

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF DUNN

NORTHWEST JUDICIAL DISTRICT

SHERYLE J. OLSON FAMILY )  
MINERAL TRUST, by and through its )  
trustee, Sheryle J. Olson, for itself and all )  
others similarly situated, )

Case No.: \_\_\_\_\_

Plaintiff, )

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

v. )

HESS CORPORATION, a Delaware )  
corporation, and HESS BAKKEN )  
INVESTMENTS II, LLC, a Delaware )  
limited liability company, )

Defendants. )

**PARTIES**

1. Plaintiff Sheryle J. Olson Family Mineral Trust, by and through its trustee, Sheryle J. Olson (“Plaintiff”) brings this action for itself and all others similarly situated. Trustee Sheryle J. Olson is a resident of Dickinson, Stark County, North Dakota.
2. Defendant Hess Corporation (“Defendant Hess Corporation”) is a corporation organized under the laws of Delaware with its principal offices at 1185 Avenue of the Americas, New York, New York. Defendant Hess Corporation 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 Hess Bakken Investments II, LLC (“Defendant Hess Bakken Investments”) is a company organized under the laws of Delaware with its principal offices at 1501 McKinney Street, Houston, Texas. Defendant Hess Bakken Investments 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.

4. Defendant Hess Corporation was the operator of the following oil wells classified as “horizontal” wells:
  - a. the Bonnie Divide 16-1H well, located in the NENE of Section 16, Township 146 North, Range 97 West, Dunn County, North Dakota having API number 33-025-01089-00-00 (“Bonnie Divide 16-1H Well”);
  - b. the Wing 9-1H well, located in the SESE of Section 9, Township 146 North, Range 97 West, Dunn County, North Dakota having API number 33-025-01088-00-00 (“Wing 9-1H Well”);
  - c. the Hamilton 35-1H well, located in the SWSE of Section 35, Township 146 North, Range 97 West, Dunn County, North Dakota having API number 33-025-00833-00-00 (“Hamilton 35-1H Well”);
  - d. the Trotter 25-1H well, located in the NENW of Section 25, Township 146 North, Range 97 West, Dunn County, North Dakota having API number 33-025-00758-00-00 (“Trotter 25-1H Well”); and
  - e. the Wing 15-1H well, located in the NENW of Section 15, Township 146 North, Range 97 West, Dunn County, North Dakota having API number 33-025-01053-00-00 (“Wing 15-1H Well”).
5. Defendant Hess Corporation applied to transfer operating rights in the above wells to Defendant Hess Bakken Investments on October 8, 2013. The transfer of operating rights was approved on January 1, 2014.

6. Plaintiff owns mineral interests from which oil and gas are being produced from the Bonnie Divide 16-1H Well, the Hamilton 35-1H Well, the Wing 9-1H Well, the Trotter 25-1H Well and the Wing 15-1H Well (sometimes hereinafter referred to as “Plaintiff’s Wells”) and is entitled to royalties from production from Plaintiff’s Wells.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this case and personal jurisdiction over Defendant Hess Corporation and Defendant Hess Bakken Investments (hereinafter collectively referred to as “Defendants”).
8. Venue is proper in Dunn County, North Dakota under N.D.C.C. § 28-04-05 because Defendants do not reside in the state and this action is brought in the county in which the cause of action arose.

### **BACKGROUND**

9. The Wing 9-1H Well was spudded on May 27, 2010 and began to produce hydrocarbons in September of 2010. The Bonnie Divide 16-1H Well was spudded on April 29, 2011 and began to produce hydrocarbons in October of 2011. The Hamilton 35-1H Well was spudded on October 14, 2008 and began to produce hydrocarbons in December of 2008. The Trotter 25-1H Well was spudded on May 9, 2008 and began to produce hydrocarbons in July of 2008. The Wing 15-1H Well was spudded on April 19, 2010 and began to produce hydrocarbons in July of 2010.
10. Defendants pay or should pay royalties to Plaintiff from Plaintiff’s Wells.
11. The oil and gas production from Plaintiff’s Wells is from the Little Knife-Bakken Pool.
12. The Bonnie Divide 16-1H Well has produced oil and gas, and has flared gas since first production through at least November of 2013. For the months since first production, the

