IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

JOHN CECIL, on behalf of himself and all others similarly situated, Plaintiff, vs. BP AMERICA PRODUCTION COMPANY (f/k/a Amoco Production Company) (including BP Amoco Corporation, ARCO, BP Exploration, Inc., BP Corporation North America, Inc., and BP Energy Company), Defendant.	Civil Action No. 16-CV-00410-RAW

PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT

John Cecil ("Plaintiff"), on behalf of himself and the Class of all other persons similarly situated, files this Second Amended Class Action Complaint against BP America Production Company ("BPAPC", f/k/a Amoco Production Company) and several affiliates—BP Amoco Corporation, ARCO, BP Exploration, Inc., BP America, Inc., BP Corporation North America, Inc., and BP Energy Company— (collectively "BP"), and alleges and states as follows:

SUMMARY OF ACTION

1. Plaintiff and the Class bring claims to rectify BP's actual, knowing, and willful underpayment or non-payment of royalties on natural gas and/or constituents of the gas stream produced from wells through improper accounting methods (such as not paying on the starting price for gas products but instead taking improper deductions) and by failing to account for and pay royalties, all as more fully described below.

2. For a period of over two decades, BP engaged in a willful effort to defraud its royalty owners in Oklahoma wells by intentionally deducting Midstream Service costs, which allowed BP and its co-conspirators to take millions of dollars that should have been paid in royalties.

3. The BP and its co-conspirators added to that effort by not paying royalties for all of the valuable constituents that came from Class Wells, such as FL&U and Plant Fuel, and again hiding that from royalty owners.

4. By systematically deducting more from every monthly check of every royalty owner in Oklahoma, BP and its co-conspirators improperly enriched themselves by millions of dollars.

5. BP purposefully implemented a scheme to defraud royalty owners and—over the objection of its own royalty committee—covered it up so that royalty owners (like those in this case) wouldn't file lawsuits to stop BP's fraud.

6. Only by serving discovery in this case, and uncovering documents that BP had previously concealed, could Plaintiff and the Class finally pursue justice for BP's decades-long scheme to defraud Oklahoma royalty owners.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 18 U.S.C. §§ 1962 and 1964 (prohibited activities and civil remedies); and supplemental jurisdiction over the state law claims through 28 U.S.C. § 1967.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because BP transacts business and is found within this District, and/or has agents within this District, and a substantial part of the events giving rise to the claims asserted herein occurred and caused injury in this District.

PARTIES

9. Plaintiff is a citizen and resident of Oklahoma. Plaintiff owns a royalty interest in in a BP operated well that produces gas.

10. Defendant BP America Production Company, f/k/a Amoco Production Company ("BPAPC"), is a corporation organized under Delaware law with its principal place of business in Texas. BPAPC has already been served and appeared in this action.

11. BPAPC is responsible back to at least January 1, 1985 (when price deregulation began) for Amoco Production Co. wells since BP acquired Amoco in the late 1990s, for Atlantic Richfield Co. (ARCO) wells since BP acquired ARCO in 2000, and for Vastar wells since BP acquired Vastar in 2000. Thereafter, BP has a number of different entities that appear to be involved, as set forth below:

BP PLC (the ultimate United Kingdom (foreign) parent company, which is publicly traded)
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BP Holdings North America Limited
|
BP America Inc. (houses all the lawyers and management that service all of the affiliates)
|
BP Corporation North America Inc. (f/k/a BP Amoco Corporation until May 2001)
|
BP Company North America Inc.
|
BP America Production Company (a/k/a BPAPC or Lower 48, and f/k/a Amoco Production Company,[1] ARCO, and Vastar) (lessee and operator of Class Wells, and owner and operator of BP Midstream Services such as gathering systems and processing plants)

[1] Amoco Corporation merged with British Petroleum in 1998 in what was then the world's largest industrial merger of approximately $48 Billion. The combined company was called BP Amoco PLC. In 2000, BP Amoco bought ARCO for $27 Billion (which owned 82% of Vastar Resources, Inc.), and later that year, BP Amoco bought the rest of Vastar for approximately $1.5 Billion. In 2000, BP Amoco p.l.c. changed its name to BP PLC.

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F&H Pipeline Company (owned the F&H Gathering System in Oklahoma until it was bought by CenterPoint in 2011, which is now Enable)

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BP Energy Company (before August 28, 2000, f/k/a Amoco Energy Trading Company

12. BP Corporation North America, Inc. is believed to have been a lessee, working interest owner that marketed its own gas through a BP affiliate and directly paid royalties to the royalty owners, operator, and/or payor of royalty on Oklahoma wells that produced gas during the Class Period. BP Corporation North America, Inc. is an Indiana corporation that was formed in 2001 upon the name change of BP Amoco Corporation. The Oklahoma Secretary of State business entities database shows its current status as "ousted" for failure to file its annual certificate with the Oklahoma Secretary of State. Service may be had on its registered agent: The Prentice-Hall Corporation System, Oklahoma, Inc., 115 S.W. 89th St., Oklahoma City, OK 73139-8511.

13. From approximately 1999 to 2001, after Amoco Production Company was acquired by BP, its name was BP Amoco Corporation, which is believed to have been a lessee, working interest owner that marketed its own gas through a BP affiliate and directly paid royalties to the royalty owners, operator, and/or payor of royalty on Oklahoma wells that produced gas during the Class Period. In 2001, BP Amoco Corporation changed its name to BP Corporation North America, Inc. Because BP is a mere continuation of BP Amoco Corporation, BP Amoco Corporation has been served with process when BP was served with process at its registered agent: The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK 73128.

