

**STATE OF NORTH DAKOTA**

**IN DISTRICT COURT**

**COUNTY OF WILLIAMS**

**NORTHWEST JUDICIAL DISTRICT**

Jeff Lawyer, Mark Lawyer, and )  
Martha Clore, for themselves and )  
all others similarly situated, )

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

Plaintiffs, )

**COMPLAINT  
AND DEMAND FOR JURY TRIAL**

vs. )

Kodiak Oil & Gas (USA) Inc., a )  
Colorado corporation, )

Defendant. )

**PARTIES**

1. Plaintiffs Jeff Lawyer, Mark Lawyer and Martha Clore (“Plaintiffs”) bring this action for themselves and all those similarly situated. Plaintiffs are citizens and residents of the state of Texas.
2. Defendant Kodiak Oil & Gas (USA) Inc. (“Defendant”) is a corporation organized under the laws of Colorado with its principal offices at 1625 Broadway, Suite 250, Denver, Colorado 80202. Defendant is a wholly-owned subsidiary of Kodiak Oil & Gas Corp, a Yukon Territory company also based in Denver Colorado at the same address. Defendant can be served with process by serving its registered agent in the State of North Dakota, CT Corporation System, 314 East Thayer Avenue, Bismarck, North Dakota 58501
3. Defendant is the operator of two oil wells classified as “horizontal” wells known as the P Alexander 155-99-16-11-2-1H Well and the P Alexander 155-99-16-11-2-1H3 Well, both of which are located in the SESE of Section 11, Township 155 North, Range 99 West,

Williams County, North Dakota, having API numbers 33-105-02270-00-00 and 33-105-02597-00-00, respectively (the “P Alexander 1H Well” and the “P Alexander 1H3 Well”).

4. Plaintiffs each own mineral interests from which oil and gas are being produced from the P Alexander 1H Well and the P Alexander 1H3 Well, and each of them is entitled to royalties from production from the P Alexander 1H Well and the P Alexander 1H3 Well.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this case and personal jurisdiction over Defendant.
6. Venue is proper in Williams 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 P Alexander 1H Well was spudded on March 22, 2012, and the P Alexander 1H3 Well was spudded on May 1, 2012. According to production records, the P Alexander 1H Well first produced oil on or about August 7, 2012, and the P Alexander 1H3 Well first produced oil on or about August 6, 2012.
8. Defendant pays or should pay royalties to Plaintiffs from the P Alexander 1H Well and the P Alexander 1H3 Well.
9. The oil and gas production from the P Alexander 1H Well and the P Alexander 1H3 Well is from the East Fork-Bakken Pool.
10. The P Alexander 1H Well and the P Alexander 1H3 Well have produced oil and gas, and have flared gas since first production through at least October, 2013. For the months

since first production, the P Alexander 1H Well and the P Alexander 1H3 Well have 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”):

a. P Alexander 1H Well

<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>
Aug-12	24	18247	17655	22223	16976	5180
Sep-12	30	13422	13526	17850	16631	1130
Oct-12	31	11950	11625	16859	12139	4628
Nov-12	30	10769	10644	7321	5244	1987
Dec-12	22	5461	5665	2153	0	2091
Jan-13	31	7538	7310	11064	9249	1722
Feb-13	28	8692	8989	13161	9838	3239
Mar-13	31	5872	5728	6660	5204	1363
Apr-13	30	5529	5461	10437	9591	756
May-13	31	5137	5674	7851	5951	1808
Jun-13	30	5187	4897	7676	6433	1158
Jul-13	31	5302	5254	9177	7785	1299
Aug-13	31	5020	4968	9863	8375	1395
Sep-13	30	4465	4402	5658	4318	1250
Oct-13	31	4353	4349	5962	4484	1385

b. P Alexander 1H3 Well

<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>
Aug-12	25	17801	17344	26679	18088	8516
Sep-12	21	11031	10872	15265	12527	2675
Oct-12	31	12248	12237	16147	11890	4165
Nov-12	22	6011	6325	16399	13789	2546
Dec-12	21	7078	6631	12233	4256	7917
Jan-13	31	8736	8443	8075	7150	833
Feb-13	28	7517	7544	13070	11737	1249
Mar-13	31	6034	6494	6228	5095	1040
Apr-13	30	6528	6505	7188	5545	1553
May-13	29	4698	4594	7199	5696	1421
Jun-13	30	4995	5212	6563	6468	8
Jul-13	31	5235	4710	7257	6908	257
Aug-13	31	4451	4399	7340	7205	42
Sep-13	29	3648	3741	6170	6081	5
Oct-13	31	3994	3909	5920	5821	9

11. Gas flared from wells such as the P Alexander 1H Well and the P Alexander 1H3 Well after one year from first production is governed by the provisions of subsection 2 of N.D.C.C. § 38-08-06.4, providing:

2. After the time period in subsection 1, flaring of gas from the well must cease and the well must be:
  - a. Capped;
  - b. Connected to a gas gathering line;
  - c. Equipped with an electrical generator that consumes at least seventy-five percent of the gas from the well;

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

12. Based on current reported production information, the P Alexander 1H Well and P Alexander 1H3 Well flared 4,086 Mcfs of gas after the one-year period from the date of first production from the well through October 2013. The flared volumes occurred in the following volumes per month:

<b>Production Month</b>	<b>MCF of Gas Vented or Flared</b>
Aug-13	1437
Sept-13	1255
Oct-13	1394

13. Any permitted flaring of gas from the P Alexander 1H Well and the P Alexander 1H3 Well was to cease after one year, and any gas flared from the well thereafter is in violation of subsection 2 of N.D.C.C. § 38-08-06.4.

14. 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.

15. Defendant has not applied for nor been granted an exemption under subsection 6 of N.D.C.C. § 38-08-06.4 for gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

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

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

17. 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.

18. Defendant has not applied for nor obtained flaring exemptions for the P Alexander 1H Well and the P Alexander 1H3 Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above. As a result, Defendant owes Plaintiffs royalties pursuant to subsection 4 on the value of the gas flared in violation of N.D.C.C. § 38-08-06.4.

19. Plaintiffs are entitled to sue for and recover royalties under the provisions of N.D.C.C. § 38-08-06.4 for flared gas from the P Alexander 1H Well and the P Alexander 1H3 Well for the production months Plaintiffs allege violated subsection 2 as set forth above.

20. Defendant has not paid royalties for the 4,086 Mcfs of gas produced and flared from the P Alexander 1H Well and the P Alexander 1H3 Well after the first year of production thus far.
21. Defendant continues to produce oil and gas from the P Alexander 1H Well and the P Alexander 1H3 Well and will continue to flare gas from such well in violation of the provisions of N.D.C.C. § 38-08-06.4.
22. Plaintiffs are entitled to royalties for future gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well.
23. 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.
24. 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.
25. 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.
26. Plaintiffs have suffered the loss of royalties due for gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.
27. Plaintiffs will suffer the loss of royalties in the future for gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4.

28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. Gas flared from wells such as the P Alexander 1H Well and the P Alexander 1H3 Well within one year of first production is governed by the provisions of subsection 1 of N.D.C.C. § 38-08-06.4, providing:

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

In other words, a producer *may* flare gas within the first year of production and avoid paying royalties on that gas *if* it fully complies with applicable rules and orders of the



Industrial Commission concerning production of oil and gas. The corollary of that rule is that if a producer fails to comply with those rules and orders, it may not avoid paying royalties on the gas under the statute on those volumes of gas flared during the first year of production out of compliance with applicable rules and orders of the Commission.

35. Upon information and belief, the P Alexander 1H Well and the P Alexander 1H3 Well were connected to a gas gathering within sixty days of first production but has operated in such a manner that gas was flared after the first year of production as alleged above.
36. Defendant operates at least 360 oil wells from which gas is produced in North Dakota in counties including Williams County. Those wells are or were operated with gas being flared in violation of N.D.C.C. § 38-08-06.4 and the Industrial Commission's orders on flaring within one year of first production.
37. On information and belief, Defendant does not pay royalties for all or a portion of the gas flared from the oil wells it operates.
38. The number of royalty owners, and royalty owners who are not paid royalties for gas flared in oil wells operated by Defendant in violation of N.D.C.C. § 38-08-06.4 and the Industrial Commission's orders on flaring within one year of first production exceeds one hundred.
39. Plaintiffs bring this Complaint on their own behalf and as representatives of all similarly situated persons against Defendant for its failure to pay royalties on gas flared from oil wells operated by Defendant as further alleged in this Complaint. Plaintiffs seek for themselves and as representatives of all similarly situated persons declaratory relief as well as money damages as further alleged in this Complaint.

40. 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.

41. 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.

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

43. 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.

44. 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.
45. 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, and they are entitled to recover royalties on the value of the Flared Gas.
46. Plaintiffs' claims are typical of the claims of the other class members. Plaintiffs are royalty owners in wells with Flared Gas operated by Defendant, and Plaintiffs have not been paid royalties on that Flared Gas despite Defendant's obligation to pay such royalties.
47. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are familiar with the basic facts underlying the class members' claims. Plaintiffs' interests do not conflict with the interests of the other class members that they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to and will prosecute this action vigorously.
48. 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.
49. Defendant has acted or refused to act on grounds that apply generally to the class, so that final declaratory relief is appropriate respecting the class as a whole. Specifically, Plaintiffs seek an order declaring Defendant's creation of Flared Gas attributable to

Class's interests without payment of royalties to be a violation of the North Dakota Anti-Flaring Statute; declaring that Defendant may not create future Flared Gas attributable to Class's interests without payment of royalties and affirmatively hereafter requiring Defendant to pay royalties for Flared Gas attributable to Class's interests.