Bonnie Divide 16-1H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendants to the North Dakota Industrial Commission, Department of Mineral Resources, Oil & Gas Division (the “Industrial Commission” or “NDIC”):

<b>Production Month</b>	<b>Days of Production</b>	<b>BBLs Oil Produced</b>	<b>BBLs Oil Sold</b>	<b>MCF of Gas Produced</b>	<b>MCF of Gas Sold</b>	<b>MCF of Gas Vented or Flared</b>
Oct-11	24	17943	17376	20379	0	20379
Nov-11	24	7742	7965	9325	0	9325
Dec-11	31	8174	7591	9030	0	9030
Jan-12	25	7561	8237	9145	0	9145
Feb-12	17	3162	3012	3766	0	3766
Mar-12	31	4699	4465	5194	2293	2901
Apr-12	30	5687	5662	5817	5817	0
May-12	25	4588	4874	4166	4166	0
Jun-12	24	5513	5255	5712	5376	336
Jul-12	31	4873	4773	5747	5565	182
Aug-12	31	4552	4630	4841	4841	0
Sep-12	30	4033	4009	3756	3756	0
Oct-12	31	4005	4265	4087	4087	0
Nov-12	30	3653	3462	3277	3277	0
Dec-12	27	2842	2851	2225	2225	0
Jan-13	31	3817	4018	2391	2391	0
Feb-13	28	3039	2788	3165	3165	0
Mar-13	31	3280	3524	3752	3752	0
Apr-13	30	2840	2734	3126	3126	0
May-13	31	2809	2767	3426	3426	0
Jun-13	25	2023	2097	111	111	0
Jul-13	27	2516	2327	3053	247	2806
Aug-13	30	2665	2997	3291	384	2907
Sep-13	30	2933	2816	3519	344	3175
Oct-13	30	2507	2599	1797	1797	0
Nov-13	30	2635	2592	3454	3205	249

13. The Wing 9-1H Well has produced oil and gas, and has flared gas since first production through at least November of 2013. For the months since first production, the Wing 9-

1H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendants to the NDIC:

<b>Production Month</b>	<b>Days of Production</b>	<b>BBLs Oil Produced</b>	<b>BBLs Oil Sold</b>	<b>MCF of Gas Produced</b>	<b>MCF of Gas Sold</b>	<b>MCF of Gas Vented or Flared</b>
Sep-10	23	18527	17379	19775	11037	8738
Oct-10	31	14463	14612	15498	15142	356
Nov-10	30	10300	10302	11235	11235	0
Dec-10	31	9036	9178	9009	9009	0
Jan-11	27	7307	7376	7561	7561	0
Feb-11	21	5509	5562	5941	5941	0
Mar-11	27	5945	5971	6142	6142	0
Apr-11	13	64	695	32	32	0
May-11	0	0	0	0	0	0
Jun-11	0	0	0	0	0	0
Jul-11	20	6002	5923	6228	48	6180
Aug-11	27	7198	6513	7254	2	7252
Sep-11	2	147	682	480	0	480
Oct-11	14	4285	4032	4869	19	4850
Nov-11	30	5245	5133	6326	0	6326
Dec-11	24	4860	5146	5590	0	5590
Jan-12	25	7187	6769	8205	4	8201
Feb-12	29	5349	5551	6443	0	6443
Mar-12	31	4922	5116	6082	1916	4166
Apr-12	27	4422	4203	5329	5329	0
May-12	19	3905	4166	5621	5621	0
Jun-12	30	4063	3918	4428	4428	0
Jul-12	31	3250	3421	3671	3671	0
Aug-12	31	3382	3302	4152	4152	0
Sep-12	30	3497	3317	3066	3066	0
Oct-12	31	3413	3517	3363	3363	0
Nov-12	29	2972	2940	3316	3316	0
Dec-12	31	3139	3115	2727	2727	0
Jan-13	24	2486	2604	2462	2462	0
Feb-13	28	3143	3272	4010	4010	0
Mar-13	31	3496	3301	4273	4273	0
Apr-13	30	2718	2713	3249	3249	0
May-13	29	2552	2537	2956	2956	0
Jun-13	30	2645	2749	2711	490	2221
Jul-13	31	2659	2540	3097	180	2917
Aug-13	31	2431	2522	2855	531	2324

