

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF DUNN

SOUTHWEST JUDICIAL DISTRICT

ROBERT J. HANSON, co-trustee, and)
ROSE M. HANSEN, co-trustee, for the)
Robert and Rose Hansen Mineral Trust,)
individually and for all those similarly)
situated,)

Plaintiffs,)

v.)

HUNT OIL COMPANY, a Delaware)
corporation,)

Defendant.)

13-2014-CV-00008

Case No.: _____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

PARTIES

1. Plaintiffs Robert J. Hansen and Rose M. Hanson as co-trustees of the Robert and Rose Hansen Mineral Trust (“Plaintiffs”) bring this action for the Trust and all those similarly situated. Plaintiffs are residents of Dickinson, Stark County, North Dakota.
2. Defendant Hunt Oil Company (“Defendant”) is a corporation organized under the laws of Delaware with its principal offices at 1900 N. Akard St., Dallas, Texas. Defendant can be served with process by serving its registered agent in the State of North Dakota, CT Corporation System, 314 E. Thayer Ave., Bismarck, North Dakota 58501-4018.
3. Defendant is the operator of the following oil wells classified as “horizontal” wells:
 - a. the Halliday 1-11-2H 1 well, located in the SWSW of Section 11, Township 146 North, Range 93 West, Dunn County, North Dakota having API number 33-025-01090-00-00 (“Halliday 1-11-2H 1 Well”);

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- b. the Halliday 1-12-1H 1 well, located in the NWNW of Section 13, Township 146 North, Range 93 West, Dunn County, North Dakota having API number 33-025-01193-00-00 (“Halliday 1-12-1H 1 Well”);
 - c. the Halliday 2-12-1H 1 well, located in the NWNW of Section 13, Township 146 North, Range 93 West, Dunn County, North Dakota having API number 33-025-01480-00-00 (“Halliday 2-12-1H 1 Well”);
 - d. the Halliday 3-11-2H well, located in the SESE of Section 11, Township 146 North, Range 93 West, Dunn County, North Dakota having API number 33-025-01692-00-00 (“Halliday 3-11-2H Well”); and
 - e. the Halliday 2-11-2H well, located in the SESE of Section 11, Township 146 North, Range 93 West, Dunn County, North Dakota having API number 33-025-01445-00-00 (“Halliday 2-11-2H Well”).
4. Plaintiffs own mineral interests from which oil and gas are being produced from the Halliday 1-11-2H 1 Well, the Halliday 1-12-1H 1 Well, the Halliday 2-12-1H 1 Well, the Halliday 3-11-2H Well and the Halliday 2-11-2H Well (sometimes hereinafter referred to as “Plaintiffs’ Wells”), and are entitled to royalties from production from Plaintiffs’ Wells.

JURISDICTION AND VENUE

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

BACKGROUND

7. The Halliday 1-11-2H 1 Well was spudded on August 25, 2010 and began to produce hydrocarbons in October of 2010. The Halliday 1-12-1H 1 Well was spudded on March 6, 2011 and began to produce hydrocarbons in May of 2011. The Halliday 2-12-1H 1 Well was spudded on November 1, 2011 and began to produce hydrocarbons in February of 2012. The Halliday 3-11-2H Well was spudded on May 8, 2012 and began to produce hydrocarbons in July of 2012. The Halliday 2-11-2H Well was spudded on September 18, 2011 and began to produce hydrocarbons in December of 2011.
8. Defendant pays or should pay royalties to Plaintiffs from Plaintiffs' Wells.
9. The oil and gas production from Plaintiffs' Wells is from the Wolf Bay-Bakken Pool.
10. The Halliday 1-11-2H 1 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 Halliday 1-11-2H 1 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
Oct-10	6	4895	2598	1467	0	1390
Nov-10	25	16200	16317	3487	705	2782
Dec-10	25	22899	23647	2317	2188	114
Jan-11	31	22914	23013	9687	1587	8100
Feb-11	28	21200	21905	8964	56	8908
Mar-11	31	19945	19185	8230	0	8230
Apr-11	30	15319	15320	6638	1028	5610
May-11	31	14145	14351	6015	107	5908
Jun-11	20	6611	7037	2793	0	2793
Jul-11	1	14	0	0	0	0

