

- a. the Calhoun 1-3H well, located in the NWNE of Section 3, Township 149 North, Range 98 West, McKenzie County, North Dakota having API number 33-053-03513-00-00 (“Calhoun 1-3H Well”);
 - b. the Barney 1-29H Well, located in the NWNE of Section 29, Township 155 North, Range 98 West, Williams County, North Dakota having API number 33-105-01921-00-00 (“Barney 1-29H Well”);
 - c. the Lila 1-8H Well, located in the SWSE of Section 8, Township 155 South, Range 99 West, Williams County, North Dakota having API number 33-105-01937-00-00 (“Lila 1-8H Well”);
 - d. the Mathewson 1-30H Well, located in the NENW of Section 30, Township 157 North, Range 98 East, Williams County, North Dakota having API number 33-105-02466-00-00 (“Mathewson 1-30H Well”);
 - e. the Sodbuster 155-99-6-7-1H Well, located in the NWNE of Section 6, Township 155 North, Range 99 West, Williams County, North Dakota having API number 33-105-02261-00-00 (“Sodbuster 155-99-6-7-1H Well”).
6. The Kummers own mineral interests from which oil and gas are being produced from the Calhoun 1-3H Well and are entitled to royalties from production from the Calhoun 1-3H Well.
 7. The Lawyers-Clore own mineral interests from which oil and gas are being produced from the Barney 1-29H Well; the Lila 1-8H Well; the Mathewson 1-30H Well and the Sodbuster 155-99-6-7-1H Well and are entitled to royalties from production from those wells operated by Defendant.

JURISDICTION AND VENUE

8. The Kummings filed this case on October 16, 2013 in state court in North Dakota where the court had subject matter jurisdiction over the case and personal jurisdiction over Defendant. On November 15, 2013, Defendant removed the case to this Court under 28 U.S.C. Section 1332(d), the Class Action Fairness Act (“CAFA”).
9. Venue is proper in this District because Plaintiffs’ claims for relief arose in this District.

BACKGROUND

A. Continental Well in which the Kummings are mineral owners

10. The Calhoun 1-3H Well was spudded on May 8, 2011. It first began to produce hydrocarbons in August of 2011.
11. Defendant pays or should pay royalties to the Kummings from the Calhoun 1-3H Well.
12. The oil and gas production from the Calhoun 1-3H Well is from the Pembroke-Bakken Pool.
13. The Calhoun 1-3H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Calhoun 1-3H Well has produced and sold oil, and produced 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
Aug-11	14	9668	9158	17435	0	17435
Sep-11	30	6124	6135	9157	0	9157
Oct-11	31	6327	6285	9315	0	9315
Nov-11	30	10720	10761	14281	2865	11416
Dec-11	30	13401	13050	15365	3815	11550
Jan-12	30	11016	11425	17400	0	17400
Feb-12	29	16768	17033	17400	0	17400
Mar-12	31	11545	11310	19180	9880	9300
Apr-12	30	6476	6672	8726	8726	0
May-12	31	10469	10367	21807	17157	4650
Jun-12	30	7562	7662	17796	16296	1500
Jul-12	31	6833	6314	11316	11216	100
Aug-12	31	5581	5836	8841	8841	0
Sep-12	30	6591	6602	15994	13844	2150
Oct-12	31	6132	5991	20649	20249	400
Nov-12	24	3786	3978	5918	5018	900
Dec-12	31	5260	5245	8731	8731	0
Jan-13	31	5093	5124	10059	10059	0
Feb-13	28	4366	4203	9184	9184	0
Mar-13	31	4578	4858	10593	10593	0
Apr-13	25	2676	2491	4283	4282	1
May-13	31	4728	4440	9004	8669	335
Jun-13	30	4221	4619	10567	10567	0
Jul-13	31	3771	3789	10079	10079	0
Aug-13	25	2851	3108	7439	7439	0
Sept-13	12	1876	1644	2541	1871	670
Oct-13	25	2909	2878	4660	4307	353

B. Continental Wells in which the Lawyers-Clore are mineral owners

14. The Barney 1-29H Well was spudded on December 6, 2010. It first began to produce hydrocarbons in March of 2011.
15. Defendant pays or should pay royalties to the Lawyers-Clore from the Barney 1-29H Well.