Sep-13	30	2190	2313	2819	144	2675
Oct-13	31	2522	2369	2803	1755	1048
Nov-13	30	2039	2128	2195	1962	233

14. The Hamilton 35-1H Well has produced oil and gas, and has flared gas since first production through at least November of 2013. For the months since first production, the Hamilton 35-1H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendants to the NDIC:

<b>Production Month</b>	<b>Days of Production</b>	<b>BBLs Oil Produced</b>	<b>BBLs Oil Sold</b>	<b>MCF of Gas Produced</b>	<b>MCF of Gas Sold</b>	<b>MCF of Gas Vented or Flared</b>
Dec-08	7	1093	0	80	0	80
Jan-09	29	2875	3578	1983	934	1049
Feb-09	20	1583	1739	1185	1185	0
Mar-09	5	484	484	385	385	0
Apr-09	10	1001	478	806	806	0
May-09	6	577	489	396	396	0
Jun-09	4	290	958	295	295	0
Jul-09	11	1196	1207	942	942	0
Aug-09	0	0	0	0	0	0
Sep-09	16	2774	2631	2348	2266	82
Oct-09	28	1553	1473	975	975	0
Nov-09	30	1309	980	891	891	0
Dec-09	2	140	501	77	77	0
Jan-10	7	475	0	92	92	0
Feb-10	0	0	0	0	0	0
Mar-10	0	0	0	0	0	0
Apr-10	22	1507	1921	1032	1032	0
May-10	3	566	477	0	0	0
Jun-10	0	0	0	0	0	0
Jul-10	0	0	0	0	0	0
Aug-10	1	404	234	0	0	0
Sep-10	18	1925	1961	1017	1017	0
Oct-10	28	1776	1891	37	37	0
Nov-10	1	71	454	0	0	0
Dec-10	0	0	0	0	0	0
Jan-11	12	2789	2219	2214	2214	0
Feb-11	21	1966	2374	1761	1761	0

Mar-11	11	1437	926	395	395	0
Apr-11	30	1324	1651	30	30	0
May-11	23	2898	2709	2095	116	1979
Jun-11	30	4173	4507	4943	0	4943
Jul-11	30	3296	3325	4036	0	4036
Aug-11	29	3277	2901	3885	612	3273
Sep-11	30	2449	2277	2395	456	1939
Oct-11	31	2779	3287	2964	56	2908
Nov-11	30	2176	1806	2781	381	2400
Dec-11	31	2327	1768	2631	259	2372
Jan-12	14	1109	1813	1299	6	1293
Feb-12	29	2494	2654	2978	3	2975
Mar-12	30	2200	2202	2513	862	1651
Apr-12	10	740	927	588	588	0
May-12	0	0	0	0	0	0
Jun-12	1	442	233	160	160	0
Jul-12	23	1791	2001	1518	1518	0
Aug-12	0	0	0	0	0	0
Sep-12	19	856	683	528	528	0
Oct-12	22	2365	2358	1765	1765	0
Nov-12	30	2762	2826	2273	2273	0
Dec-12	31	2483	2347	2172	2172	0
Jan-13	31	2318	2371	2051	2051	0
Feb-13	28	1896	1909	1689	1604	85
Mar-13	31	1963	1899	1900	1900	0
Apr-13	30	1783	1894	1751	1751	0
May-13	31	1705	1630	1715	1715	0
Jun-13	29	1454	1378	1547	1547	0
Jul-13	24	1308	1609	1306	1306	0
Aug-13	29	1671	1616	1853	1539	314
Sep-13	30	1066	1135	1469	768	701
Oct-13	31	1547	1399	1574	1024	550
Nov-13	30	1611	1604	1908	1641	267

15. The Trotter 25-1H Well has produced oil and gas, and has flared gas since first production through at least August of 2013. For the months since first production, the Trotter 25-1H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendants to the NDIC:

<b>Production Month</b>	<b>Days of Production</b>	<b>BBLs Oil Produced</b>	<b>BBLs Oil Sold</b>	<b>MCF of Gas Produced</b>	<b>MCF of Gas Sold</b>	<b>MCF of Gas Vented or Flared</b>
Jul-08	11	2129	1676	1699	0	1699
Aug-08	31	5374	5101	4298	3270	1028
Sep-08	7	1247	1455	913	913	0
Oct-08	10	2916	3239	2476	2476	0
Nov-08	6	1419	711	963	963	0
Dec-08	31	3758	4345	2714	2714	0
Jan-09	31	2809	2432	2092	2092	0
Feb-09	28	2048	2201	1689	1689	0
Mar-09	31	2033	1953	1668	1668	0
Apr-09	27	2891	2946	1747	1747	0
May-09	30	4353	3990	3537	3537	0
Jun-09	30	3880	4324	3642	3642	0
Jul-09	31	3169	3200	3030	3030	0
Aug-09	31	2803	2421	3196	2886	0
Sep-09	30	2457	2401	2771	2471	0
Oct-09	31	2371	2631	2643	2333	0
Nov-09	30	2225	2213	2420	2120	0
Dec-09	26	1923	1752	1973	1713	0
Jan-10	31	2163	2207	2222	1912	0
Feb-10	28	1802	1980	1847	1567	0
Mar-10	31	1935	1972	2056	1746	0
Apr-10	30	1753	1471	1941	1641	0
May-10	31	1840	1705	2216	1906	0
Jun-10	30	1628	1693	2173	1873	0
Jul-10	31	1620	1677	1932	1622	0
Aug-10	31	1519	1582	1832	1522	0
Sep-10	29	1451	1384	1469	1179	0
Oct-10	27	1306	1366	1274	1004	0
Nov-10	16	855	682	679	519	0
Dec-10	30	1572	1434	1288	988	0
Jan-11	31	1518	1626	1360	1050	0
Feb-11	27	1194	1848	1130	860	0
Mar-11	31	1575	1136	1431	1026	95
Apr-11	30	1333	1130	542	242	0
May-11	28	1300	1413	1177	124	773
Jun-11	24	1239	1805	1544	60	1265
Jul-11	29	1242	1305	1643	31	1327



Aug-11	31	1292	896	1888	0	1583
Sep-11	30	1178	938	1673	0	1381
Oct-11	29	1189	1159	1660	0	1370
Nov-11	29	1131	1161	1670	0	1380
Dec-11	28	1140	1137	1620	0	1340
Jan-12	23	1070	1530	1301	0	1071
Feb-12	15	492	622	1189	0	1039
Mar-12	31	1504	1494	1592	313	969
Apr-12	24	816	928	817	577	0
May-12	8	325	231	212	135	0
Jun-12	30	1173	1137	636	636	0
Jul-12	31	1211	1120	1078	768	0
Aug-12	31	959	1173	1101	800	0
Sep-12	30	1267	1112	975	675	0
Oct-12	31	1102	1162	1036	504	222
Nov-12	30	1089	947	1042	742	0
Dec-12	31	1140	1167	1091	781	0
Jan-13	30	1051	1175	1035	742	0
Feb-13	21	662	688	720	518	0
Mar-13	23	858	702	657	445	0
Apr-13	27	880	929	710	461	0
May-13	31	1026	1140	583	583	0
Jun-13	28	809	690	753	524	229
Jul-13	8	449	221	315	151	164
Aug-13	19	1489	1632	1858	968	890
Sep-13	30	1427	1618	1053	1053	0
Oct-13	19	1041	919	486	486	0
Nov-13	0	0	0	0	0	0

16. The Wing 15-1H Well has produced oil and gas, and has flared gas since first production through at least November of 2013. For the months since first production, the Wing 15-1H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendants to the NDIC:

<b>Production Month</b>	<b>Days of Production</b>	<b>BBLs Oil Produced</b>	<b>BBLs Oil Sold</b>	<b>MCF of Gas Produced</b>	<b>MCF of Gas Sold</b>	<b>MCF of Gas Vented or Flared</b>
Jul-10	11	12211	11417	11038	8045	2993
Aug-10	31	18442	18181	20131	20131	0