Aug-11	11	4505	3606	1667	0	1667
Sep-11	30	15423	16028	6659	708	5951
Oct-11	31	11043	10566	4720	3253	1467
Nov-11	30	10373	10603	191	43	148
Dec-11	31	7834	7939	1685	745	940
Jan-12	31	6846	7677	6477	2849	3628
Feb-12	21	4608	4835	1107	465	642
Mar-12	22	8596	7799	2678	2678	0
Apr-12	30	8588	8827	2764	2764	0
May-12	31	8593	8803	1142	1142	0
Jun-12	30	7941	7597	3970	3970	0
Jul-12	28	6742	7150	3908	2829	1060
Aug-12	31	7725	7641	2566	2566	0
Sep-12	30	7378	7372	1406	1406	0
Oct-12	31	6801	6839	2193	2193	0
Nov-12	30	7505	7597	2768	2750	18
Dec-12	31	7869	7454	2967	2476	491
Jan-13	31	7535	7710	2669	2270	399
Feb-13	28	6382	6426	2451	1685	766
Mar-13	31	6839	7056	2743	2133	610
Apr-13	30	6280	6161	2593	1837	756
May-13	31	6210	6001	2534	620	1914
Jun-13	30	5979	6102	2554	416	2138
Jul-13	31	5865	5631	2557	1883	674
Aug-13	24	4245	4645	1871	1761	110
Sep-13	24	4173	4088	1682	1584	98
Oct-13	31	6288	5993	2070	1542	528
Nov-13	30	5672	5589	2156	1445	711

11. The Halliday 1-12-1H 1 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 Halliday 1-12-1H 1 Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendant to the NDIC:

Production Month	Days of Production	BBLs Oil Produced	BBLs Oil Sold	MCF of Gas Produced	MCF of Gas Sold	MCF of Gas Vented or Flared
May-11	31	33681	32127	13834	0	13834

Jun-11	30	21515	21676	12603	0	12603
Jul-11	31	14517	14664	8506	1991	6515
Aug-11	31	11769	11204	5167	5167	0
Sep-11	19	8662	8972	3577	2031	1546
Oct-11	31	10935	11154	4607	3883	724
Nov-11	8	226	1120	165	130	35
Dec-11	23	11861	10981	6087	2560	3527
Jan-12	31	12267	12480	11454	5101	6353
Feb-12	29	8078	8319	7928	3663	4265
Mar-12	31	9153	9236	3139	3139	0
Apr-12	30	8378	8163	2294	2294	0
May-12	31	8483	8576	1872	1872	0
Jun-12	30	7659	7739	3604	3604	0
Jul-12	31	6712	6831	2920	2920	0
Aug-12	30	4191	4401	1730	1730	0
Sep-12	27	7533	7269	3318	3318	0
Oct-12	31	7805	7867	3608	3608	0
Nov-12	30	7231	6640	3337	3337	0
Dec-12	31	7131	7097	3222	2572	650
Jan-13	31	6862	7274	2846	2516	330
Feb-13	28	5974	5979	2072	1123	949
Mar-13	25	5010	4788	2031	1466	565
Apr-13	30	6408	6453	2696	1041	1655
May-13	31	6087	6165	2739	2609	130
Jun-13	30	5116	5539	2373	1203	1170
Jul-13	31	5565	5439	2666	2541	125
Aug-13	31	5329	5263	2555	2530	25
Sep-13	30	5060	4837	2586	2516	70
Oct-13	31	5058	4844	2571	2061	510
Nov-13	30	4732	5252	2335	1918	417