16. The oil and gas production from the Barney 1-29H Well is from the Brooklyn-Bakken Pool.

17. The Barney 1-29H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Barney 1-29H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant to 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
Mar-11	18	9665	9003	10120	0	10120
Apr-11	30	8140	7954	11588	0	11588
May-11	24	10730	10897	12728	5977	6751
Jun-11	26	12414	12716	16191	7237	8954
Jul-11	31	12453	12336	15877	11212	4665
Aug-11	30	8388	8337	9918	8992	926
Sep-11	30	10680	10568	13006	13006	0
Oct-11	31	10447	10399	13101	11334	1767
Nov-11	26	6851	7164	10322	9912	410
Dec-11	31	10292	9993	15469	15239	230
Jan-12	31	9082	9346	16549	14949	1600
Feb-12	29	6768	6773	18619	18619	0
Mar-12	19	3125	3370	4179	2179	2000
Apr-12	4	1061	815	1794	994	800
May-12	26	5935	5492	7523	7273	250
Jun-12	30	6639	7036	10677	10677	0
Jul-12	31	5684	5726	10834	10582	252
Aug-12	31	5433	5538	11429	11429	0
Sep-12	30	4985	5062	10612	10612	0
Oct-12	31	4735	4702	11382	11182	200
Nov-12	30	4643	4562	10142	10142	0
Dec-12	31	4008	4058	9366	9366	0
Jan-13	31	3042	3283	4916	4913	3
Feb-13	5	102	0	0	0	0
Mar-13	0	0	0	0	0	0
Apr-13	0	0	0	0	0	0
May-13	0	0	0	0	0	0

Jun-13	24	2733	2823	2350	960	1390
Jul-13	29	3769	3691	4597	4189	408
Aug-13	25	2944	3015	3292	3056	236
Sep-13	9	1123	918	1194	1147	47
Oct-13	31	6054	5804	7505	7275	230
Nov-13	30	6115	6363	7465	7435	30

18. The Lila 1-8H Well was spudded on June 30, 2011. It first began to produce hydrocarbons in June of 2012.

19. Defendant pays or should pay royalties to the Lawyers-Clore from the Lila 1-8H Well.

20. The oil and gas production from the Lila 1-8H Well is from the Epping-Bakken Pool.

21. The Lila 1-8H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Lila 1-8H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant to 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
Jun-12	23	15766	15235	16953	12966	3987
Jul-12	31	16421	16570	13857	12995	862
Aug-12	31	12482	12366	11116	10836	280
Sep-12	30	9412	9259	7946	7946	0
Oct-12	31	7248	7472	2356	1881	475
Nov-12	30	8155	8156	5710	5460	250
Dec-12	31	7387	7391	5000	0	5000
Jan-13	31	6033	6248	6100	0	6100
Feb-13	19	4418	4498	2243	21	2222
Mar-13	20	6033	5791	4807	3597	1210
Apr-13	29	5999	6035	6207	5812	395

May-13	31	3969	3932	3839	3524	315
Jun-13	30	3601	3637	3520	3070	450
Jul-13	31	3747	3797	3742	3442	300
Aug-13	31	3976	3989	3320	3297	23
Sep-13	30	3466	3545	3113	3107	6
Oct-13	31	3659	3587	3038	3012	26

22. The Mathewson 1-30H Well was spudded on January 8, 2012. It first began to produce hydrocarbons in March of 2012.

23. Defendant pays or should pay royalties to the Lawyers-Clore from the Mathewson 1-30H Well.

24. The oil and gas production from the Mathewson 1-30H Well is from the Oliver-Bakken Pool.

25. The Mathewson 1-30H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Mathewson 1-30H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant to 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
Mar-12	1	1042	655	912	0	912
Apr-12	25	13964	13929	12203	0	12203
May-12	31	9948	9666	8077	0	8077
Jun-12	30	7276	7608	5869	0	5869
Jul-12	31	6442	6421	5612	0	5612
Aug-12	30	4974	5243	4244	0	4244
Sep-12	8	2467	2257	1777	1777	0
Oct-12	30	7119	6971	6696	5727	969
Nov-12	14	3085	3192	2407	2257	150
Dec-12	31	4372	4597	3325	3154	171
Jan-13	31	3959	3789	3257	3257	0
Feb-13	28	3408	3506	2856	2820	36
Mar-13	17	1909	2078	1837	1673	164

Apr-13	10	894	872	711	711	0
May-13	31	4199	3966	3727	3248	479
Jun-13	30	3262	3377	2965	2922	43
Jul-13	11	807	804	729	56	673
Aug-13	31	3454	3587	2766	0	2766
Sep-13	30	3481	3194	2941	2014	927
Oct-13	28	2626	2811	2054	1662	392

26. The Sodbuster 155-99-6-7-1H Well was spudded on August 5, 2011. It first began to produce hydrocarbons in April of 2012.