Sep-10	30	11753	12022	11957	11957	0
Oct-10	31	8774	8819	8383	8363	20
Nov-10	30	6268	6256	5813	5813	0
Dec-10	24	5729	5906	5154	5154	0
Jan-11	19	2422	2203	2346	2346	0
Feb-11	28	7912	7929	8495	8495	0
Mar-11	31	6716	6433	7781	7781	0
Apr-11	29	6148	6707	3509	3509	0
May-11	31	6246	5950	6429	1679	4750
Jun-11	29	5018	5347	5682	282	5400
Jul-11	31	5117	4840	5812	112	5700
Aug-11	31	4773	4653	5567	87	5480
Sep-11	30	4316	4385	5216	61	5155
Oct-11	31	4443	4673	5148	23	5125
Nov-11	30	3924	3905	4835	0	4835
Dec-11	22	3352	3542	3740	0	3740
Jan-12	25	4402	4214	4970	0	4970
Feb-12	28	3977	3934	4753	0	4753
Mar-12	30	3888	3936	4646	1537	3109
Apr-12	28	3685	3765	4162	4162	0
May-12	31	3657	3708	4503	4503	0
Jun-12	11	2051	2070	1748	1748	0
Jul-12	31	3148	3244	2265	2265	0
Aug-12	31	3315	3269	2436	2436	0
Sep-12	30	3305	3049	1934	1934	0
Oct-12	31	3332	3519	2262	2262	0
Nov-12	30	3256	3223	3975	3975	0
Dec-12	31	3016	2825	3157	3157	0
Jan-13	31	3078	3344	2962	2962	0
Feb-13	28	2633	2580	3213	3213	0
Mar-13	31	3385	3513	4185	4185	0
Apr-13	26	2370	2097	2707	2707	0
May-13	14	1262	1646	1163	1163	0
Jun-13	12	622	461	880	0	880
Jul-13	31	3496	3408	3990	831	3159
Aug-13	31	2842	2809	3444	1634	1810
Sep-13	30	2681	2798	3517	1405	2112
Oct-13	31	3511	3490	3894	1611	2283
Nov-13	30	3012	2845	3416	2499	917

17. Gas flared from wells such as Plaintiff's Wells 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.

18. Based on current reported production information, the Bonnie Divide 16-1H Well flared 9,137 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:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
Jul-13	2806
Aug-13	2907
Sep-13	3175
Nov-13	249

19. Based on current reported production information, the Wing 9-1H Well flared 47,346 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:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
Sep-11	352
Oct-11	4850
Nov-11	6326
Dec-11	5590
Jan-12	8201
Feb-12	6443
Mar-12	4166
Jun-13	2221
Jul-13	2917
Aug-13	2324
Sep-13	2675
Oct-13	1048
Nov-13	233

20. Based on current reported production information, the Hamilton 35-1H Well flared 31,686 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:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
May-11	1979
Jun-11	4943
Jul-11	4036
Aug-11	3273
Sep-11	1939
Oct-11	2908
Nov-11	2400
Dec-11	2372
Jan-12	1293
Feb-12	2975
Mar-12	1651
Feb-13	85
Aug-13	314
Sep-13	701
Oct-13	550
Nov-13	267

21. Based on current reported production information, the Trotter 25-1H Well flared 15,098 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:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
Mar-11	95
May-11	773
Jun-11	1265
Jul-11	1327
Aug-11	1583
Sep-11	1381
Oct-11	1370
Nov-11	1380
Dec-11	1340
Jan-12	1071
Feb-12	1039
Mar-12	969
Oct-12	222
Jun-13	229
Jul-13	164
Aug-13	890

22. Based on current reported production information, the Wing 15-1H Well flared 50,166 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:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
Jul-11	1838
Aug-11	5480
Sep-11	5155
Oct-11	5125
Nov-11	4835
Dec-11	3740

Jan-12	4970
Feb-12	4753
Mar-12	3109
Jun-13	880
Jul-13	3159
Aug-13	1810
Sep-13	2112
Oct-13	2283
Nov-13	917

23. Any permitted flaring of gas from Plaintiff's Wells was to cease after one year, and any gas flared from the wells thereafter is in violation of subsection 2 of N.D.C.C. § 38-08-06.4.

24. 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.

25. Defendants have not applied for nor been granted an exemption under subsection 6 of N.D.C.C. § 38-08-06.4 for gas flared from Plaintiff's Wells for the production months Plaintiff alleges violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

26. Subsection 4 of N.D.C.C. § 38-08-06.4 provides royalty owners a private right of action against producers such as Defendants 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.

27. In addition to a private right of action granted royalty owners under N.D.C.C. § 38-08-06.4, 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.