14. Prior to 1998, Amoco Production Company is believed to have been a lessee, working interest owner that marketed its own gas through an Amoco affiliate (Amoco Energy

Trading Corporation) and directly paid royalties to the royalty owners, operator, and/or payor of royalty on Oklahoma wells that produced gas during the Class Period. In 1998 or 1999, BP acquired Amoco Corporation (including Amoco Production Company) to form BP Amoco Corporation.[2] Accordingly, Amoco Corporation, Amoco Production Company, and BP Amoco Corporation are predecessors of BP. Since BP is a mere continuation of Amoco Corporation and Amoco Production Company, the Amoco entities were served with process when BP was served with process at its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK 73128.

15. BP—including its affiliated predecessor entities, Amoco Production Company, Amoco Corporation, ARCO, BP Corporation North America, Inc., BP Energy Company, and BP Amoco Corporation—is in the business of producing and marketing gas and constituent products from the wells in which Class members hold royalty interests.

16. The typical royalty payment is between 1/8th and 3/16th of a well's revenue.

17. BP and its affiliated predecessors, successors, and all those to whose prior leasehold interests they have succeeded and for whom they are legally liable whether by merger, assignment, or otherwise shall herein collectively be known as "Defendant" or "BP".

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself and as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons or entities, except as specifically excluded below, who are or were royalty owners in wells located in Oklahoma which had production during any portion of the time period from January 1, 1985 through and including December 31, 2017, where Defendant BP America Production Company (including its

[2] http://www.bp.com/en/global/corporate/about-bp/our-history/late-century.html

> affiliated predecessors and affiliated successors) is or was the operator (or a working interest owner) who marketed its share of gas as to production before January 1, 2018. The claims in this matter relate to royalty payments for gas and its constituents (such as residue gas, natural gas liquids, helium, nitrogen, or drip condensate).
>
> Excluded from the Class are: (1) United States agencies and Indian tribes and allottees; (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendant, its affiliates, predecessors, and employees, officers, and directors; (4) the claims of royalty owners to the extent their claims are covered by prior settlement agreements, if any, releasing claims as to all or part of the Class Period, but only to the extent such prior settlements fully released the claims of such royalty owner(s) that would be released by this proposed class settlement as to the Class Wells, Released Parties, and Released Claims (the intent being that this Settlement be and remain effective as to any claims not already released by any such prior settlement agreements); (5) overriding royalty owners and others whose interest was carved out from the lessee's working interest; (6) officers of the Court in this case; (7) persons or entities that the Court determines Plaintiff's Counsel are prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; (8) any publicly traded company and their affiliated entities that produces, gathers, processes or markets gas; and (9) royalty owners who are suing in their individual capacities only for the alleged underpayment or nonpayment of royalties in *Watts, et al. v. BP America Production Company*, Case No. C-2001-73 in the District Court for Pittsburg County, Oklahoma.[3]

19. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable.

20. BP operates or has operated thousands of Class Wells that produce gas. BP holds a working interest in these Wells, with at least one, and usually multiple, royalty owners for each well.

21. BP has within its possession or control records that identify all persons to whom it (including affiliated predecessors and those for whom it is legally responsible) has paid royalties from Class Wells during the Class Period.

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[3] The Plaintiffs in the *Watts v. Amoco* case as of the date hereof are: Ronald W. McGee, as Trustee of Watts Ranch, LLC; Nora Ann Watts Enis; Judy R. Durant; Johnye L. Barnes; the Estate of Clara Joann Smith; and the C&J Wilcox Family Trust.

22. The questions of fact or law common to Plaintiff and the Class include, without limitation, one or more of the following:

Whether Plaintiff and members of the Class are owed a common legal duty under: (1) Implied Duty to Market (IDM) as well as express duties of the leases; (2) fiduciary duty; (3) tortious breach of lease; (4) RICO; and/or (5) fraud, deceit, or constructive fraud, which requires BP to sever the gas from the ground and to prepare the gas for market at BP's sole expense?

A. If so, whether:

1. An affiliate sale can be ignored as a matter of law under *Howell v. Texaco, Inc*., 2004 OK 92, so that only the first arm's length sale in a market can be used to determine the royalty without any netback or work back calculation of costs allowed;

2. In an arm's length transaction, are the Midstream Costs of gathering, compression, dehydration, treatment, and processing (GCDTP) costs associated with preparing the gas for market such that none of them should have been deducted from royalties but all or some of them were;

B. Whether BP paid royalty to Plaintiff and members of the Class for all valuable constituents coming from their wells, including Helium, Drip Condensate, FL&U and Plant Fuel?

C. Whether BP, BP's affiliates, BP's executives, and Amoco formed an enterprise-in-fact (the BP/Amoco Enterprise) within the meaning of RICO?

D. Whether BP and the other members of the BP/Amoco enterprise-in-fact engaged in a pattern of racketeering activity?

E. Whether the BP/Amoco Enterprise caused Plaintiff and the Class to suffer injuries to their property?

F. Can class-wide damages be calculated?

23. Plaintiff is typical of other class members because: (a) Plaintiff (like the rest of the Class) has a lease that requiring full, not partial payment; (b) gas from the well in which Plaintiff (like the rest of the Class) holds a royalty interest was and is marketed by BP and incurs Midstream Service costs; and, (c) BP pays royalty to Plaintiff (like other Class members) using a common method that deducts the Midstream Service costs. BP pays royalty based on this net

instead of gross value. The Midstream Services are necessary to place the gas and its constituent parts into marketable condition so they can be sold into recognized, active, and competitive commercial markets.

24. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff is a royalty owner to whom BP pays royalty. Plaintiff understands his duties as a Class representative. Plaintiff has retained counsel competent and experienced in class action and royalty owner litigation.

25. This action is properly maintainable as a class action. Common questions of law or fact exist as to all members of the Class and those common questions predominate over any questions solely affecting individual members of such Class. *See* ¶22 above. There is no need for individual Class members to testify in order to establish BP's liability to or damages sustained by Plaintiff and members of the Class.

26. Class action treatment is appropriate in this matter and is superior to the alternative of numerous individual lawsuits by members of the Class. Class action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense and effort on the part of those individuals, witnesses, the courts, and/or BP. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative forum exists for the fair and efficient adjudication of the claims of all Class members.

27. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by all or some members of the Class. Joinder of all Class members

would be either highly impracticable or impossible. And the amounts at stake for individual Class members, while significant in the aggregate, would be insufficient to enable them to retain competent legal counsel to pursue claims individually. In the absence of a class action in this matter, BP will likely retain the benefit of its wrongdoing.

GAS INDUSTRY BACKGROUND

32. The members of the Class own royalty interests in wells that produce gas and constituents that are transformed into marketable products and sold into the established commercial markets for those products.

33. BP's method for calculating royalty to the members of the Class is subject to uniform accounting procedures, implied marketable product law, and express lease requirements.

34. Oklahoma law requires the lessee to bear all of the costs of placing gas and its constituents into "Marketable Condition" products and to honor the terms of the leases.

35. Gas and its constituent parts are marketable products only when they are in the physical condition to be bought and sold in a commercial marketplace.

36. Only after a given product is marketable does a royalty owner have to pay its proportionate share of the reasonable costs to get a higher enhanced value or price for that particular product.

The Lessor-Lessee Relationship

37. The lessor owns minerals, including oil and gas; the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter into a lease that allows the lessee to take the minerals from the lessor's land. The usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better

seismic technology, and increased efficiency of drilling rigs, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue.

38. But, the oil and gas companies (including BP) have used undisclosed internal accounting practices to try to keep for themselves as much of the well revenue as possible. These accounting practices are at the heart of every oil and gas royalty case.

39. Rather than adopting transparency in its royalty calculation formula, BP, like most lessees, has guarded its production and accounting processes as confidential or proprietary, thereby, depriving the royalty owners of information necessary to understand how BP calculates royalties. Consequently, the royalty owner is unaware of the lessee's actual practices, thereby enabling the lessee to breach the oil and gas lease without accountability.

40. If and when one or more of the royalty owners learn of the "breach", the royalty owner has only three (3) – all poor – options: (1) confront the lessee and maybe get paid while the lessee continues to retain improperly garnered gas revenues from thousands of other unknowing royalty owners; (2) do nothing since the "breach" only results in a modest yearly loss and the expense of individual litigation would exceed the recovery, if any; or (3) file a class action lawsuit which will persist for years and probably will not recover the full loss. In short, if the lessee breaches, it may never be held accountable; and if a royalty owner complains, the lessee will still come out ahead because an individual case is not worth much and a class action rarely obtains 100% repayment to royalty owners plus-prejudgment interest, plus attorneys' fees and expenses. The class action is the best of the three options, hence this suit.

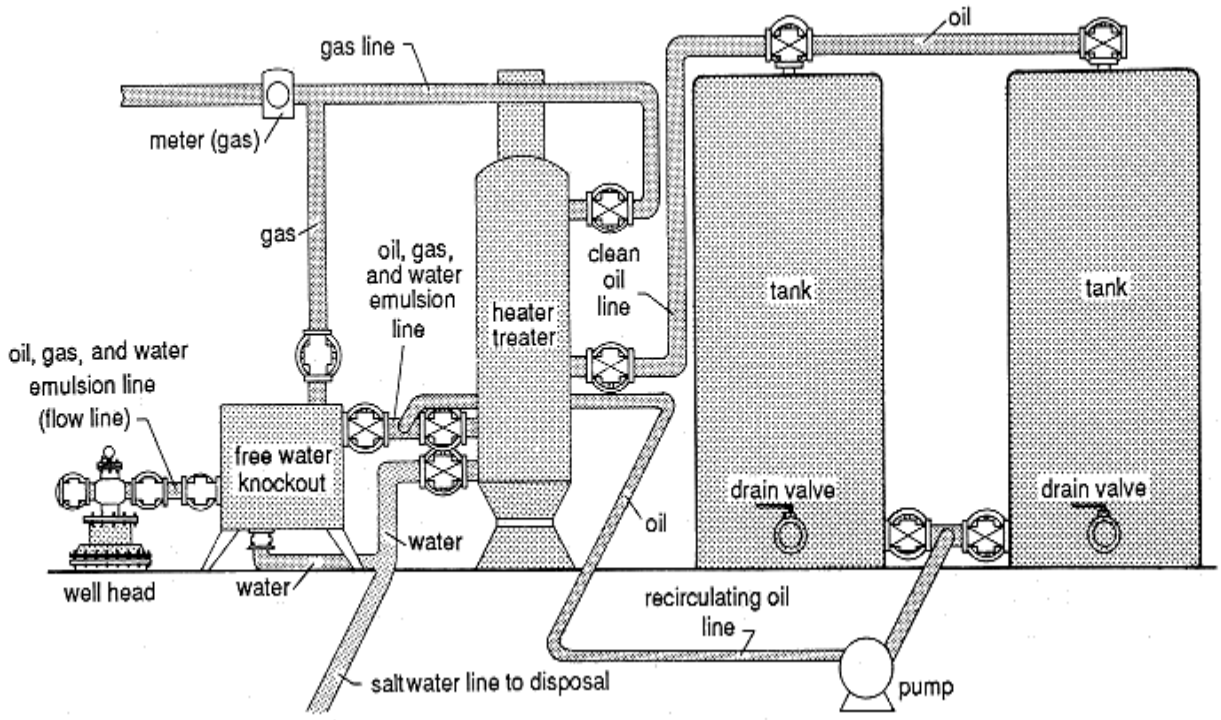
Residue Gas and Natural Gas Liquids Production