27. Defendant pays or should pay royalties to the Lawyers-Clore from the Sodbuster 155-99-6-7-1H Well.

28. The oil and gas production from the Sodbuster 155-99-6-7-1H Well is from the Epping-Bakken Pool.

29. The Sodbuster 155-99-6-7-1H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Sodbuster 155-99-6-7-1H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant to 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
Apr-12	12	8848	8161	8673	550	8123
May-12	31	15956	16137	16225	3160	13065
Jun-12	27	10191	10213	9830	6940	2890
Jul-12	31	9141	9258	6869	5629	1240
Aug-12	31	7769	7767	5241	2129	3112
Sep-12	30	8139	8173	7838	1126	6712
Oct-12	31	8017	7958	8060	4233	3827
Nov-12	30	7025	7050	5483	4414	1069
Dec-12	30	6033	6117	4054	0	4054
Jan-13	21	2606	2814	2950	0	2950
Feb-13	0	0	0	0	0	0

Mar-13	24	6627	6552	5244	1811	3433
Apr-13	29	5976	6033	5282	2584	2698
May-13	31	5215	5038	5377	4265	1112
Jun-13	30	3616	3593	3441	3141	300
Jul-13	31	5568	5447	5350	4686	664
Aug-13	31	4592	4818	4603	2466	2137
Sep-13	30	5098	4856	4834	2978	1856
Oct-13	31	4616	4572	4908	1939	2969

30. Gas flared from wells such as the Calhoun 1-3H Well; the Barney 1-29H Well; the Lila 1-8H Well; the Mathewson 1-30H Well and the Sodbuster 155-99-6-7-1H 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.

31. Based on current reported production information, the Calhoun 1-3H Well flared 4,809 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
Sep-12	2150
Oct-12	400

Nov-12	900
May-13	335
Sept-13	670
Oct-13	353

32. Based on current reported production information, the Barney 1-29H Well flared 4,942 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
Mar-12	1096
Apr-12	800
May-12	250
Jun-12	0
Jul-12	252
Aug-12	0
Sep-12	0
Oct-12	200
Nov-12	0
Dec-12	0
Jan-13	3
Feb-13	0
Mar-13	0
Apr-13	0
May-13	0
Jun-13	1390
Jul-13	408
Aug-13	236
Sep-13	47
Oct-13	230
Nov-13	30

33. Based on current reported production information, the Lila 1-8H Well flared 685 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
Jun-13	330
Jul-13	300
Aug-13	23
Sep-13	6
Oct-13	26

34. Based on current reported production information, the Mathewson 1-30H Well flared 5,285 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
Mar-13	5
Apr-13	0
May-13	479
Jun-13	43
Jul-13	673
Aug-13	2766
Sep-13	927
Oct-13	392

35. Based on current reported production information, the Sodbuster 155-99-6-7-1H Well flared 10,207 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
Apr-13	1169
May-13	1112
Jun-13	300
Jul-13	664

Aug-13	2137
Sep-13	1856
Oct-13	2969

36. Any permitted flaring of gas from the Calhoun 1-3H Well; the Barney 1-29H Well; the Lila 1-8H Well; the Mathewson 1-30H Well and the Sodbuster 155-99-6-7-1H 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.

37. 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.

38. 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 Calhoun 1-3H Well; the Barney 1-29H Well; the Lila 1-8H Well; the Mathewson 1-30H Well and the Sodbuster 155-99-6-7-1H Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

39. 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.

40. 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.

41. Defendant has not applied for nor obtained flaring exemptions for the Calhoun 1-3H Well; the Barney 1-29H Well; the Lila 1-8H Well; the Mathewson 1-30H Well and the Sodbuster 155-99-6-7-1H Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above. As a result, Defendant owes Plaintiffs royalties on the value of the gas flared in violation of Subsection 4 of N.D.C.C. § 38-08-06.4.

42. Plaintiffs are entitled to sue for and recover royalties under the provisions of N.D.C.C. § 38-08-06.4 for flared gas from the Wells for the production months Plaintiffs allege violated subsection 2 as set forth above.