28. Defendants have not applied for nor obtained flaring exemptions for Plaintiff's Wells 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, Defendants owe Plaintiff royalties pursuant to subsection 4 on the value of the gas flared in violation of subsection 2 of N.D.C.C. § 38-08-06.4.

29. 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 Plaintiff's Wells for the production months Plaintiff alleges violated subsection 2 as set forth above.

30. Defendants have not paid royalties for the 153,433 Mcfs of gas produced and flared from Plaintiff's Wells after the first year of production.

31. Defendant Hess Bakken Investments continues to produce oil and gas from Plaintiff's Wells and will continue to flare gas from such wells in violation of the provisions of N.D.C.C. § 38-08-06.4.

32. Plaintiff is entitled to royalties for future gas flared from Plaintiff's Wells.

33. The provisions of N.D.C.C. § 38-08-06.4 were enacted in part to mitigate the adverse health and environmental effects on the air of North Dakota caused by the flaring of gas

from oil wells in the State of North Dakota and to prevent the destruction of the gas, a valuable natural resource of the State of North Dakota.

34. Defendants' 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.
35. 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.
36. Plaintiff has suffered the loss of royalties due for gas flared from Plaintiff's Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.
37. Plaintiff will suffer the loss of royalties in the future for gas flared from Plaintiff's Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.

43. Defendants are 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.

44. Gas flared in wells such as Plaintiff's 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 flare gas within the first year of production and avoid paying royalties on that gas.

45. The Industrial Commission has provided the following rules concerning the flaring of gas in Plaintiff's Wells:

- a. NDIC Order No. 11809 in Case No. 10013 dated April 24, 2008 ("Order 11809"); NDIC Order No. 12147 in Case No. 10278 dated August 1, 2008 ("Order 12147"); NDIC Order No. 12719 in Case No. 10755 dated January 16, 2009 ("Order 12719"); NDIC Order No. 14366 in Case No. 12116 dated March 24, 2010 ("Order 14366"); NDIC Order No. 14437 in Case No. 12240 dated July 2, 2010 ("Order 14437"); NDIC Order No. 16610 in Case No. 14333 dated April 7, 2011 ("Order 16610"); NDIC

Order No. 19156 in Case No. 16888 dated April 13, 2012 (“Order 19156”); NDIC Order No. 19632 in Case No. 17363 dated May 24, 2012 (“Order 19632”); and NDIC Order No. 21423 in Case No. 19120 dated January 24, 2013 (“Order 21423”), all of which deal in part with Plaintiff’s Wells.

- b. As stated in Paragraph 36, page 10 of Order 11809; Paragraph 44, page 13 of Order 12147; Paragraph 27, page 9 of Order 12719; Paragraph 35, page 11 of Order 14366; Paragraph 44, page 11 of Order 14437; Paragraph 57, page 13 of Order 16610; Paragraph 57, page 12 of Order 19156; Paragraph 63, page 13 of Order 19632; and Paragraph 83, page 15 of Order 21423, the Industrial Commission has ordered as follows:

All wells in the Little Knife-Bakken Pool shall be allowed to produce at maximum efficient rate for a period of 30 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; 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 90 days, commencing on the first day oil is produced through wellhead 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. 22117 in Case No. 19810 dated May 10, 2013 (“Order 22117”) that dealt in part with the Plaintiff’s Wells.
- d. As stated in Paragraphs 1 and 2, page 2 of Order 22117, the Industrial Commission has ordered as follows:

- (1) All current wells and all wells hereafter completed in the Little Knife-Bakken Pool shall be allowed to produce at a maximum efficient rate through September 30, 2013.
- (2) After September 30, 2013, all wells in the Little Knife-Bakken Pool shall be allowed to produce at 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 wellhead equipment into tanks from the ultimate producing interval after casing has been run, if the necessity therefor can be demonstrated to his satisfaction.

46. Under the Orders cited above, until the entry of Order 22117 on May 10, 2013, Plaintiff's Wells as well as all wells in the Little Knife-Bakken Pool could be produced at the maximum efficient rate for the first 30 days of production. After the first 30 days of production, the well could produce an average of 100 barrels of oil per day unless the Industrial Commission entered administrative orders allowing unrestricted oil production for up to 90 days. On May 10, 2013, all of Plaintiff's Wells had produced in excess of one year.

