



State of North Dakota, Corporation Service Company, 316 N. 5th Street, PO Box 1695, Bismarck, North Dakota 58502-1695.

5. Defendant is the operator of an oil well classified as a “horizontal” well, the Lampert 13-24H well, located in the SWSW of Section 24, Township 163 North, Range 100 West, Divide County, North Dakota having API number 33-023-00657-00-00 (“Lampert 13-24H Well”).
6. Defendant also is the operator of an oil well classified as a “horizontal” well, the Broderson 13-35H well, located in the SWSW of Section 35, Township 150 North, Range 98 West, McKenzie County, North Dakota having API number 33-053-03234-00-00 (“Broderson 13-35H Well”).
7. Border Farm Trust owns mineral interests from which oil and gas are being produced from the Lampert 13-24H Well and is entitled to royalties from production from the Lampert 13-24H Well.
8. The Kummings own mineral interests from which oil and gas are being produced from the Broderson 13-35H Well and are entitled to royalties from production from the Broderson 13-35H Well.

#### **JURISDICTION AND VENUE**

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

**BACKGROUND**

11. The Lampert 13-24H Well was spudded on January 4, 2011. It began to produce hydrocarbons in February of 2011. The Broderon 13-35H Well was spudded on November 14, 2010. It began to produce hydrocarbons in January of 2011.
12. Defendant pays or should pay royalties to Border Farm Trust from the Lampert 13-24H Well and to the Kummings from the Broderon 13-35H Well.
13. The oil and gas production from the Lampert 13-24H Well is from the West Ambrose-Bakken Pool. The oil and gas production from the Broderon 13-35H Well is from the Siverston-Bakken Pool.
14. The Lampert 13-24H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Lampert 13-24H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant to the North Dakota Industrial Commission, Department of Mineral Resources, Oil & Gas Division (the “Industrial Commission” or “NDIC”):

<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>
Feb-11	10	4098	3392	2553	0	2553
Mar-11	25	10367	10992	7954	0	7954
Apr-11	22	9742	9396	7260	0	7260
May-11	16	5940	5763	4109	0	4109
Jun-11	19	5425	5655	3030	2861	169
Jul-11	30	7618	7614	487	0	320
Aug-11	31	7747	7630	3470	2679	788
Sep-11	30	7040	6968	3542	3026	471
Oct-11	31	7085	6805	3910	3776	74
Nov-11	29	5636	5802	2978	2782	139
Dec-11	29	5867	5758	2747	2118	573
Jan-12	30	6129	6477	2901	2400	446

Feb-12	28	4747	4678	1873	1420	393
Mar-12	31	4951	5180	2530	2107	347
Apr-12	30	4641	4165	1898	970	891
May-12	31	4562	4865	2499	1789	513
Jun-12	30	3954	4144	2223	1750	297
Jul-12	31	3841	3526	2356	1922	264
Aug-12	31	3643	3960	2434	0	2278
Sep-12	30	3362	3020	2475	0	2334
Oct-12	30	3326	3094	2348	0	2209
Nov-12	30	3249	3518	1983	0	1846
Dec-12	31	3313	2954	1887	0	1752
Jan-13	31	3222	3720	1877	0	1748
Feb-13	28	2746	2666	1708	0	1592
Mar-13	28	2696	2751	1681	0	1557
Apr-13	30	2807	2732	1760	0	1638
May-13	31	2667	2955	1859	0	1730
Jun-13	30	2438	2419	1691	0	1562
Jul-13	31	2452	2434	1951	1466	351
Aug-13	31	2451	2267	1671	1146	396
Sept-13	29	2149	2213	2142	2019	1
Oct-13	31	2187	2208	1883	1736	25

15. The Broderson 13-35H Well has produced oil and gas, and has flared gas since first production through at least October of 2013. For the months since first production, the Broderson 13-35H Well has produced and sold oil, and produced and flared gas in the following quantities as reported by Defendant 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>
Jan-11	3	473	0	831	0	831
Feb-11	24	1201	1365	1964	0	1964
Mar-11	30	689	478	948	0	948
Apr-11	25	541	713	179	0	179
May-11	24	424	469	372	10	362
Jun-11	24	148	227	161	0	161
Jul-11	31	220	0	427	0	350
Aug-11	31	180	227	295	0	282
Sep-11	27	157	228	214	0	201
Oct-11	1	21	227	9	0	8