41. The gas is gathered from each well, dehydrated and compressed, through underground gathering lines crossing many miles of land to processing plants where the raw gas

is transformed into two primary products--methane and fractionated natural gas liquids ("NGLs"). Once homogenized as fungible products, the residue gas and NGLs are sold in the commercial market.

Wellhead (Basic Separation and Gas Measurement)

42. The diagram below illustrates the beginning of the gas conditioning process.



See http://www.kgs.ku.edu/Publications/Oil/primer13.html

43. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, carbon dioxide, etc., all mixed together in the gas stream.4 After the stream comes out of the ground, it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due to the

[4] Hydrocarbons can vary in chemical makeup (from simple methane to complex octane) and in form (from pure gaseous state to liquid condensate). The non-hydrocarbon makeup of the well-stream that includes natural gas can also include gases such as helium, sulfur, carbon dioxide, and nitrogen. This mixture of many gaseous elements and substances is often referred to as the "gas stream" or just "gas".

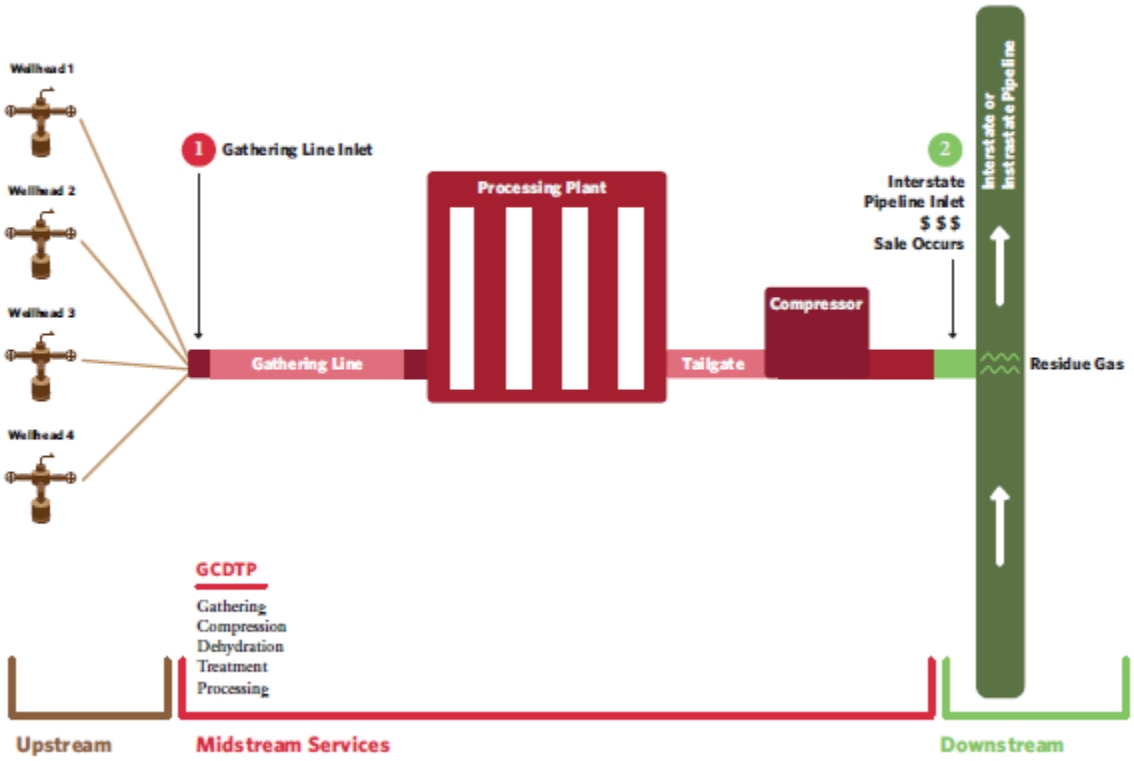
low technology, the separator is not expensive (the "separation cost"). The gaseous mixture (with helium, nitrogen, carbon dioxide, NGLs, and other gaseous substances) passes from the separator into the gas line.[5] The remaining fluid goes through the heater-treater where heat, gravity segregation, chemical additives and electric current break down the mixture more clearly in oil and water. The heater-treater is installed, maintained and takes fuel to operate (the "heater-treater cost"). The water is drained off and sent for salt water disposal. The oil that is separated at the wellhead is collected in a tank, usually trucked out and sold (the payment of oil royalties is not at issue in this lawsuit).

44. Since production over time depletes the pressure of a well, on rare occasion, on-lease compressors are installed to suction gas out of the well or to move the gaseous mixture down the gathering lines. But when they are installed, their use requires fuel (the "on-lease compression" or "vacuum compression" cost).

