

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

SCOTT WISDAHL, for himself and all)	
others similarly situated,)	Case No.: 4:13-cv-00139-DLH-CSM
Plaintiff,)	
)	
v.)	FIRST AMENDED COMPLAINT
)	AND DEMAND FOR JURY TRIAL
CRESCENT POINT ENERGY U.S.)	
CORP. a Delaware corporation,)	
)	
Defendant.)	
)	
)	
)	
)	

PARTIES

1. Scott Wisdahl (“Plaintiff”) brings this action for himself and all others similarly situated. Plaintiff is a resident of Williston, Williams County, North Dakota.
2. Defendant Crescent Point Energy U.S. Corp. (“Defendant”) is a corporation incorporated under the laws of Delaware with its principal offices at 555 17th Street, Suite 750, Denver, Colorado. 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 CPEUSC Austin 17-20-158N-99W well, located in the SWSE of Section 8, Township 158 North, Range 99 West, Williams County, having API number 33-105-02388-00-00 (“CPEUSC Austin 17-20-158N-99W Well”).

4. Plaintiff owns mineral interests from which oil and gas are being produced from the CPEUSC Austin 17-20-158N-99W Well and is entitled to royalties from production from the CPEUSC Austin 17-20-158N-99W Well.

JURISDICTION AND VENUE

5. Plaintiff 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”).
6. Venue is proper in this District because Plaintiff’s claims for relief arose in this District.

BACKGROUND

7. The CPEUSC Austin 17-20-158N-99W Well was spudded on November 28, 2011. It began to produce hydrocarbons in March 2012.
8. Defendant pays or should pay royalties to Plaintiff from the CPEUSC Austin 17-20-158N-99W Well.
9. The oil and gas production from the CPEUSC Austin 17-20-158N-99W Well is from the Ellisville-Bakken Pool.
10. The CPEUSC Austin 17-20-158N-99W Well produced oil and gas, and flared all gas produced from first production in March 2012 through July 2013. For the months since first production, the CPEUSC Austin 17-20-158N-99W 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
Mar-12	11	4211	3022	1630	0	1630
Apr-12	30	4197	4951	2768	0	2768
May-12	31	9447	8851	7478	0	7478
Jun-12	30	5350	5442	3681	0	3681
Jul-12	31	8558	8637	6228	0	6228
Aug-12	31	6596	6954	4670	0	4670
Sep-12	30	5082	4956	3560	0	3560
Oct-12	31	4832	4875	2994	0	2994
Nov-12	30	4311	4355	2540	0	2540
Dec-12	31	4369	4357	2487	0	2487
Jan-13	31	3839	3919	2093	0	2093
Feb-13	28	3201	3234	1610	0	1610
Mar-13	31	3147	3198	1318	0	1318
Apr-13	19	1673	1682	736	0	736
May-13	19	2296	2272	1281	0	1281
Jun-13	30	3213	3205	2543	0	2543
Jul-13	31	2961	3150	2541	0	2541
Aug-13	31	2714	2815	3025	3025	0
Sept-13	30	2453	2491	2882	2882	0
Oct-13	31	2373	2414	2789	2789	0

11. Gas flared from wells such as the CPEUSC Austin 17-20-158N-99W 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.

12. Based on current reported production information, the CPEUSC Austin 17-20-158N-99W Well has flared 8,419 Mcfs of gas after the one-year period from the date of first production from the well through October 2013

13. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Mar-13	1318
Apr-13	736
May-13	1281
Jun-13	2543
Jul-13	2541

14. Any permitted flaring of the gas from the CPEUSC Austin 17-20-158N-99W 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.

15. Subsection 6 of N.D.C.C. § 38-08-06.4 exempts a producer from the requirements 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.

16. 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 CPEUSC Austin 17-20-158N-99W Well for the production months Plaintiff alleges violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

17. 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.

18. 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.

19. Defendant has not applied for nor obtained a flaring exemption for the CPEUSC Austin 17-20-158N-99W Well for the production months Plaintiff alleges violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above. As a result, Defendant owes Plaintiff royalties on the value of the gas flared in violation of Subsection 4 of N.D.C.C. § 38-08-06.4.