47. Upon information and belief, the Bonnie Divide 16-1H Well was not connected to a gas gathering and processing facility until March of 2012. From November 13, 2011 through the end of February of 2012, following the expiration of the 30-day period set forth in the applicable Orders cited above during which the Bonnie Divide 16-1H Well could be

produced at maximum efficient rate but before it was connected to a gathering and processing facility, Defendant Hess Corporation reported the Bonnie Divide 16-1H Well produced approximately 28,935 Mcfs of gas that was flared. The flaring of that volume of gas during such period of was in violation of Order 16610.

48. Defendant Hess Corporation reported to the NDIC that the Bonnie Divide 16-1H Well produced 55,064 Mcfs of gas that were flared during the first year of production. The flaring of approximately 28,935 Mcfs of gas during the period from November 13, 2011 through the end of February 2012 was not in compliance with or as provided by Order 16610.

49. Defendants operate at least 795 oil wells from which gas is produced in North Dakota in counties including Dunn County, Williams County, Billings County, and McKenzie 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.

50. On information and belief, Defendants do not pay royalties for all or a portion of the gas flared from the oil wells it operates.

51. The number of royalty owners, and royalty owners who are not paid royalties for gas flared in oil wells operated by Defendants 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.

52. Plaintiff brings this Complaint on Plaintiff's behalf and as a representative of all similarly situated persons against Defendants for failure to pay royalties on gas flared from oil wells operated by Defendants as further alleged in this Complaint. Plaintiff seeks for

Plaintiff and as a representative of all similar situated persons declaratory relief as well as money damages as further alleged in this Complaint.

53. 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 Defendants 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, Defendants reported to the NDIC that it exceeded that maximum oil production allowable during at least part of the first year.

54. 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. Defendants have not paid royalties for the Flared Gas.

The Class definition excludes:

- i. Defendants; their officers, directors and employees; any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir or assign of Defendants;
- 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 Defendants' 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.

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

56. 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.

57. 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 Defendants flared natural gas in violation of the North Dakota Anti-Flaring Statute;
- b. Whether Defendants must pay the Class royalties on Flared Gas;

- c. Whether the Class is entitled to declaratory relief adjudicating that Defendants are required to pay royalties on the value of Flared Gas and future Flared Gas;
  - d. Whether Defendants are guilty of conversion of Flared Gas;
  - e. Whether Defendants have committed waste of North Dakota's valuable natural resources; and
  - f. Whether Defendants should cease flaring gas in violation of North Dakota law.
58. The class members have been damaged by Defendants' misconduct. The class members are within the class of persons entitled to be paid royalties for violations of N.D.C.C. § 38-08-06.4.1, and they are entitled to recover royalties on the value of the Flared Gas.
59. Plaintiff's claims are typical of the claims of the other class members. Plaintiff is a royalty owner in wells with Flared Gas operated by Defendants, and Plaintiff has not been paid royalties on that Flared Gas despite Defendants' obligation to pay such royalties.
60. 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 Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in class action litigation and intends to and will prosecute this action vigorously.
61. 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 Defendants 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.

62. Defendants have 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 Defendants' 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 Defendants may not create future Flared Gas attributable to Class's interests without payment of royalties and affirmatively hereafter requiring Defendants 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.**

63. For Plaintiff's First Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

64. Defendants operated Plaintiff's Wells such that Defendants flared 153,433 Mcfs of gas from Plaintiff's Wells after the first year of production.

65. Defendants owe Plaintiff for royalties attributable to gas flared from Plaintiff's Wells for those periods following one year after the day of first production from the well.

66. Defendant Hess Corporation operated at least one of Plaintiff's Wells 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.

67. Defendants owe Plaintiff for royalties attributable to gas flared from Plaintiff's Wells for time periods alleged above.

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

68. For Plaintiff's Second Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.



69. Plaintiff believes and therefore alleges that Defendants have flared gas and that Defendants likely will continue to flare gas from Plaintiff's 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.

70. Plaintiff is entitled to declaratory relief adjudicating that Defendants are obligated to pay royalties pursuant to subsection 4 on the value of all Flared Gas and future Flared Gas from Plaintiff's Wells flared in violation of N.D.C.C. § 38-08-06.4.