45. The gaseous mixture produced from a single well cannot be processed economically, so the mixtures from many wells are "gathered" together through gathering lines and delivered to a processing plant for transformation into marketable products and sale into commercial markets. This results in a gathering cost (G). The below diagram provides an overview of the process. BP does not improperly deduct from royalty any of the costs before the gathering line inlet.

[5] A minute portion of this raw gas may be used on a few leased lands to heat the farm house pursuant to a free gas clause in the lease. Although title transfers to the gas, it is not a sale. Some producers sell less than 3% of the raw gas to a local irrigator during the summer months for agricultural purposes, but this is not the economic market for which the wells are drilled.

Midstream Service Costs (GCDTP)



46. As the gaseous mixture from each well enters the gathering line, it flows into a meter run where the mixture is measured for both volume (in Mcf) and quality (Btu content) (combined, "gas measurement," in MMBtu). The meter run must be constantly maintained to record accurate measurements.

47. Gathering pipelines are usually made of metal that could be corroded by water vapor (and other corrosive gases) in the gaseous mixture, so a glycol dehydrator is used to remove the water vapor. This results in a dehydration cost (D).

48. Gas will not move downstream from the well unless it is pressurized sufficiently to overcome the in-line back pressure and friction in the gathering line. So large gas compressors

are installed to move the gas from the gathering line inlet to the processing plant. These compressors are expensive and require fuel to operate. This results in a compression cost (C).

49. The gathering pipelines themselves cost money to lay and maintain, though most have been in place for decades.

50. Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas ("L&U"). Lessees pay no royalty on the volume of L&U. Combined, the compression and/or treatment fuel along with L&U are called FL&U.

Natural Gas Processing

51. Once a sufficient amount of the gas mixture from multiple wells (and often from multiple gathering systems) is gathered, the mixture enters the inlet of the processing plant where the mixture will be transformed into methane and mixed NGLs.

52. Lessees, such as BP, use gas processing plants that either they or a third-party own. Usually an unrelated third party owns the processing plant but the plant may also be owned in whole or in part by a lessee.

53. The plant removes impurities that remain in the mixture, such as carbon dioxide, nitrogen, or sulfur, before the mixture can be processed. This incurs a "treatment cost" (T)).

54. The final cost, processing (P), involves services to transform the gas mixture into methane gas (also called "residue gas") and NGLs raw make.

a. Methane must meet the quality standards for long-haul pipeline transmission set by the Federal Energy Regulatory Commission ("FERC") which is called "pipeline quality gas".

b. The raw make NGLs are used as a feedstock in the petrochemical and oil refining industries; they are a more valuable commodity than methane. To separate the

NGLs from the gaseous mixture, they are cooled to temperatures lower than minus 150°F (the "Cryogenic or cooling process"). The NGLs move into a liquids pipeline and processed by a fractionator into their marketable products: ethane; propane; butanes; and pentanes plus. In the gas contracts, this process incurs a "T&F" or "fractionation" fee, even though lessees sometimes give away the NGLs in keep-whole agreements as consideration for other services the midstream company provides.

55. This total processing system involves expensive equipment and requires fuel to operate (collectively, the "processing charge" and/or "plant fuel"). Lessees do not pay royalty on plant fuel, even though it comes from Class Wells.

56. At the tailgate of the processing plant, at least two products emerge: (1) residue gas (or methane gas); and, (2) NGLs (usually a mixture of NGLs, known as "raw make" or "Y" grade). But none of these products are commercially marketable at that point.

Marketable Condition for the Products

57. *Methane Gas*. Methane gas (or residue gas) is commercial quality (a/k/a "pipeline quality") at the tailgate of the processing plant only after it is further pressurized to enter the transmission line by a booster compressor (the "booster compression" cost).

58. *NGLs*. The raw mixture of NGLs at the tailgate of the processing plant is not commercially marketable. It must be fractionated into commercially marketable products – ethane, propane, butane, isobutene, natural gasoline, etc.[6] In computing royalty for NGLs, BP improperly deducts processing fees and/or other costs (such as transportation and fractionation, T&F) needed to reach commercially marketable fractionated NGLs.

[6] *See* http://ngl.conocophillips.com/news/about.html.

Sale of Products

59. To turn the marketable products into money, the producer sells them (or contracts to have them sold) in the commercial market place in an arm's length transaction. No money exchanges hands until the residue gas is sold at the Index pool and the fractionated NGLs at OPIS.

The Paper Title Transfer Cover-Up

60. Lessees, such as BP here, attempt to obscure the actual gas preparation for market through fictitious sales, often affiliate sales, with self-serving language in gas marketing contracts about title transfer or even by creating a wholly owned affiliate to manufacture a fictitious or bogus "sale" before the gas reaches commercial quality for sale.

61. The "starting price" for gas products is always achieved, as it must be, at a commercial market price. All of the gas contracts express the commercial market price in one of two ways: (a) a market price, called an "Index" price for residue gas and "OPIS" price for fractionated NGLs, or (b) a "weighted average sales price" or "WASP" achieved at the same residue Index market or OPIS market. The difference stems from BP's market power to, over time, obtain above "Index" or "OPIS" price in its arm's length sale. Whichever starting price is used in an arm's length transaction, that price is the highest and best reasonable price for the valuable gas products.