Nov-11	16	13310	12368	13834	1483	12347
Dec-11	31	26302	26379	29511	872	28634
Jan-12	30	23614	23947	24633	0	24596
Feb-12	29	16746	17045	31772	58	31585
Mar-12	31	14038	13567	29353	8862	20290
Apr-12	30	11695	11707	23688	15068	8490
May-12	31	10688	10765	16102	11618	4344
Jun-12	30	9253	9255	18916	14472	4337
Jul-12	31	8768	8572	18359	16495	1461
Aug-12	31	7810	7908	15651	13907	1430
Sep-12	26	6628	6853	11299	10312	748
Oct-12	31	7968	7927	18167	17085	884
Nov-12	30	6871	6865	14791	13663	963
Dec-12	31	6782	6766	14428	13137	1125
Jan-13	29	6263	6270	13219	12798	259
Feb-13	28	5804	5664	12093	11405	542
Mar-13	31	5990	6072	13719	13021	535
Apr-13	30	5539	5643	12259	11126	969
May-13	16	3211	3294	5651	5281	203
Jun-13	24	5052	5376	10094	9841	101
Jul-13	5	1547	1520	3151	3114	37
Aug-13	29	12855	12132	26707	26333	374
Sept-13	30	10509	10292	23407	21025	2251
Oct-13	30	7914	7925	17443	17184	32

16. Gas flared from wells such as the Lampert 13-24H Well and the Broderon 13-35H 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.

17. Based on current reported production information, the Lampert 13-24H Well flared 23,724 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>
Feb-12	393
Mar-12	347
Apr-12	891
May-12	513
Jun-12	297
Jul-12	264
Aug-12	2278
Sep-12	2334
Oct-12	2209
Nov-12	1846
Dec-12	1752
Jan-13	1748
Feb-13	1592
Mar-13	1557
Apr-13	1638
May-13	1730
Jun-13	1562
Jul-13	351
Aug-13	396
Sept-13	1
Oct-13	25

18. Based on current reported production information, the Broderson 13-35H Well flared 105,556 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>
Jan-12	24,596
Feb-12	31585
Mar-12	20290
Apr-12	8490
May-12	4344
Jun-12	4337
Jul-12	1461
Aug-12	1430
Sep-12	748
Oct-12	884
Nov-12	963
Dec-12	1125
Jan-13	259
Feb-13	542
Mar-13	535
Apr-13	969
May-13	203
Jun-13	101
Jul-13	37
Aug-13	374
Sept-13	2251
Oct-13	32

19. Any permitted flaring of gas from the Lampert 13-24H Well and the Broderson 13-35H 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.

20. 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.

21. 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 Lampert 13-24H Well or the Broderson 13-35H Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

22. 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.

23. 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.

24. Defendant has not applied for nor obtained flaring exemptions for the Lampert 13-24H Well and the Broderson 13-35H Well for the production months Plaintiffs allege violated subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above. As a result, Defendant owes Plaintiffs royalties on the value of the gas flared in violation of Subsection 4 of N.D.C.C. § 38-08-06.4.

25. 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 Lampert 13-24H Well and the Broderson 13-35H Well for the production months Plaintiffs allege violated subsection 2 as set forth above.



26. Defendant has not paid royalties for the 23,724 Mcfs of gas produced and flared from the Lampert 13-24H Well after the first year of production or for the 105,556 Mcfs of gas produced and flared from the Broderson 13-35H Well after the first year of production thus far.
27. Defendant continues to produce oil and gas from the Lampert 13-24H Well and the Broderson 13-35H Well and will continue to flare gas from such well in violation of the provisions of N.D.C.C. § 38-08-06.4.
28. Plaintiffs are entitled to royalties for future gas flared from the Lampert 13-24H Well and the Broderson 13-35H Well.
29. 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.
30. 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.
31. 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.
32. Plaintiffs have suffered the loss of royalties due for gas flared from the Lampert 13-24H Well and the Broderson 13-35H Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4 as set forth above.