12. The Halliday 2-12-1H 1 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 Halliday 2-12-1H 1 Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendant to the 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
Feb-12	10	10304	9517	683	0	568
Mar-12	31	20848	20876	10067	330	9737
Apr-12	30	12579	12323	1849	1849	0
May-12	31	9645	10124	1932	1932	0
Jun-12	30	7382	7320	3065	3065	0
Jul-12	25	7894	7734	2800	2800	0
Aug-12	31	7234	7181	2424	2424	0
Sep-12	30	6434	6306	2463	2463	0
Oct-12	31	10197	10173	3723	3723	0
Nov-12	30	8960	8711	3957	3957	0
Dec-12	31	9191	9016	4030	3025	1005
Jan-13	29	7900	8350	3653	3383	270
Feb-13	28	7904	7871	3432	1637	1795
Mar-13	31	8278	8135	3685	2870	815
Apr-13	29	7504	7796	3444	1224	2220
May-13	26	6695	6496	2799	2679	120
Jun-13	30	7093	7563	3210	1650	1560
Jul-13	31	6842	6570	3075	2930	145
Aug-13	31	6530	6767	2898	2873	25
Sep-13	30	5956	5564	2702	2632	70
Oct-13	31	5911	6130	2478	2036	442
Nov-13	30	5462	5252	2290	1857	433

13. The Halliday 3-11-2H 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 Halliday 3-11-2H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendant to the 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
Jul-12	20	14027	12725	1654	601	1053
Aug-12	27	18569	18634	1965	1965	0
Sep-12	30	14040	14286	6300	6300	0
Oct-12	31	9431	9752	4655	4655	0

Nov-12	27	5996	6353	2346	2331	15
Dec-12	27	10116	9393	2609	2177	432
Jan-13	31	8626	8940	3080	2620	460
Feb-13	28	7626	7647	3024	2080	944
Mar-13	31	8099	8362	3405	2648	757
Apr-13	30	6852	6756	2967	2102	865
May-13	31	7213	6937	3086	756	2330
Jun-13	30	6336	6537	2839	462	2377
Jul-13	31	6993	6637	3197	2354	843
Aug-13	31	6536	6871	3020	2843	177
Sep-13	30	6218	6113	2628	2475	153
Oct-13	31	6241	6193	2503	1864	639
Nov-13	30	5600	5522	2189	1467	722

14. The Halliday 2-11-2H 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 Halliday 2-11-2H Well has produced and sold oil, and produced, sold, and flared gas in the following quantities as reported by Defendant to the 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
Dec-11	11	8632	6870	1244	0	1206
Jan-12	31	16783	17638	14481	6310	8171
Feb-12	29	12071	11923	8834	3963	4871
Mar-12	31	10499	10521	4453	4453	0
Apr-12	30	8086	8304	2816	2816	0
May-12	26	7355	7198	813	813	0
Jun-12	30	6956	7510	3009	3009	0
Jul-12	17	1753	1933	392	136	237
Aug-12	31	3116	3146	1026	1026	0
Sep-12	30	5395	5222	1243	1243	0
Oct-12	31	9429	9141	1276	1276	0
Nov-12	30	7107	7406	2720	2703	17
Dec-12	31	7085	6730	2971	2479	492
Jan-13	31	8317	8346	3085	2624	461
Feb-13	28	7155	7193	3024	2079	945
Mar-13	31	7604	7851	3406	2648	758
Apr-13	30	7030	6893	3241	2297	944

May-13	31	6773	6560	3087	756	2331
Jun-13	30	6097	6272	2909	474	2435
Jul-13	31	6566	6246	3197	2354	843
Aug-13	31	6138	6452	3021	2843	178
Sep-13	30	5839	5740	2628	2474	154
Oct-13	31	4876	4955	2540	1892	648
Nov-13	24	3276	3384	1419	951	468

15. Gas flared from wells such as the Plaintiffs' 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.

16. Based on current reported production information, the Halliday 1-11-2H 1 Well flared 15,868 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Oct-11	237
Nov-11	148
Dec-11	940
Jan-12	3628
Feb-12	642
Jul-12	1060
Nov-12	18

