas constitutes Common Law Waste for which the Proposed Class is entitled to compensation, including that provided in N.D.C.C. § 32-17-22.
102. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Eighth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Eighth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

103. The adjudication of the Proposed Class's claims under this Eighth Cause of Action will be fairly and efficiently accomplished as:

- a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's Common Law Waste of the Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
- c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. the common questions of law or fact predominate over any questions affecting only individual members;
- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Eighth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of a class action would not pose unusual difficulties; and
- h. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

- A. Ordering Defendant to pay damages to Plaintiff in an amount to be proven at trial; and,
- B. Declaring that Defendant's production and flaring of gas and future production and flaring of gas is illegal unless Defendant pays royalties to Plaintiff for the value of such Flared Gas, or otherwise complies with N.D.C.C. § 38-08-06.4;
- C. Ordering Defendant to pay Plaintiff's reasonable attorneys' fees as allowed by law, and Plaintiff's costs and disbursements; and,
- D. Ordering certification of the Proposed Class pursuant to Rule 23(b) of the North Dakota Rules of Civil Procedure;
- E. Ordering Defendant to pay damages to the Proposed Class in an amount to be proven at trial; and,
- F. Declaring that Defendant's production and flaring of gas and future production and flaring of gas is illegal unless Defendant pays royalties to the Proposed Class for the value of such Flared Gas, or otherwise complies with N.D.C.C. § 38-08-06.4; and,
- G. Ordering Defendant to pay reasonable attorneys' fees as allowed by law, as well as costs and disbursements in bringing the Proposed Class's Claims; and,
- H. For such other relief that the court deems appropriate.

Dated this 16th day of October, 2013.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury of nine on all issues triable by a jury.

Dated this 16th day of October, 2013.

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