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

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

51. Defendant operated the P Alexander 1H Well and the P Alexander 1H3 Well so that at least 4,086 Mcfs of gas was flared after the one-year period from the date of first production from the wells through October 2013.

52. Defendant owes Plaintiffs for royalties attributable to gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well after the first year of production.

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

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

54. Plaintiffs believe and therefore allege that Defendant has flared gas and likely will continue to flare gas from the P Alexander 1H Well and the P Alexander 1H3 Well without paying required royalties on the value of the Flared Gas, as required under subsection 4 of N.D.C.C. § 38-08-06.4.

55. Plaintiffs are entitled to declaratory relief adjudicating that Defendant is obligated to pay royalties pursuant to subsection 4 on the value of all Flared Gas and future Flared Gas from the P Alexander 1H Well and the P Alexander 1H3 Well flared in violation of N.D.C.C. § 38-08-06.4.

56. Plaintiffs are entitled to 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.**

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

58. Plaintiffs are entitled to royalties for gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well after the first year of production as alleged above through the present for the P Alexander 1H Well and the P Alexander 1H3 Well.

59. Defendant has not paid and refuses to pay royalties to Plaintiffs for gas flared from the P Alexander 1H Well and the P Alexander 1H3 Well after the first year of production for the P Alexander 1H Well and the P Alexander 1H3 Well.

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

61. 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 Plaintiff.

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

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

63. The flaring of gas from the P Alexander 1H Well and the P Alexander 1H3 Well as described in the allegations of the *Background* of the Complaint constitutes an unreasonable or improper use, abuse, mismanagement, or omission of duty by Defendant

touching Plaintiffs' rights in the mineral estate from which production from the P Alexander 1H Well and the P Alexander 1H3 Well is taken ("Common Law Waste").

64. 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.

65. Defendant's flaring of gas from the P Alexander 1H Well and the P Alexander 1H3 Well 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.**

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

67. 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.

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

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

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

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

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

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

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



73. 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.
74. 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.
75. 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.
76. 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.
77. 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.**

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

79. 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.

80. The Proposed Class is entitled to compensation for Defendant's conversion of the Proposed Class's Flared Gas.

81. Defendant has not paid and refuses to pay royalties to the Proposed Class for Flared Gas.

82. 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.
83. 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.
84. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.
85. 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.
86. The adjudication of the Proposed Class's claims under this Seventh Cause of Action will be fairly and efficiently accomplished as:
- a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's conversion of the Flared Gas;
  - b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
  - c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the

Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

87. For their Eighth 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 their claim for money damages for the Proposed Class under this Eighth Cause of Action.

89. The Proposed Class is entitled to compensation for Defendant's Common Law Waste of the Proposed Class's Flared Gas.

90. 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.

91. 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.
92. 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.
93. 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.
94. The adjudication of the Proposed Class's claims under this Eighth Cause of Action will be fairly and efficiently accomplished as:
- a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's Common Law Waste of the Flared Gas;
  - b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;
  - c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

#### **PRAYER FOR RELIEF**

WHEREFORE, 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;
- 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;
- 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;
- 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;
- G. Ordering Defendant to pay reasonable attorneys' fees as allowed by law, as well as costs and disbursements in bringing the Proposed Class's Claims, and;
- H. For such other relief that the Court deems appropriate.

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

**BAUMSTARK BRAATEN LAW PARTNERS**

/s/ Derrick Braaten  
Derrick Braaten (06394)  
Lindsey Nieuwsma (06857)  
109 N 4<sup>th</sup> Street, Suite 100  
Bismarck, ND 58501  
Telephone: 701-221-2911  
Fax: 701-221-5842  
derrick@baumstarkbraaten.com  
lindsey@baumstarkbraaten.com

**BALZER LAW FIRM, P.C.**

Cody L. Balzer (ND 07513)  
1302 Cleveland Ave  
Loveland, CO 80537  
Telephone: (970) 203-1515  
Fax: (970) 613-1806  
cody@balzerlaw.com

**ATTORNEYS FOR PLAINTIFFS**

**DEMAND FOR JURY TRIAL**

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

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

**BAUMSTARK BRAATEN LAW PARTNERS**

*/s/ Derrick Braaten* \_\_\_\_\_

Derrick Braaten (06394)

Lindsey Nieuwsma (06857)

109 North 4<sup>th</sup> Street, Suite 100

Bismarck, ND 58501

Telephone: 701-221-2911

Fax: 701-221-5842

*Attorneys for Plaintiffs*