62. Affiliate gas contracts are not arm's length sales in a commercial market. Instead, the later arm's-length sale by the affiliate in the commercial market is the true sale that should be used as the "starting price" for marketable condition gas products.

a. Some lessees, such as BP here, contract with or use affiliated gathering companies or other affiliated gas service providers before the products (residue gas and/or

NGLs) are in Marketable Condition in an effort to: (1) artificially, and improperly, create a commercial market where none truly exists so they may justify deducting costs from royalty, or not paying for all of the gas or constituent products produced; (2) charge "marketing fees" (sometimes disguised as a Return on Investment) to royalty owners even though the lessee is already obligated under the lease to prepare the gas for market and market the gas and constituent products; and/or (3) pay on the lower lessee/affiliate sale price and not the higher affiliate/third party price.

b. WASP involves a pool of sales transactions to third parties (and/or affiliates) and combines the prices paid by those third parties (and/or affiliates) to arrive at a "weighted average sales price." Lessees can manipulate this process by using lower lessee/affiliate sales prices for part of the pool price, rather than all third party arm's length sale prices.

63. Fictitious "sales" are created by lessees in an effort to pass off a non-commercial market sale as if it should be the starting point for royalty payments. But none of those efforts comport with economic reality or are in good faith with respect to royalty owners. For instance:

a. Anything of value can be sold at any place and in any condition.

i. Gas and other minerals can and are routinely sold in the ground, but they are not in marketable condition.

ii. Gas could be sold at the bottom of the hole when it is severed from the surrounding rock and enters the downhole pipe. Although a contract driller might be willing to accept some percentage of the future sale of oil or gas in the real

marketplace as compensation for his drilling services, that agreement does not make the transaction a real market sale.

iii. Gas could be sold "at the wellhead" when the gas is severed from the surface. Although a contract operator might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his well operating services, that transaction does not make it a real market sale.

iv. Gas also could be sold at the gathering line inlet when the gas enters the gathering line and changes custody. Although a contract gatherer might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for its gathering services, that transaction does not make it a real market sale.

v. Gas also could be sold at the processing plant inlet when the gas changes custody to the processing plant. Although a contract processor might be willing to accept some percentage of the future sale of gas in the real marketplace as compensation for his processing services, that transaction does not make it a real market sale.

The lessee could simply pay for all of these services with monetary fees or in-kind contributions of all or part of the valuable constituents. But the structure of the transaction does not change the fact that the services are necessary to prepare the gas and valuable constituents for the first real sale into the commercial market – Index or OPIS.

b. Nor does a contract saying title transfers at a custody transfer point create a sale of marketable products in a real commercial market. Some gas contracts with Midstream companies that provide GCDTP services purport to do that, but other

parts of the gas contract demonstrate that it is a legal sleight of hand as (i) the risk of loss that usually passes with a true title transfer and market sale does not happen; (ii) the cost of future downstream services that usually passes with a true title transfer and market sale does not happen; (iii) the starting price which would occur with a true title transfer and market sale does not happen. Indeed, the paper title transfer is unnecessary to receiving the Midstream services as the gas could receive the exact same Midstream service without the paper title transfer.

c. All of the gas contracts implicitly recognize this paper title transfer fiction, as the starting price for gas products always is at the Index and OPIS market pool as previously described.

d. Midstream services providers are not buyers and resellers of raw gas. They are service providers that convert raw gas into pipeline quality gas so it can enter the Index or OPIS market pools.

Different Ways BP Underpays Royalty Owners

64. The millions of dollars at stake and the one-sided nature of the gas lessor-lessee relationship are constant temptations to illegally siphon away gas royalties and covertly charge inflated costs and deductions to royalty owners.

65. All payment formulas, affiliate and non-affiliate contractual relationships, and all calculations are exclusively in the control of lessees, *and* they involve undisclosed accounting and operational practices. As a result, there are many ways royalty owners are underpaid on their royalty interests, and they never know it. The common thread through all of these schemes is that they are typically buried in the internal lessee accounting systems or royalty-payment formulas.

66. BP represents the royalty calculation on the form of a monthly check stub it sends each royalty owner. The check stub shows each royalty owner's interest and taxes (which are not in dispute here), and volume, price, deductions, and value, all of which are disputed.

67. BP underpays royalty to Plaintiff and all other Class Members in the following ways:

a. *Residue Gas*. The starting price paid for residue gas should be an arm's length, third party market sales price for residue gas at pipeline quality. All of BP's gas contracts show this to be true. But, instead of paying on that gross competitive price, BP pays on a net price after directly taking or allowing midstream companies to indirectly take Midstream Services deductions (both monetary fees and in-kind volumetric deductions).

b. *NGLs*. The starting price paid for fractionated NGLs should be an arm's length, third party market sales price for ethane, propane, normal butane, iso-butane, and pentane plus (a/k/a natural gasoline). All of BP's gas contracts will show this to be true. But instead of paying on that gross competitive price, BP pays royalty (i) for only some of the NGLs produced (some is lost and unaccounted for in the gathering process, lost in plant fuel or compression fuel); (ii) after deducting Midstream processing fees and expenses (often keeping in-kind a Percentage of the Proceeds ("POP") of the fractionated NGLs as payment for the processing services); and, (iii) after reducing payment by T&F.

BP's ACTUAL, KNOWING AND WILLFUL
UNDERPAYMENT OR NON-PAYMENT OF ROYALTIES

68. As set forth above, the underpayment and non-payment of royalties are done with BP's actual and willful knowledge and scienter. BP's decision to overrule its own royalty committee and conceal the deductions it is taking from royalty owners is indefensible.