33. Plaintiffs will suffer the loss of royalties in the future for gas flared from the Lampert 13-24H Well and the Broderon 13-35H Well in violation of subsection 2 of N.D.C.C. § 38-08-06.4.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.
40. Gas flared from wells such as the Lampert 13-24H Well and the Broderon 13-35H 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.

41. The Industrial Commission has provided the following rules concerning the flaring of gas in the Lampert 13-24H Well:

- a. NDIC Order No. 15000 in Case No. 12739 dated September 14, 2010 (“Order 15000”) that dealt in part with the Lampert 13-24H Well.
- b. As stated in Paragraph 20, pages 5 and 6 of Order 15000, the Industrial Commission has ordered as follows:

All wells in the West Ambrose-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.

- c. NDIC Order No. 16341 in Case No. 14066 dated July 8, 2011 (“Order 16341”).
- d. As stated in Paragraph 20, pages 5 and 6 of Order 16341, the Industrial Commission has ordered as follows:

All wells in the West Ambrose-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.

- e. NDIC Order No. 17744 in Case No. 15498 dated September 20, 2011 (“Order 17744”).
- f. As stated in Paragraph 34, pages 8 and 9 of Order 17744, the Industrial Commission has ordered as follows:

All wells in the West Ambrose-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.

- g. NDIC Order No. 17475 in Case No. 15230 dated September 20, 2011 (“Order 17475”).
- h. As stated in Paragraph 34, pages 7 and 9 of Order 17475, the Industrial Commission has ordered as follows:

All wells in the West Ambrose-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 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.

42. Under Order 15000, Order 16341, Order 17744 and Order 17475, the Lampert 13-24H

Well could be produced at the maximum efficient rate for the first 60 days of production.

After that, the well could produce an average of 200 barrels of oil per day for 60 days; thereafter, an average of 150 barrels per day for the next 60 days; and thereafter at an average of 100 barrels per day unless the Industrial Commission entered administrative orders allowing unrestricted oil production for up to 120 days.

43. Upon information and belief, the Lampert 13-24H Well was not connected to a gas gathering and processing facility until June of 2011. From April 20, 2011 through May 2011, following the expiration of the 60-day period set forth in Order 15000 and Order 16341 during which the Lampert 13-24H Well could be produced at maximum efficient rate but before it was connected to a gathering and processing facility, Defendant reported the Lampert 13-24H Well produced over 8,000 barrels of oil during the first year of production in violation of Industrial Commission rules and orders and while the well was not connected to a gas gathering and processing facility. The flaring of this gas during the period from April 20, 2011 through January 2012 violated subsection 1 of N.D.C.C. § 38-08-06.4 because it was not as permitted under rules of the Commission cited above and as a result, royalties are owed on the value of the gas flared.
44. Defendant operates at least 235 oil wells from which gas is produced in North Dakota in counties including Divide 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.
45. On information and belief, Defendant does not pay royalties for all or a portion of the gas flared from the oil wells it operates.
46. 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.

47. 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.

48. 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.

49. 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.

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

51. 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.



52. Common questions of law and fact exist such that a resolution of those questions will drive a common remedy for the common injury suffered by the Class. These common questions of law and fact also predominate over the questions affecting only individual class members. Some of the common legal and factual questions include:

- a. Whether Defendant flared natural gas in violation of the North Dakota Anti-Flaring Statute;
- b. Whether Defendant must pay the Class royalties on Flared Gas;
- c. Whether the Class is entitled to declaratory relief adjudicating that Defendant is required to pay royalties on the value of Flared Gas and future Flared Gas;
- d. Whether Defendant is guilty of conversion of Flared Gas;
- e. Whether Defendant has committed waste of North Dakota's valuable natural resources; and
- f. Whether Defendant should cease flaring gas flared in violation of North Dakota law.

53. 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 subsections 1 and 2 of N.D.C.C. § 38-08-06.4, and they are entitled to recover royalties on the value of the Flared Gas.

54. 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.

55. 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.

56. 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.