20. 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 CPEUSC Austin 17-20-158N-99W Well for the production months Plaintiff alleges violated subsection 2 as set forth above.

21. Defendant has not paid royalties for the 8,419 MCFs of gas flared from the CPEUSC Austin 17-20-158N-99W Well after the first year of production.

22. Defendant continues to produce oil and gas from the CPEUSC Austin 17-20-158N-99W Well and on information and belief likely will continue to flare some or all gas from such well in violation of the provisions of N.D.C.C. § 38-08-06.4.
23. Plaintiff is entitled to royalties for future gas flared from the CPEUSC Austin 17-20-158N-99W Well.
24. 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.
25. 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.
26. Apart from the injury to the public in general, Plaintiff's injuries include an impairment of Plaintiff's mineral interest and results in the loss of the royalties that are to be paid to Plaintiff pursuant to N.D.C.C. § 38-08-06.4. Plaintiff is aggrieved as provided in N.D.C.C. § 32-40-03.
27. Plaintiff has suffered the loss of royalties due for gas flared from the CPEUSC Austin 17-20-158N-99W Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.
28. Plaintiff will suffer the loss of royalties in the future for gas flared from the CPEUSC Austin 17-20-158N-99W Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4.
29. 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.

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. Gas flared from wells such as the CPEUSC Austin 17-20-158N-99W 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.

36. The Industrial Commission has provided the following rules concerning the flaring of gas in the CPEUSC Austin 17-20-158N-99W Well:

a. NDIC Order No. 18854 in Case No. 16585 dated February 10, 2012, and NDIC Order No. 20007 in Case No. 17737 dated July 13, 2012 (“Orders 18854 and 20007”).

b. As stated in Paragraph 28 of Order 18854, the Industrial Commission has ordered as follows:

After April 30, 2012, all wells in the Ellisville-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. As stated in Paragraph 2 of Order 20007, the Industrial Commission has ordered as follows:

After December 31, 2012, all wells in the Ellisville-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.

37. Under Order 18854, the CPEUSC Austin 17-20-158N-99W Well could be produced at the maximum efficient rate for the first 60 days of production, which was March 20, 2012 through May 19, 2012. Order 18854 allowed all wells in the Ellisville-Bakken Pool to produce oil at the maximum efficient rate through April 30, 2012; thereafter, paragraph 28 of Order 18854 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 20007 dated July 13, 2012. So from May 20, 2012 through July 12, 2012 oil production from the CPEUSC Austin 17-20-158N-99W Well was limited to an average of 200 barrels of oil per day.
38. From May 20, 2012 through May 31, 2012, a time when Order 18854 was in effect, Defendant reported to the NDIC that it produced over 3,650 barrels of oil, which exceeded the applicable daily average limit of 200 barrels by more than 1,250 barrels.

Defendant also reported to the NDIC that it flared approximately 2,650 Mcfs of gas during that time.

39. Upon information and belief, the CPEUSC Austin 17-20-158N-99W Well was not connected to a gas gathering and processing facility until August 2013. The flaring of approximately 2,650 Mcfs of gas during the period from May 20, 2012 through May 31, 2012 violated subsection 1 of N.D.C.C. § 38-08-06.4 because it was not as permitted under rules of the Commission cited above, and as a result, royalties are owed on the value of the gas flared.
40. Defendant operates over 29 oil wells from which gas is produced in North Dakota in counties including 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.
41. On information and belief, Defendant does not pay royalties for all or a portion of the gas flared from the oil wells it operates.
42. 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.
43. Plaintiff brings this Complaint on his 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 himself and as a representative of all similar situated persons declaratory relief as well as money damages as further alleged in this Complaint.

44. 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.

45. 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.

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

47. 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.

48. 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.
49. 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.
50. 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.
51. 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 he or she seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intends to and will prosecute this action vigorously.
52. 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.

53. 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 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.**

54. For his First Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

55. Defendant operated the CPEUSC Austin 17-20-158N-99W Well so that 8,419 Mcfs of gas was flared after the one-year period from the date of first production from the well.