69. In fact, BP has settled similar claims on a non-class basis in Oklahoma, yet only doing so for those that asserted their claims individually. This allowed BP to quiet the "squeaky wheels" while continuing its improper practices as to all others and reaping millions of dollars in improper proceeds.

70. In addition, BP is well familiar with the fact that virtually all other producers in Oklahoma have resolved the same claims, paying back to royalty owners over a billion dollars.

71. Nevertheless, BP continues its improper payment practices with actual and willful knowledge and intent.

COUNT I – VIOLATION OF THE RICO ACT, 18 U.S.C. §§ 1961-1968

72. Plaintiff and the Class incorporate by reference the allegations in all other paragraphs of this Complaint as if fully set forth in this section.

73. Plaintiff, each member of the Class, and BP and its co-conspirators are a "person," as that term is defined in 18 U.S.C. §§ 1961(3) and 1962(c).

74. The scheme alleged herein constitutes mail and/or wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

75. The conduct of BP and its co-conspirators, as described in this Complaint, constitutes the execution of a scheme to deprive oil and gas lessors of royalties properly due them by means of fraudulent pretenses and representations through the use of the United States mails, in violation of 18 U.S.C. § 1341, and interstate wires, in violation of 18 U.S.C. § 1343.

The Enterprise

76. For purposes of this claim, the RICO "enterprise", as the term is defined under 18 U.S.C. §§ 1961(4) and 1962(c), consists of each of BP and its co-conspirators—and their respective officers, directors, employees, agents, and direct and indirect subsidiaries (the "Enterprise").

77. The Enterprise is separate and distinct from the persons that constitute that enterprise-in-fact.

78. Each of the intra-company transactions made by BP was an "intra-company gas sale," rather than an arms-length sale reflecting the actual market price. This was a scheme to defraud.

79. BP and its co-conspirators refuse to be transparent toward royalty owners.

80. The deductions taken are indefensible. With full clarity that these deductions are actually a scheme to defraud, it now makes sense why the BP took such deductions.

81. To date, the Defendants have deducted millions of dollars.

82. This self-dealing is at the heart of the affiliate deduction issue and RICO.

83. This fact is not disclosed to royalty owners or to the public.

84. At all relevant times, the Enterprise was engaged in, and its activities affected, interstate commerce because the mails and wires were used to effectuate the scheme and BP could not have executed the scheme to defraud without using interstate commerce.

85. The proceeds of the Enterprise were distributed to its participants, including to BP.

86. The Enterprise was ongoing and worked together toward a common purpose.

87. All of the co-conspirators in the enterprise in fact worked together and cooperatively toward this common purpose.

88. Each of the co-conspirators expressly agreed to, and did, knowingly and willfully participate in the conduct of the Enterprise.

89. The Enterprise has operated for decades.

90. The Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which BP engaged.

The Pattern of Racketeering Activity

91. At all relevant times, in violation of 18 U.S.C. § 1962(c), BP conducted the affairs of the Enterprise through a pattern of racketeering activity as defined in RICO, 18 U.S.C. § 1961(5), by virtue of the conduct described in this complaint.

92. The pattern of racketeering activity consisted of mail and/or wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

93. BP, as the lessee, owes a contractual obligation to act honestly and fairly to the royalty owners. Nevertheless, BP misused its position.

94. BP also owes a duty not to charge unreasonable fees to the royalty owners.

95. If any of the co-conspirators did not conduct or participate in the enterprise, all of the co-conspirators nevertheless conspired to do so, in violation of § 1962(d), because the joined an agreement to facilitate and perpetuate the scheme to defraud against the royalty owners.

Injury to Plaintiffs and the Class

96. As a direct and proximate result of violations of 18 U.S.C. § 1962(c) and (d) by BP, Plaintiff and the Class have been injured in their business or property within the meaning of 18 U.S.C. § 1964(c).

97. Plaintiff and the Class had and continue to have sums withheld from their royalty on account of falsely inflated, unauthorized post-production costs by reason, and as a direct, proximate, and foreseeable result, of the scheme alleged. Plaintiffs' continued deprivation through inflated and unreasonable deductions evidence their reliance on the BP's misstatements.

98. Under the provisions of 18 U.S.C. § 1964(c), BP is jointly and severally liable to Plaintiff and the Class for three times the damages sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

COUNT II – BREACH OF LEASE
(INCLUDING EXPRESS TERMS AND IMPLIED COVENANTS)

99. Plaintiff and the Class incorporate by reference the allegations in all other paragraphs of this Complaint as if fully set forth in this section.

100. Plaintiff and the other Class Members entered into written, fully executed, oil and gas leases with BP, and the express and implied terms of those leases were breached which include implied covenants requiring BP to prepare the gas and its constituent parts for market at BP's sole cost. The leases also place upon BP the obligation to properly account for and pay royalty interests to royalty owners under the mutual benefit rule and good faith and fair dealing.

101. At all material times, Plaintiff and the Class have performed their terms and obligations under the leases.

102. BP breached the leases, including the implied covenants, by its actions and/or inactions in underpaying royalty or not paying royalty on all products sold from the gas stream.

103. As a result of BP's breaches, Plaintiff and the Class have been damaged through underpayment of the actual amounts due.

COUNT III – BREACH OF FIDUCIARY DUTY

104. Plaintiff and the Class incorporate by reference the allegations in all other paragraphs of this Complaint as if fully set forth in this section.