71. 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.**

72. For Plaintiff's Third Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.

73. Plaintiff is entitled to royalties for gas flared from Plaintiff's Wells during the first year of production as alleged above and gas flared thereafter through the present.

74. Defendants have not paid and refuse to pay royalties to Plaintiff for gas flared from Plaintiff's Wells during the first year of production and for gas flared thereafter through the present.

75. Defendants' actions constitute a tortious detention of personal property due to the Plaintiff in defiance of the rights of Plaintiff.

76. 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.**

77. For Plaintiff's Fourth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
78. The flaring of gas from Plaintiff's 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 Defendants touching Plaintiff's rights in the mineral estate from which production from Plaintiff's Wells is taken ("Common Law Waste").
79. The laws of North Dakota require Defendants 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 this Complaint.
80. Defendants' flaring of gas from Plaintiff's Wells as previously alleged in this Complaint constitutes Common Law Waste for which Plaintiff is entitled to compensation, including that provided in N.D.C.C. § 32-17-22.

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

81. For Plaintiff's Fifth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
82. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) of the North Dakota Rules of Civil Procedure for the purposes of seeking remedies for the Proposed Class under this Fifth Cause of Action.
83. Defendants have operated or are operating oil wells in which Flared Gas occurs.

84. Defendants owe Proposed Class for royalties attributable to Flared Gas.
85. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Fifth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Fifth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.
86. The adjudication of the Proposed Class's claims under this Fifth Cause of Action will be fairly and efficiently accomplished as:
- a. the members of the Proposed Class have a common interest in obtaining royalties for Flared Gas;
  - b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendants;
  - c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
  - d. the common questions of law or fact predominate over any questions affecting only individual members;
  - e. other means of adjudicating the claims and defenses are impracticable or inefficient;

- f. the claims under this Fifth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of class action would not pose unusual difficulties; and
- h. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

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

87. For Plaintiff's Sixth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
88. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking declaratory relief for the Proposed Class under this Sixth Cause of Action.
89. Plaintiff believes and therefore alleges that Defendants have 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.
90. Plaintiff seeks and is entitled to declaratory relief adjudicating that Defendants are obligated to pay the Class royalties for past Flared Gas and Future Flared Gas if Future Flared Gas is produced.
91. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Sixth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims for declaratory relief under this Sixth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

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

- a. the members of the Proposed Class have a common interest in requiring Defendants 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 Defendants;
- 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 CONVERSION OF FLARED GAS.**

93. For Plaintiff's Seventh Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
94. 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 Seventh Cause of Action.
95. The Proposed Class is entitled to compensation for Defendants' conversion of the Proposed Class's Flared Gas.
96. Defendants have not paid and refuses to pay royalties to the Proposed Class for Flared Gas.
97. Defendants' actions towards the Proposed Class constitute a tortious detention of personal property due to the Proposed Class in defiance of the rights of the Proposed Class.
98. 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.
99. Defendants should compensate Proposed Class for Defendant's conversion of the Flared Gas.
100. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Seventh Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Seventh Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.

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

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

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

102. For Plaintiff's Eighth Cause of Action, Plaintiff repeats and realleges each and every prior allegation of this Complaint.
103. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of Plaintiff's claim for money damages for the Proposed Class under this Eighth Cause of Action.
104. The Proposed Class is entitled to compensation for Defendants' Common Law Waste of the Proposed Class's Flared Gas.
105. The flaring of Flared Gas constitutes an unreasonable or improper use, abuse, mismanagement, or omission of duty by Defendants touching the Proposed Class's rights in the mineral estate from which production of the Flared Gas occurs.
106. The laws of North Dakota require Defendants 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.
107. Defendants' 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.
108. Plaintiff seeks certification of the Proposed Class pursuant to Rule 23(b) for this Eighth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Eighth Cause of Action; and (c) Plaintiff will fairly and adequately protect the interests of the Proposed Class.



109. 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 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 Defendants;
- 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.

**PRAYER FOR RELIEF**

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

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

Dated this 17<sup>th</sup> day of January 2014.

**BAUMSTARK BRAATEN LAW PARTNERS**

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**ATTORNEYS FOR PLAINTIFF**

**DEMAND FOR JURY TRIAL**

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

Dated this 17<sup>th</sup> day of January 2014.

**BAUMSTARK BRAATEN LAW PARTNERS**

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