Dec-12	491
Jan-13	399
Feb-13	766
Mar-13	610
Apr-13	756
May-13	1914
Jun-13	2138
Jul-13	674
Aug-13	110
Sep-13	98
Oct-13	528
Nov-13	711

17. Based on current reported production information, the Halliday 1-12-1H 1 Well flared 6,596 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Dec-12	650
Jan-13	330
Feb-13	949
Mar-13	565
Apr-13	1655
May-13	130
Jun-13	1170
Jul-13	125
Aug-13	25
Sep-13	70
Oct-13	510
Nov-13	417

18. Based on current reported production information, the Halliday 2-12-1H 1 Well flared 6,223 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Feb-13	513
Mar-13	815
Apr-13	2220
Jun-13	1560
Jul-13	145
Aug-13	25
Sep-13	70
Oct-13	442
Nov-13	433

19. Based on current reported production information, the Halliday 3-11-2H Well flared 2,253 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Jul-13	562
Aug-13	177
Sep-13	153
Oct-13	639
Nov-13	722

20. Based on current reported production information, the Halliday 2-11-2H Well flared 10,345 Mcfs of gas after the one-year period from the date of first production from the well. The flared volumes occurred in the following volumes per month:

Production Month	MCF of Gas Vented or Flared
Dec-12	180
Jan-13	461
Feb-13	945
Mar-13	758

Apr-13	944
May-13	2331
Jun-13	2435
Jul-13	843
Aug-13	178
Sep-13	154
Oct-13	648
Nov-13	468

21. Any permitted flaring of gas from Plaintiffs' Wells 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.

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

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

23. 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 Plaintiffs' Wells for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

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

25. 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.

26. Defendant has not applied for nor obtained a flaring exemption for Plaintiffs' Wells for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above. As a result, Defendant owes Plaintiffs royalties on the value of the gas flared in violation of N.D.C.C. § 38-08-06.4.
27. Plaintiffs are entitled to sue for and recover royalties under the provisions of N.D.C.C. § 38-08-06.4 for flared gas from Plaintiffs' Wells for the production months Plaintiffs allege violated subsection 2 as set forth above.
28. Defendant has not paid royalties for the gas produced and flared from Plaintiffs' Wells after the first year of production.
29. Defendant continues to produce oil and gas from Plaintiffs' Wells and will continue to flare gas from such wells in violation of the provisions of N.D.C.C. § 38-08-06.4.
30. Plaintiffs are entitled to royalties for future gas flared from Plaintiffs' Wells.
31. 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.

32. 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.
33. Apart from the injury to the public in general, Plaintiffs' injuries include an impairment of Plaintiffs' mineral interest and results in the loss of the royalties that are to be paid to Plaintiffs pursuant to N.D.C.C. § 38-08-06.4. Plaintiffs are aggrieved as provided in N.D.C.C. § 32-40-03.
34. Plaintiffs have suffered the loss of royalties due for gas flared from Plaintiffs' Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.
35. Plaintiffs will suffer the loss of royalties in the future for gas flared from Plaintiffs' Wells in violation of subsection 2 of N.D.C.C. § 38-08-06.4.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.

41. 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.

42. Gas flared in wells such as Plaintiffs' 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.

43. The Industrial Commission has provided the following rules concerning the flaring of gas in Plaintiffs' Wells:

a. NDIC Order No. 16646 in Case No. 14369 dated May 17, 2011 ("Order 16646") and NDIC Order No. 18577 in Case No. 16312 dated September 10, 2012 ("Order 18577").

b. As stated in Paragraphs 20 and 21, pages 5 and 6 of Order 16646, the Industrial Commission has ordered as follows:

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

(21) After July 31, 2011, all wells in the Wolf Bay-Bakken Pool shall be allowed to produce at maximum efficient rate for a period of 180 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.

- c. As stated in Paragraph 42, page 8 of Order 18577, the Industrial Commission has ordered as follows:

(42) All wells in the Wolf Bay-Bakken Pool shall be allowed to produce at maximum efficient rate for a period of 180 days commencing on the first day oil is produced through wellhead 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.