43. Defendant has not paid royalties for the 4,809 Mcfs of gas produced and flared from the Calhoun 1-3H Well after the first year of production; for the 4,492 Mcfs of gas produced and flared from the Barney 1-29H Well after the first year of production; for the 685 Mcfs of gas produced and flared from the Lila 1-8H Well after the first year of production ; for the 5,285 Mcfs of gas produced and flared from the Mathewson 1-30H Well after the first year of production; for the 10,207 Mcfs flared from the Sodbuster 155-99-6-7-1H Well after the first year of production.

44. Defendant continues to produce oil and gas from the Wells and will continue to flare gas from such well in violation of the provisions of N.D.C.C. § 38-08-06.4.

45. Plaintiffs are entitled to royalties for future gas flared from the Wells.
46. 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.
47. Defendant's violation of N.D.C.C. § 38-08-06.4 injures the public by ignoring the State's effort to mitigate the adverse health and environmental effects of flaring gas.
48. Apart from the injury to the public in general, Plaintiffs' injuries include an impairment of Plaintiffs' mineral interest and results in the loss of the royalties that are to be paid to Plaintiffs pursuant to N.D.C.C. § 38-08-06.4. Plaintiffs are aggrieved as provided in N.D.C.C. § 32-40-03.
49. Plaintiffs have suffered the loss of royalties due for gas flared from the Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.
50. Plaintiffs will suffer the loss of royalties in the future for gas flared from the Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4.
51. 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.
52. 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.
53. 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.

54. 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.
55. 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.
56. 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.
57. Gas flared from wells such as the Calhoun 1-3H Well and the other Wells 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 avoid paying royalties on the gas under the statute on those volumes of gas flared during the first year of production out of compliance with applicable rules and orders of the Commission.

A. Continental Well in which the Kummings are mineral owners.

58. The Industrial Commission has provided the following rules concerning the flaring of gas in the Calhoun 1-3H Well within the first year of production:

a. NDIC Order No. 16490 in Case No. 14215 dated April 20, 2011(“Order 16490”).

b. As stated in Paragraphs 1 and 2, page 2 of Order 16490, the Industrial Commission has ordered as follows:

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

(2) After August 31, 2011, all wells in the Pembroke-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. NDIC Order No. 17884 in Case No. 15638 dated February 2, 2012 (“Order 17884”).

d. As stated in Paragraphs 1 and 2, page 2 of Order 17884, the Industrial Commission has ordered as follows:

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

(2) After July 31, 2011, all wells in the Pembroke-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.

59. Under Order 16490, the Calhoun 1-3H Well could be produced at the maximum efficient rate for the first 60 days of production under Paragraph 2 of Order 16490. After that, the well could produce 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. During October 2011, a time when no further administrative orders were in

effect, Defendant reported to the NDIC that it exceeded the applicable daily average limit of 200 barrels of oil by more than the permitted amount, and also reported to the NDIC that it flared all gas produced from the Well during that time Order 16490 was in effect.

60. Upon information and belief, the Calhoun 1-3H Well was not connected to a gas gathering and processing facility until November of 2011. For the last 13 days of the month of October 2011 and, upon information and belief, in November before connection, following the expiration of the 60-day period set forth in Paragraph 2 of Order 16490 during which the Calhoun 1-3H Well could be produced at maximum efficient rate but before it was connected to a gathering and processing facility, Defendant reported the Calhoun 1-3H Well produced gas that was flared. Upon information and belief, the flaring of approximately 15,622 Mcfs of gas during that period of October and November 2011 was in violation of Paragraph 2 of Order 16490.

61. Defendant reported to the NDIC that the Calhoun 1-3H Well produced 109,223 Mcfs of gas that were flared during the first year of production. The flaring of approximately 15,622 Mcfs of gas during the 13-day period in October and, upon information and belief, in November before connection, was not in compliance with or as provided by Paragraph 2 of Order 16490. 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.