57. 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.**

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

59. Defendant operated the Lampert 13-24H Well so that at least 23,724 Mcfs of gas was flared after the one-year period from the date of first production from the well through October 2013.

60. Defendant operated the Broderson 13-35H Well so that at least 105,556 Mcfs of gas was flared after the one-year period from the date of first production from the well through

October 2013.

61. Defendant owes Plaintiffs for royalties attributable to gas flared from the Lampert 13-24H Well and the Broderson 13-35H Well for those periods following one year after the day of first production from each well.
62. Defendant operated the Lampert 13-24H Well within one year of first production so that gas was flared during the time periods alleged above in violation of N.D.C.C. § 38-08-06.4 and the Orders cited above.
63. Defendant owes Border Farm Trust for royalties attributable to gas flared from the Lampert 13-24H Well during the first year of production.

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

64. For their Second Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
65. The Plaintiffs believe and therefore allege that Defendant has flared gas and likely will continue to flare gas from the Lampert 13-24H Well and the Broderson 13-35H 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.
66. Plaintiffs are entitled to declaratory relief adjudicating that Defendant is obligated to pay royalties on the value of all Flared Gas and future Flared Gas from the Lampert 13-24H Well and the Broderson 13-35H Well flared in violation of section 4 of N.D.C.C. § 38-08-06.4.
67. 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.**

68. For their Third Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
69. Plaintiffs are entitled to royalties for gas flared from the Lampert 13-24H Well during the first year of production as alleged above, and royalties for gas flared thereafter through the present for the Lampert 13-24H Well and the Broderson 13-35H Well.
70. Defendant has not paid and refuses to pay royalties to Plaintiffs for gas flared from the Lampert 13-24H Well during the first year of production and royalties for gas flared thereafter through the present for the Lampert 13-24H Well and the Broderson 13-35H Well.
71. Defendant's actions constitute a tortious detention of personal property due to the Plaintiffs in defiance of the rights of Plaintiffs.
72. 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.**

73. For their Fourth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
74. The flaring of gas from the Lampert 13-24H Well and the Broderson 13-35H 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 Lampert 13-24H Well and the Broderson 13-35H Well is taken ("Common Law Waste").

75. 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.

76. Defendant's flaring of gas from the Lampert 13-24H Well and the Broderson 13-35H Well as previously alleged in this Complaint constitutes Common Law Waste for which Plaintiffs is entitled to compensation, including that provided in N.D.C.C. § 32-17-22.

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

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

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

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

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

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

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

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

82. Defendant's flaring of gas from the Lampert 13-24H Well and the Broderson 13-35H Well as previously alleged in this Complaint constitutes a violation of N.D.C.C. § 38-08-06.4 from which Plaintiffs are entitled to recovery of unpaid royalties as permitted under N.D.C.C. § 43-02-03-60.2.

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

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

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

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

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

87. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Sixth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Sixth Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

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

- a. the members of the Proposed Class have a common interest in obtaining royalties for Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant.
- c. separate adjudication by an individual member of the Proposed Class as a practical matter would be dispositive of the interests of other members of the Proposed Class not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- d. the common questions of law or fact predominate over any questions affecting only individual members;
- e. other means of adjudicating the claims and defenses are impracticable or inefficient;
- f. the claims under this Sixth Cause of Action are not known to be subject of a class action, a government action, or other proceeding;

- g. the management of a class action would not pose unusual difficulties; and
- h. no conflict of laws issues are involved, as such issues are matters of North Dakota law or are governed by North Dakota law.

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

89. For their Seventh Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
90. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking declaratory relief for the Proposed Class under this Seventh Cause of Action.
91. 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.
92. 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.
93. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Seventh Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class’s claims for declaratory relief under this Seventh Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.
94. The adjudication of the Proposed Class’s claims under this Seventh Cause of Action will be fairly and efficiently accomplished as:



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

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

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

96. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of its claim for money damages for the Proposed Class under this Eighth Cause of Action.

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

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

99. 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.

100. 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.

101. Defendant should compensate Proposed Class for Defendant's conversion of the Flared Gas.

102. 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.