44. Under the Orders cited above, Plaintiffs' Wells and all wells in the Wolf Bay-Bakken Pool could be produced at the maximum efficient rate for the first 180 days of production. After the first 180 days of production, the well could produce an average of

200 barrels of oil per day for 60 days; thereafter, an average of 150 barrels per day for the next 60 days; and thereafter at an average of 100 barrels per day unless the Industrial Commission entered administrative orders allowing unrestricted oil production for up to 120 days. Order 16646 permitted production at the maximum efficient rate from May 17, 2011 until July 31, 2011 for all wells in the Wolf Bay-Bakken Pool that were within the first year of production.

45. Upon information and belief, the Halliday 1-11-2H 1 Well was connected to a gas gathering and processing facility within 180 days of first production but has operated in such a manner that gas was flared after the first year of production as alleged above.
46. Upon information and belief, the Halliday 1-12-1H 1 Well was connected to a gas gathering and processing facility within 180 days of first production but has operated in such a manner that gas was flared after the first year of production alleged above.
47. Upon information and belief, the Halliday 2-12-1H 1 Well was connected to a gas gathering and processing facility within 180 days of first production but has operated in such a manner that gas was flared after the first year of production alleged above.
48. Upon information and belief, the Halliday 3-11-2H Well was connected to a gas gathering and processing facility within 180 days of first production but has operated in such a manner that gas was flared after the first year of production alleged above.
49. Upon information and belief, the Halliday 2-11-2H Well was connected to a gas gathering and processing facility within 180 days of first production but has operated in such a manner that gas was flared after the first year of production alleged above.
50. On information and belief, Defendant does 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 Defendant in violation of N.D.C.C. § 38-08-06.4 exceeds one hundred.
52. Plaintiffs bring this Complaint on behalf of the Trust and as representatives of all similarly situated persons against Defendant for its failure to pay royalties on gas flared from oil wells operated by Defendant as further alleged in this Complaint. Plaintiffs seek for the Trust and as representatives 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 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.

54. Plaintiffs seek to certify the following Class: All persons, including individuals, estates, trusts, corporations, partnerships, and other business entities owning royalty interests in North Dakota:

- a. From which there has been Flared Gas; and
- b. Defendant has not paid royalties for the Flared Gas.

The Class definition excludes:

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

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 Plaintiffs, 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 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 in violation of North Dakota law.
58. 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 N.D.C.C. § 38-08-06.4.1, and they are entitled to recover royalties on the value of the Flared Gas.
59. Plaintiffs' claims are typical of the claims of the other class members. Plaintiffs are royalty owners in a well with Flared Gas operated by Defendant, and Plaintiffs have not been paid royalties on that Flared Gas despite Defendant's obligation to pay such royalties.
60. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are familiar with the basic facts underlying the class members' claims. Plaintiffs' interests do not conflict with the interests of the other class members that Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend 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 Plaintiffs and the class members. Individual litigation of the legal and factual issues raised by the conduct of Defendant would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale and comprehensive supervision by a single court.
62. Defendant has acted or refused to act on grounds that apply generally to the class, so that final declaratory relief is appropriate respecting the class as a whole. Specifically, Plaintiffs seek an order declaring Defendant's creation of Flared Gas attributable to Class's interests without payment of royalties to be a violation of 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.**

63. For their First Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
64. Defendant operated Plaintiffs' Wells such that Defendant flared 41,285 Mcfs of gas from Plaintiffs' Wells after the first year of production.
65. Defendant owes Plaintiffs for royalties attributable to gas flared from Plaintiffs' Wells for those periods following one year after the day of first production from the well.
66. Defendant owes Plaintiffs for royalties attributable to gas flared from Plaintiffs' Wells for the time periods alleged above in violation of N.D.C.C. § 38-08-06.4.
67. Defendant owes Plaintiffs for royalties attributable to gas flared from Plaintiffs' Wells for

the time periods alleged above.