B. Continental Wells in which the Lawyer-Clore are mineral owners.

62. The Industrial Commission has provided the following rules concerning the flaring of gas from the the Lila 1-8H Well and the Sodbuster 155-99-6-7-1H Well, both of which are in the Epping-Bakken Pool within the first year of production:

a. NDIC Order No. 15928 in Case No. 13650 dated January 4, 2011 and (“Order 15928”).

b. As stated in Paragraph 49, page 10 of Order 15928, the Industrial Commission has ordered as follows:

(49) All wells in the Epping-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.

c. NDIC Order No. 16280 in Case No. 14057 dated February 1, 2011 and (“Order 16280”).

d. As stated in Paragraph 26, page 6 of Order 16280, the Industrial Commission has ordered as follows:

(26) All wells in the Epping-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. NDIC Order No. 16817 in Case No. 14540 dated May 25, 2011 and (“Order 16817”).

f. As stated in Paragraph 26, page 5 of Order 16817, the Industrial Commission has ordered as follows:

(26) All wells in the Epping-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.

g. NDIC Order No. 18997 in Case No. 16628 dated March 14, 2012 and (“Order 18997”).

h. As stated in Paragraph 31, page 6 of Order 18997, the Industrial Commission has ordered as follows:

(31) All wells in the Epping-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. NDIC Order No. 20605 in Case No. 18336 dated September 27, 2013 and (“Order 20605”).

j. As stated in Paragraph 36, page 7 of Order 20605, the Industrial Commission has ordered as follows:

(36) All wells in the Epping-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.

- k. NDIC Order No. 20951 in Case No. 18649 dated September 27, 2013 and (“Order 20951”).
- l. As stated in Paragraph 36, page 7 of Order 20951, the Industrial Commission has ordered as follows:

(36) All wells in the Epping-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.

63. The Industrial Commission has provided the following rules concerning the flaring of gas in the the Barney 1-29H Well, which is in the Brooklyn-Bakken Pool, within the first year of production:

- a. NDIC Order No. 14705 in Case No. 12449 dated July 19, 2010 and (“Order 14705”).
- b. As stated in Paragraph 22, page 6 of Order 14705, the Industrial Commission has ordered as follows:

(22) All wells in the Brooklyn-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.

- c. NDIC Order No. 16888 in Case No. 14610 dated October 7, 2011 and (“Order 16888”).

- d. As stated in Paragraph 20, page 6 of Order 16888, the Industrial Commission has ordered as follows:

(20) All wells in the Brooklyn-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. NDIC Order No. 19464 in Case No. 17195 dated June 11, 2012 and (“Order 19464”).

- f. As stated in Paragraph 42, page 9 of Order 19464, the Industrial Commission has ordered as follows:

(42) All wells in the Brooklyn-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.

g. NDIC Order No. 19828 in Case No. 17558 dated June 11, 2012 and (“Order 19828”).

h. As stated in Paragraph 43, page 13 of Order 19828, the Industrial Commission has ordered as follows:

(43) All wells in the Brooklyn-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.

64. Under Order 14705, the Barney 1-29H Well could be produced at the maximum efficient rate for the first 60 days of production under Paragraph 2 of Order 14705. After that, the well could produce 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. During May 2011, a time when no further administrative orders were in effect, Defendant reported to the NDIC that it exceeded the applicable daily average limit of 200 barrels of oil by more than the permitted amount, and also reported to the NDIC that it flared gas produced from the Well during that time Order 14705 was in effect.

65. Upon information and belief, the Barney 1-29H Well was not connected to a gas gathering and processing facility until sometime in May of 2011. For the a period of the month of May 2011 before connection, following the expiration of the 60-day period set forth in Paragraph 2 of Order 14705 during which the Barney 1-29H Well could be produced at maximum efficient rate but before it was connected to a gathering and processing facility, Defendant reported the Barney 1-29H Well produced gas that was flared. Upon information and belief, the flaring of approximately 6,751 Mcfs of gas during that period of May 2011 was in violation of Paragraph 2 of Order 14705.

66. Defendant reported to the NDIC that the Barney 1-29H Well produced 47,915 Mcfs of gas that were flared during the first year of production. The flaring of approximately 6,751 Mcfs of gas during May 2011 before connection, was not in compliance with or as provided by Paragraph 2 of Order 14705. 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

67. The Industrial Commission has provided the following rules concerning the flaring of gas in the Mathewson 1-30H Well, which is in the Oliver-Bakken Pool, within the first year of production:

- a. NDIC Order No. 18549 in Case No. 16284 dated March 13, 2012 and (“Order 18549”).
- b. As stated in Paragraphs 1 and 2, page 2 of Order 18549, the Industrial Commission has ordered as follows:

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

- (2) After December 31, 2012, all wells in the Oliver-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. NDIC Order No. 19783 in Case No. 17513 dated September 18, 2012 and (“Order 19783”).
- d. As stated in Paragraphs 42 and 43, page 8 of Order 19783, the Industrial Commission has ordered as follows:

(42) All wells completed in the Oliver-Bakken Pool shall be allowed to produce at a maximum efficient rate through December 31, 2012.