56. Defendant owes Plaintiff for royalties attributable to gas flared from the CPEUSC Austin 17-20-158N-99W Well for those periods following one year after the day of first production from the well.

57. Defendant operated the CPEUSC Austin 17-20-158N-99W Well within one year of first production so that 40,129 Mcfs of gas were flared during the time periods alleged above in violation of N.D.C.C. § 38-08-06.4 and Paragraph 28 of Order No. 18854.

58. Defendant owes Plaintiff for royalties attributable to gas flared from the CPEUSC Austin 17-20-158N-99W Well for time periods alleged above.

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

59. For his Second Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
60. Plaintiff believes and therefore alleges that Defendant has flared gas and likely will continue to flare gas from the CPEUSC Austin 17-20-158N-99W 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.
61. 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 CPEUSC Austin 17-20-158N-99W Well flared in violation of section 4 of N.D.C.C. § 38-08-06.4.
62. 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.**

63. For his Third Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
64. Plaintiff is entitled to royalties for gas flared from the CPEUSC Austin 17-20-158N-99W Well during the first year of production as alleged above and gas flared thereafter through the present.
65. Defendant has not paid and refuses to pay royalties to Plaintiff for gas flared from the CPEUSC Austin 17-20-158N-99W Well during the first year of production and for gas flared thereafter through the present.
66. Defendant's actions constitute a tortious detention of personal property due to Plaintiff in defiance of the rights of Plaintiff.

67. 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.

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

69. The flaring of gas from the CPEUSC Austin 17-20-158N-99W 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 CPEUSC Austin 17-20-158N-99W Well is taken ("Common Law Waste").

70. 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.

71. Defendant's flaring of gas from the CPEUSC Austin 17-20-158N-99W 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: 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

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

73. Plaintiff is an aggrieved person 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.

74. 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.

75. Plaintiff 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 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.

76. Plaintiff, pursuant to N.D.C.C. § 32-40-06, gave timely notice by certified mail of Plaintiff's 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 Williams County; and

D. The Attorney General of the State of North Dakota

77. Defendant's flaring of gas from the CPEUSC Austin 17-20-158N-99W Well as previously alleged in this Complaint constitutes a violation of N.D.C.C. § 38-08-06.4

from which Plaintiff is 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.

78. For his Sixth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

79. Plaintiff seeks 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.

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

81. Defendant owes Proposed Class for royalties attributable to Flared Gas.

82. 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 under this Sixth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

83. 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;
- 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 Sixth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of 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
FOR PAST AND FUTURE FLARED GAS.**

84. For his Seventh Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
85. 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 Seventh Cause of Action.
86. 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.

87. 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.
88. 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 for declaratory relief under this Seventh Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.
89. 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.**

- 90. For his Eighth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
- 91. Plaintiff seeks 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.
- 92. The Proposed Class is entitled to compensation for Defendant's conversion of the Proposed Class's Flared Gas.
- 93. Defendant has not paid and refuses to pay royalties to the Proposed Class for Flared Gas.
- 94. 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.
- 95. 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.
- 96. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.

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

98. 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 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.**

99. For his Ninth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
100. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of his claim for money damages for the Proposed Class under this Ninth Cause of Action.
101. The Proposed Class is entitled to compensation for Defendants' Common Law Waste of the Proposed Class's Flared Gas.
102. 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.
103. 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.
104. 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.
105. Plaintiff seeks 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) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

106. 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 Defendants' 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 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**

107. For their Tenth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

108. 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.

109. 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.

110. 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. Plaintiff is aggrieved as provided in N.D.C.C. § 32-40-03.

111. 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.

112. Plaintiff, pursuant to N.D.C.C. § 32-40-06, gave timely notice by certified mail of Plaintiff's 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 Williams County; and
- D. The Attorney General of the State of North Dakota.

113. Plaintiff seeks 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..

114. Plaintiff seeks 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) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

115. 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, 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 Federal 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 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 30th day of December 2013.

BAUMSTARK BRAATEN LAW PARTNERS

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ATTORNEYS FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff previously made a timely demand for jury trial on all issues triable by a jury, and renews that demand in this First Amended Complaint.

Dated this 30th day of December 2013.

/s/ Derrick Braaten
Derrick Braaten