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

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

69. The Plaintiffs believe and therefore allege that Defendant has flared gas and likely will continue to flare gas from Plaintiffs' 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. Plaintiffs are entitled to declaratory relief adjudicating that Defendant is obligated to pay royalties on the value of all Flared Gas and future Flared Gas from Plaintiffs' Wells in violation of N.D.C.C. § 38-08-06.4.

71. Plaintiffs are entitled to the declaratory relief as permitted under N.D.C.C. ch. 32-23-01.

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

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

73. Plaintiffs are entitled to royalties for gas flared from Plaintiffs' Wells after the first year of production as alleged above and gas flared thereafter through the present.

74. Defendant has not paid and refuses to pay royalties to Plaintiffs for gas flared from Plaintiffs' Wells after the first year of production and for gas flared thereafter through the present.

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

76. Plaintiffs are entitled to the highest value of the gas flared for the time during which royalties were not paid as well as fair compensation for the time and money Plaintiffs have expended and will expend to obtain the compensation due to Plaintiffs.

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

77. For Plaintiffs' Fourth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

78. The flaring of gas from Plaintiffs' Wells as described in the allegations of the *Background* of the Complaint constitutes an unreasonable or improper use, abuse, mismanagement, or omission of duty by Defendant touching Plaintiffs' rights in the mineral estate from which production from Plaintiffs' Wells is taken ("Common Law Waste").

79. 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.

80. Defendant's flaring of gas from Plaintiffs' Wells as previously alleged in this Complaint constitutes Common Law Waste for which Plaintiffs are 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 Plaintiffs' Fifth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.

82. Plaintiffs seek 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. Defendant has operated or is operating oil wells in which Flared Gas occurs.
84. Defendant owes Proposed Class for royalties attributable to Flared Gas.
85. Plaintiffs seek 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) Plaintiffs 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 Defendant.
 - c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
 - d. the common questions of law or fact predominate over any questions affecting only individual members;

- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Fifth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of 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 DEFENDANT FOR PAST AND FUTURE FLARED GAS.**

87. For their Sixth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
88. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking declaratory relief for the Proposed Class under this Sixth Cause of Action.
89. Plaintiffs believe and therefore allege that Defendant has flared and likely will continue to flare gas from some or all of the oil wells it operates in North Dakota, resulting in further Flared Gas (“Future Flared Gas”) and damage to the Class.
90. Plaintiffs seek and are entitled to declaratory relief adjudicating that Defendant is obligated to pay the Class royalties for past Flared Gas and Future Flared Gas if Future Flared Gas is produced.
91. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Sixth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class’s claims for

declaratory relief under this Sixth Cause of Action; and (c) Plaintiffs 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 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. 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 their Seventh Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
94. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of its claim for money damages for the Proposed Class under this Seventh Cause of Action.
95. The Proposed Class is entitled to compensation for Defendant's conversion of the Proposed Class's Flared Gas.
96. Defendant has not paid and refuses to pay royalties to the Proposed Class for Flared Gas.
97. 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.
98. The Proposed Class is entitled to the highest value of the Flared Gas as well as fair compensation for the time and money Plaintiffs have expended and will expend to obtain the compensation due to the Proposed Class.
99. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.
100. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Seventh Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Seventh Cause of Action; and (c) Plaintiffs 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 Defendant's conversion of the Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
- c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. the common questions of law or fact predominate over any questions affecting only individual members;
- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Seventh Cause of Action are not known to be subject of a class action, a government action, or other proceeding;
- g. the management of 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 their Eighth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
103. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of Plaintiffs' claim for money damages for the Proposed Class under this Eighth Cause of Action.
104. The Proposed Class is entitled to compensation for Defendant's 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 Defendant 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 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.
107. 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.
108. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Eighth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under

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

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 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.

PRAYER FOR RELIEF

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

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

Dated this 21st day of January 2014.

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ATTORNEYS FOR PLAINTIFFS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury on all issues triable by a jury.

Dated this 21st day of January, 2014.

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