(43) After December 31, 2012, all wells in the Oliver-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. NDIC Order No. 21540 in Case No. 19237 dated January 25, 2013 and (“Order 21540”).
- f. As stated in Paragraphs 1 and 2, page 2 of Order 21540, the Industrial Commission has ordered as follows:

(1) All current wells and all wells hereafter completed in the Oliver-Bakken Pool shall be allowed to produce at a maximum efficient rate through June 30, 2013.

(2) After June 30, 2013, all wells in the Oliver-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. NDIC Order No. 21983 in Case No. 19677 dated April 19, 2013 and (“Order 21983”).
- h. As stated in Paragraphs 45 and 46, page 10 of Order 21983, the Industrial Commission has ordered as follows:

(45) All wells completed in the Oliver-Bakken Pool shall be allowed to produce at a maximum efficient rate through June 30, 2013.

(46) After June 30, 2013, all wells in the Oliver-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

68. Defendant operates at least 820 oil wells from which gas is produced in North Dakota in counties including McKenzie County and Williams 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.
69. On information and belief, Defendant does not pay royalties for all or a portion of the gas flared from the oil wells it operates.
70. 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.
71. Plaintiffs bring this Complaint on their own behalf and as representatives 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. Plaintiffs seek for themselves and as representatives of all similarly situated persons declaratory relief as well as money damages as further alleged in this Complaint.
72. For purposes of this case, the term "Flared Gas" means the following: Natural gas and associated natural gas liquids 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 not covered by a flaring exemption applied for and obtained from the Commission under subsection 6 of N.D.C.C. § 38-08-06.4 (the “North Dakota Anti-Flaring Statute”); or
- b. gas flared from a well within the first year of production either (i) before the NDIC issued rules permitting flaring or (ii) after the NDIC issued rules 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 those rules, Defendant reported to the NDIC that it exceeded that maximum oil production allowable during at least part of the first year.

73. Plaintiffs seek 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.

74. The requirements of Rule 23(a) of the Federal Rules of Civil Procedure are met.

75. Class members are so numerous that their individual joinder is impracticable.

The precise number of Class members is unknown to Plaintiffs, but it is clear that the number greatly exceeds the number to make joinder possible or practicable.

76. Common questions of law and fact exist such that a resolution of those questions will drive a common remedy for the common injury suffered by the Class. These common questions of law and fact also 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 must pay the Class royalties on Flared Gas;
- c. 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;
- d. Whether Defendant is guilty of conversion of Flared Gas;
- e. Whether Defendant has committed waste of North Dakota's valuable natural resources; and

f. Whether Defendant should cease flaring gas flared in violation of North Dakota law.

77. 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 subsection 2 of N.D.C.C. § 38-08-06.4, and they are entitled to recover royalties on the value of the Flared Gas.
78. Plaintiffs' claims are typical of the claims of the other class members. Plaintiffs are royalty owners in wells with Flared Gas operated by Defendant, and Plaintiffs have not been paid royalties on that Flared Gas despite Defendant's obligation to pay such royalties.
79. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are familiar with the basic facts underlying the class members' claims. Plaintiffs' interests do not conflict with the interests of the other class members that they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to and will prosecute this action vigorously.
80. The class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs 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.
81. 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, Plaintiffs seek an order declaring Defendant's creation of Flared Gas attributable to Class's interests without payment of royalties to be a violation of the North Dakota Anti-Flaring Statute; declaring that Defendant may not create future Flared Gas attributable to Class's interests without payment of royalties and affirmatively hereafter 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.**

82. For their First Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
83. Defendant operated the Calhoun 1-3H Well so that at least 4,809 Mcfs of gas was flared after the one-year period from the date of first production from the well through October 2013.
84. Defendant operated the Barney 1-29H Well so that at least 5,816 Mcfs of gas was flared after the one-year period from the date of first production from the well through November 2013.
85. Defendant operated the Lila 1-8H Well so that at least 4,942 Mcfs of gas was flared after the one-year period from the date of first production from the well through October 2013.
86. Defendant operated the Mathewson 1-30H Well so that at least 5,285 Mcfs of gas was flared after the one-year period from the date of first production from the well through October 2013.
87. Defendant operated the Sodbuster 155-99-6-7-1H Well so that at least 10,207 Mcfs of gas was flared after the one-year period from the date of first production

from the well through October 2013.