105. The Class members have interests in Oklahoma wells that have unitized under 52 Okla. Stat. § 87.1.

106. A fiduciary duty was created and vested when BP (or its predecessor in interest) requested and received unitization orders from the Oklahoma Corporation Commission pursuant to those statutes.

107. BP is the unit operator by appointment from the Oklahoma Corporation Commission for Class members.

108. BP breached its fiduciary duty to the Class members by failing to properly report, account for, and distribute gas proceeds to the Class members for their proportionate royalty share of gas production.

109. As a direct and proximate result of BP's conduct in breaching its fiduciary duties, Class members are entitled to recover actual damages.

110. Plaintiff and the Class are also entitled to and seek pre-judgment interest, post-judgment interest, attorneys' fees from the common fund, expenses, and costs.

COUNTS IV, V, AND VI – FRAUD, DECEIT, AND CONSTRUCTIVE FRAUD

111. Plaintiff and the Class incorporate by reference the allegations in all other paragraphs of this Complaint as if fully set forth in this section.

112. BP made uniform misrepresentations and/or omissions on the monthly check stubs sent to Class members reflecting the wrong volume and price, and not detailing all of the monetary fee and in-kind volumetric deductions.

113. As set forth above, BP made a material representation that was false and/or omitted to state one or more material facts needed to make what was stated not misleading. BP knew when the material representations were made on the check stubs that the statements were false or misleading and/or at least made recklessly without any knowledge of their truth, or made the statements with the intent that Plaintiff and the Class would rely on them. Plaintiff and the Class Members did rely on and/or are legally presumed to have relied upon these uniform written representations as being truthful and accurate, when they were not. Plaintiff and the Class Members suffered injury and were underpaid as a result.

114. BP also concealed or failed to disclose facts about the price, volume, value, various products produced, and deductions, which BP had a duty to disclose to avoid presenting half-truths or misrepresentations.

115. BP undertook the duty to properly account by making the statements in check stubs on a monthly basis to royalty owners. By speaking on the issue, BP had a duty to make full and fair disclosure of all relevant facts. This is especially so because BP had superior and/or specialized knowledge and/or access to information when compared to royalty owners.

116. BP knew that its representations or omissions on the monthly check stubs were at least ambiguous and created a false impression of the actual facts to the royalty owners.

117. BP knew the facts were peculiarly within BP's knowledge and that the Class was not in a position to discover the facts pertaining to the proper volume, values, and constituents coming from their wells. Accordingly, having spoken on the subject matter, BP had a duty to make full and fair disclosure of all material facts such that its statements were not misleading, but did not.

118. BP was deceitful by suggesting, as a fact, that the volume, price, value and other statements were as set forth on the monthly check stubs when those statements were not true. BP knew the statements were not true, had no reasonable grounds for believing they were true, or gave only such information as was likely to mislead for want of the communication of the non-disclosed facts.

119. The misrepresentations and omissions were intentionally made. They were intended to suggest that the price was a third party commercial price without hidden deductions, the volumes were accurately measured without volumetric deductions, and that deductions would be shown on the check stub when in fact they were not.

120. By creating and mailing misleading check stubs to the Class, BP has fraudulently and deceitfully misled the Class into believing that the Class Members had been paid on the full value of the production from their wells.

121. BP acted intentionally or recklessly in disregard of the rights of Plaintiff and the Class Members, on a uniform basis, by not properly paying royalty owners, by deceiving them with check stubs that were misleading, and by failing to correct BP's royalty payment practices after being sued multiple times for underpaying royalties such that punitive damages should be awarded and that BP acted intentionally and with malice toward Plaintiff and the Class Members subjecting BP to punitive damages.

122. As a direct and proximate result of BP's deceit and fraud, Plaintiff and the Class were underpaid monthly for royalties and are entitled to recover actual and punitive damages.

123. In addition, the money wrongfully obtained by BP as a result of what should have been paid to Plaintiff and the Class should be held in constructive trust along with monetary interest for Plaintiff and the Class.

COUNT VII – TORTIOUS BREACH OF LEASE

124. Plaintiff and the Class incorporate by reference the allegations in all other paragraphs of this Complaint as if fully set forth in this section.

125. Defendants' actions amount to more than a simple breach of contract. Implied into every contract is the duty to deal honestly and fairly.

126. Defendants are guilty of tortious breach of contract resulting in damages to the Class.

127. Defendants' tortious acts were performed intentionally, maliciously and with utter disregard to the express and implied rights of the Class. Therefore, in addition to actual damages, Defendants should pay punitive damages as a method of punishing Defendants and setting an example for others.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an Order and Judgment against BP as follows:

a. That the Court determine that this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to members of the Class;

b. Appointing Plaintiff as the class representative, and Plaintiff's Counsel as class counsel;

c. Awarding Plaintiff and the Class damages and treble damages for the violation of RICO, plus attorneys' fees, as set forth in the RICO statute;

d. Awarding Plaintiff and the Class damages for actual damages for breach of lease, and interest at the highest allowable rate (such as lawful, equitable, or internal rate

of return), as well as compensatory and punitive damages for breach of fiduciary duty, fraud, deceit, and constructive fraud;

e. Awarding pre- and post-judgment interest;

f. Granting Plaintiff and the Class the costs of prosecuting this action together with reasonable attorney's fees out of the recovery;

g. Granting such other relief as this Court may deem just, equitable and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a jury trial on all matters so triable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2018, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record *via* the Court's electronic filing system.

/s/ Reagan E. Bradford
Reagan Bradford