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

- a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's conversion of the Flared Gas;
- b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those

individual members, which would establish incompatible standards of conduct for Defendant;

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

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

- 104. For their Ninth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
- 105. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of their claim for money damages for the Proposed Class under this Ninth Cause of Action.
- 106. The Proposed Class is entitled to compensation for Defendant's Common Law Waste of the Proposed Class's Flared Gas.

107. 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.
108. 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.
109. 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.
110. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Ninth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action will fairly and efficiently provide for the adjudication of the Proposed Class's claims under this Ninth Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.
111. The adjudication of the Proposed Class's claims under this Ninth Cause of Action will be fairly and efficiently accomplished as:
  - a. the members of the Proposed Class have a common interest in obtaining compensation for Defendant's Common Law Waste of the Flared Gas;
  - b. the prosecution of separate actions by individual members of the Proposed Class would create a risk of inconsistent or varying adjudications with respect to those individual members, which would establish incompatible standards of conduct for Defendant;

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

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

112. For their Tenth Cause of Action, Plaintiffs repeat and reallege each and every prior allegation of this Complaint.
113. The proposed class is made up of aggrieved persons under the provision of the *North Dakota Environmental Law Enforcement Act of 1975* found at N.D.C.C. §§ 32-40-01 et seq. This statute reaffirms a private right of action to enforce the environmental anti-flaring provisions under N.D.C.C. § 38-08-06.4.
114. By flaring in violation of N.D.C.C. § 38-08-06.4, Defendant has violated an environmental statute, rule or regulation for the protection of natural resources

including minerals under the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2.

115. Apart from the injury to the public in general, injuries to the Proposed Class include an impairment of the Proposed Class's mineral interest and results in the loss of the royalties that are to be paid to members of the Proposed Class pursuant to N.D.C.C. § 38-08-06.4. Plaintiffs are aggrieved as provided in N.D.C.C. § 32-40-03.
116. The Proposed Class is entitled under N.D.C.C § 32-40-06 to sue to enforce the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2 and to recover damages suffered from Defendant as a result of the Defendant's violation of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2.
117. Plaintiffs, pursuant to N.D.C.C. § 32-40-06, gave timely notice by certified mail of Plaintiffs' intent to file suit and the violation of N.D.C.C. § 38-08-06.4 as generally set forth in this Complaint to the following:
  - A. Defendant;
  - B. The North Dakota Industrial Commission;
  - C. The State's Attorney for McKenzie County; and
  - D. The Attorney General of the State of North Dakota.
118. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b)(2) for the purposes of seeking enforcing the provisions of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2 and to recover damages by the Proposed Class suffered as a result of the Defendant's violation of N.D.C.C. § 38-08-06.4 and N.D.A.C. § 43-02-03-60.2..
119. Plaintiffs seek certification of the Proposed Class pursuant to Rule 23(b) for this Tenth Cause of Action as (a) the requirements of Rule 23(a) are satisfied; (b) a class action

will fairly and efficiently provide for the adjudication of the Proposed Class's claims for declaratory relief under this Seventh Cause of Action; and (c) Plaintiffs will fairly and adequately protect the interests of the Proposed Class.

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

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

**PRAYER FOR RELIEF**

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

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



Dated this 27<sup>th</sup> day of December, 2013.

**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  
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

**THE MONTS FIRM**

Britton D. Monts (*pro hac vice pending*)  
401 Congress Ave., Suite 1540  
Austin, Texas 78701-3851  
Telephone: (512) 474-6092  
Fax: (512) 692-2981  
bmonts@themontsfirm.com

**MURDOCK LAW FIRM PC**

Timothy J. Pearse (*pro hac vice pending*)  
123 West First Street, Suite 675  
Casper, WY 82601  
Telephone: (307) 235-0480  
Fax: (877) 216-5037  
tpearse@nmurdocklaw.com

**TARLOW STONECIPHER & STEELE,  
PLLC**

Matt J. Kelly (*pro hac vice pending*)  
1705 West College Street  
Bozeman, MT 59715-4913  
Telephone: (406) 586-9714  
Fax: (406) 586-9720  
mkelly@lawmt.com

**ATTORNEYS FOR PLAINTIFFS**