88. Defendant owes the Kummings and the Lawyers-Clore for royalties attributable to gas flared from their respective Wells for those periods following one year after the day of first production from each well.

89. Defendant operated the Calhoun 1-3H Well and the Barney 1-29H Well within one year of first production so that gas was flared during the time periods alleged above in violation of N.D.C.C. § 38-08-06.4 and the Orders cited above.

90. Defendant owes the Kummings and the Lawyers-Clore for royalties attributable to gas flared illegally from the Wells during the first year of production.

**SECOND CAUSE OF ACTION: DECLARATORY RELIEF AGAINST
DEFENDANT FOR PAST AND FUTURE FLARED GAS**

91. For their Second Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

92. The Plaintiffs believe and therefore allege that Defendant has flared gas and likely will continue to flare gas from the Wells 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.

93. Plaintiffs are 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 Wells flared in violation of section 4 of N.D.C.C. § 38-08-06.4.

94. Plaintiffs are 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.

95. For their Third Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
96. Plaintiffs are entitled to royalties for gas flared from the Wells during the first year of production as alleged above, and royalties for gas flared thereafter through the present for the Wells.
97. Defendant has not paid and refuses to pay royalties to Plaintiffs for gas flared from the Wells during the first year of production and royalties for gas flared thereafter through the present for the Wells.
98. Defendant's actions constitute a tortious detention of personal property due to the Plaintiffs in defiance of the rights of Plaintiffs.
99. Plaintiffs are 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 Plaintiffs have expended and will expend to obtain the compensation due to Plaintiffs.

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

100. For their Fourth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
101. The flaring of gas from the Wells 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 Plaintiffs' rights in

the mineral estate from which production from the Wells is taken (“Common Law Waste”).

102. 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.

103. Defendant’s flaring of gas from the Wells as previously alleged in this Complaint constitutes Common Law Waste for which Plaintiffs is entitled to compensation, including that provided in N.D.C.C. § 32-17-22.

FIFTH CAUSE OF ACTION: ACTION UNDER N.D.C.C. § 32-40-06 TO ENFORCE PAYMENT OF ROYALTIES ATTRIBUTABLE TO GAS FLARED IN VIOLATION OF N.D.C.C § 38-08-06.4 AND N.D.A.C. § 43-02-03-60.2

104. For their Fifth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

105. Plaintiffs are aggrieved persons under the provision of the *North Dakota Environmental Law Enforcement Act of 1975* found at N.D.C.C. § 32-40-01 et seq. This statute provides for and reaffirms a private right of action to enforce the environmental anti-flaring provisions under N.D.C.C. § 38-08-06.4. N.D.C.C. § 32-40-06 states:

...[a]ny person ... aggrieved by the violation of any environmental statute, rule, or regulation of this state may bring an action in the appropriate district court, either to enforce such statute, rule, or regulation, or to recover any damages that have occurred as a result of the violation, or for both such enforcement and damages.

106. By flaring in violation of N.D.C.C. § 38-08-06.4, Defendant has violated an environmental statute, rule or regulation for the protection of natural resources

including minerals under the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2. Plaintiffs are entitled under N.D.C.C. § 32-40-06 to sue to enforce the provisions of N.D.C.C. § 38-08-06.4 and to recover damages suffered from Defendant as a result of the Defendant's violation of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2.

107. Original Plaintiffs, pursuant to N.D.C.C. § 32-40-06, gave timely notice by certified mail of Plaintiffs' intent to file suit and the violation of N.D.C.C. § 38-08-06.4 as generally set forth in this Complaint to the following:

- A. Defendant;
- B. The North Dakota Industrial Commission;
- C. The State's Attorney for McKenzie County; and
- D. The Attorney General of the State of North Dakota

108. Defendant's flaring of gas from the Wells as previously alleged in this Complaint constitutes a violation of N.D.C.C. § 38-08-06.4 from which Plaintiffs are entitled to recovery of unpaid royalties as permitted under N.D.C.C. § 43-02-03-60.2.

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

109. For their Sixth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

110. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure for the purposes of seeking remedies for the Proposed Class under this Sixth Cause of Action.

111. Defendant has operated or is operating oil wells in which Flared Gas

occurs.

112. Defendant owes Proposed Class for royalties attributable to Flared Gas.
113. Plaintiffs seek 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 under this Sixth Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.
114. 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 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;
 - e. 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 Sixth 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.

SEVENTH CAUSE OF ACTION: CLASS CLAIMS FOR DECLARATORY RELIEF AGAINST DEFENDANT FOR PAST AND FUTURE FLARED GAS.

115. For their Seventh Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
116. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking declaratory relief for the Proposed Class under this Seventh Cause of Action.
117. Plaintiffs believe and therefore allege 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.
118. Plaintiffs seek and are 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.
119. Plaintiffs seek 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 for declaratory relief under this Seventh Cause of

Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

120. 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 requiring Defendant to pay royalties for the 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 Seventh Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- f. the management of 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.

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

121. For their Eighth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
122. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of its claim for money damages for the Proposed Class under this Eighth Cause of Action.
123. The Proposed Class is entitled to compensation for Defendant's conversion of the Proposed Class's Flared Gas.
124. Defendant has not paid and refuses to pay royalties to the Proposed Class for Flared Gas.
125. Defendant's 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.
126. The Proposed Class is entitled to the highest value of the Flared Gas as well as fair compensation for the time and money Plaintiffs have expended and will expend to obtain the compensation due to the Proposed Class.
127. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.
128. Plaintiffs seek 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) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

129. 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 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 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.

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

130. For their Ninth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
131. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of their claim for money damages for the Proposed Class under this Ninth Cause of Action.
132. The Proposed Class is entitled to compensation for Defendant's Common Law Waste of the Proposed Class's Flared Gas.
133. 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.
134. 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.
135. 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.
136. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Ninth 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 Ninth Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

137. The adjudication of the Proposed Class's claims under this Ninth 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 Ninth 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.

**TENTH CAUSE OF ACTION: CLASS CLAIMS FOR ACTION UNDER
N.D.C.C. § 32-40-06 TO ENFORCE PAYMENT OF ROYALTIES
ATTRIBUTABLE TO GAS FLARED IN VIOLATION OF
N.D.C.C § 38-08-06.4 AND N.D.A.C. § 43-02-03-60.2**

138. For their Tenth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

139. The proposed class is made up of aggrieved persons under the provision of the *North Dakota Environmental Law Enforcement Act of 1975* found at N.D.C.C. §§ 32-40-01 et seq. This statute reaffirms a private right of action to enforce the environmental anti-flaring provisions under N.D.C.C. § 38-08-06.4.

140. By flaring in violation of N.D.C.C. § 38-08-06.4, Defendant has violated an environmental statute, rule or regulation for the protection of natural resources including minerals under the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2.

141. Apart from the injury to the public in general, injuries to the Proposed Class include an impairment of the Proposed Class's mineral interest and results in the loss of the royalties that are to be paid to members of the Proposed Class pursuant to N.D.C.C. § 38-08-06.4. Plaintiffs are aggrieved as provided in N.D.C.C. § 32-40-03.

142. The Proposed Class is entitled under N.D.C.C § 32-40-06 to sue to enforce the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2 and to recover damages suffered from Defendant as a result of the Defendant's violation of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2.

143. Original Plaintiffs, pursuant to N.D.C.C. § 32-40-06, gave timely notice by certified mail of Plaintiffs' intent to file suit and the violation of N.D.C.C. § 38-08-06.4 as generally set forth in this Complaint to the following:

- A. Defendant;
- B. The North Dakota Industrial Commission;
- C. The State's Attorney for McKenzie County; and
- D. The Attorney General of the State of North Dakota.

144. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking enforcing the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2 and to recover damages by the Proposed Class suffered as a result of the Defendant's violation of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2..

145. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Tenth 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 the Seventh Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

146. The adjudication of the Proposed Class's claims under this Tenth 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 Tenth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- f. the management of 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an order:

- A. Ordering Defendant to pay damages to Plaintiffs 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 violates North Dakota law unless Defendant pays royalties to Plaintiffs for the value of such Flared Gas, or otherwise complies with N.D.C.C. § 38-08-06.4;

- C. Ordering Defendant to pay Plaintiffs' reasonable attorneys' fees as allowed by law, and Plaintiffs' costs and disbursements; and,
- D. Ordering certification of the Proposed Class pursuant to Rule 23(b) of the Federal Rules of Civil Procedure with reasonable notice to the Class;
- 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 violates North Dakota law 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 2nd day of January, 2014.

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ATTORNEYS FOR PLAINTIFFS

DEMAND FOR JURY TRIAL

Plaintiffs previously and timely demanded a jury trial on all issues triable by a jury, and renew that demand in this First Amended Complaint.

Dated this 2nd day of January, 2014.

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