

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

EXTRACTION OIL & GAS, INC., *et al.*,<sup>1</sup>

Debtors.

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ANNETTE LEAZER; TOM LEAZER;  
GORDON NISWENDER; JOY NISWENDER;  
H.L. WILLETT ESTATE; SAGLIO ENERGY  
LLC; OVERLAND OIL & GAS ADVISORY  
LLC; OVERLAND MINERALS AND  
ROYALTIES LLC; OVERLAND ENERGY  
PARTNERS FUND I LLC; OVERLAND  
ENERGY PARTNERS FUND II LLC;  
J A INVESTMENTS; BRIGHTON SOUTH,  
LLC; ATOMIC CAPITAL MINERALS, LLC;  
ACM FUND II LLC; TIMNATH LANDS LLC;  
RAWAH RESOURCES LLC; THUNDER  
RIDGE RESOURCES LLC; TRG OIL AND  
GAS; J. GALE MOODY; VALERIE MOODY;  
AND ALASKAN OIL AND RESOURCES,  
LLC,

Plaintiffs

v.

EXTRACTION OIL & GAS, INC.,

Defendant

Chapter 11

Case No. 20-11548 CSS

(Jointly Administered)

Adversary No. 20-50963-CSS

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**SECOND AMENDED COMPLAINT**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



Annette Leazer; Tom Leazer; Gordon Niswender; Joy Niswender; H.L. Willett Estate; Saglio Energy LLC; Overland Oil & Gas Advisory LLC; Overland Minerals and Royalties LLC; Overland Energy Partners Fund I LLC; Overland Energy Partners Fund II LLC; J A Investments; Brighton South, LLC; Atomic Capital Minerals, LLC; ACM Fund II LLC; Timnath Lands LLC; Rawah Resources LLC; Thunder Ridge Resources LLC; TRG Oil and Gas; J. Gale Moody (“J Moody”); Valerie Moody; and Alaskan Oil and Resources, LLC (collectively, the “Plaintiffs”), file this Complaint against Defendant Extraction Oil & Gas, Inc. (“Defendant” or “Extraction”). In support of their Complaint the Plaintiffs state as follows:

### **I. SUMMARY OF COMPLAINT**

1. This Complaint involves causes of action related to underpayments of royalties to the Plaintiffs on oil and natural gas produced and sold by the Defendant from wells located in Colorado. These underpayments are a result of the Defendant paying Plaintiffs only a portion of the true value of their oil and gas interests.

2. The Defendant failed to sell and pay for all Plaintiffs’ oil and gas the Defendant produced, took deductions and/or allowed deductions, recoupments, fees, adjustments, and penalties to be taken from the sale of Plaintiffs’ oil and gas, and failed to market and sell the Plaintiffs’ oil and gas at market prices. Said conduct violates every one of the oil and gas leases that govern the Defendant’s payment of royalty obligations with the Plaintiffs and impacts all Plaintiffs.

3. The Defendant also took deductions related to taxes expressly forbidden by the oil and gas leases it entered into and that govern the royalty payments with Plaintiffs J

Moody, Valerie Moody, Alaskan Oil and Resources, LLC, Annette and Tom Leazer, and J A Investments. These Plaintiffs have additional royalty underpayment claims related thereto.

4. The Defendant also failed to recognize the entire mineral ownership of Plaintiffs Valerie Moody, Alaskan Oil and Resources, LLC, and J A Investments. This resulted in the Defendant failing to pay royalties for oil and gas owned by these Plaintiffs that has been taken, produced and sold by the Defendant. These Plaintiffs have additional royalty underpayment claims related thereto.

## **II. JURISDICTION, CONSENT TO ENTRY OF JUDGMENT, AND VENUE**

5. This Court has jurisdiction over the subject matter of this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (E), and (O).

6. In accordance with Local Rule 7008, the Plaintiffs consent to the entry of final orders or a judgment by the bankruptcy Court in this adversary proceeding.

7. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

## **III. PARTIES**

8. Annette and Tom Leazer are individuals who reside in Windsor, Colorado. Mr. and Mrs. Leazer are party to an oil and gas lease governing the Defendant's production of their oil and gas and payment of royalties for the sale thereof to them that is recorded at Reception Number 3997182 in Weld County, Colorado.

9. Gordon and Joy Niswender are individuals who reside in Windsor, Colorado. Mr. and Mrs. Niswender are party to an oil and gas lease governing the Defendant's

production of their oil and gas and payment of royalties for the sale thereof to them that is recorded at Reception Number 3932512 in Weld County, Colorado.

10. H.L. Willett Estate is an Estate opened in Denver, Colorado. H.L. Willett Estate has interests in oil and gas leases governing the Defendant's production of oil and gas and payment of royalties for the sale thereof to it that are recorded at Reception Numbers 1793397 and 1889640 in Weld County, Colorado.

11. Saglio Energy LLC, is a Colorado limited liability company with its principal place of business located in Gypsum, Colorado. Saglio Energy LLC has interests in oil and gas leases governing the Defendant's production of oil and gas and payment of royalties for the sale thereof to it that are recorded at Reception Numbers 1722852, 1791570, 1793063, 1797293, 1803417, 1803418, 1803419, 1803420, 1821249, 1835642, 1843193, 1846901, 1955342, 1889328, 1889869, 1892156, 1892157, 1892159, 1892165, 1895177, and 1899098 in Weld County, Colorado.

12. Overland Oil & Gas Advisory LLC, Overland Minerals and Royalties LLC, Overland Energy Partners Fund I LLC, Overland Energy Partners Fund II LLC, are related limited liability companies with their principal place of business located in Denver, Colorado. Overland Oil & Gas Advisory LLC is party to an oil and gas lease governing the Defendant's production of oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Numbers 1980833 and in Weld County, Colorado. Overland Minerals and Royalties LLC is party to an oil and gas lease governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 4372563 in Weld County, Colorado. Overland Energy

Partners Fund I, LLC is party to oil and gas leases governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Numbers 4419136 and 4435911 in Weld County, Colorado. Overland Energy Partners Fund II, LLC is party to oil and gas leases governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 4419135 and 4435910 in Weld County, Colorado.

13. J A Investments, is a Colorado limited liability company with its principal place of business located in Windsor, Colorado. J A Investments is party to an oil and gas lease governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 409816 in Weld County, Colorado.

14. Brighton South, LLC, is a Colorado limited liability company with its principal place of business located in Denver, Colorado. Brighton South, LLC is party to an oil and gas lease governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 2019000005976 in Adams County, Colorado.

15. Atomic Capital Minerals, LLC and ACM Find II LLC, are related limited liability companies with their principal place of business located in Houston, Texas. They are party to oil and gas leases governing the Defendant's production of their oil and gas and payment of royalties for the sale thereof that are recorded at Reception Numbers 1544067, 1929370, 2174749, 3651566, 3805273, 3843509, and 3947881 for ACM Fund II, LLC, and 1884516, 1552242, 1561774, 1624682, 1747028, 1814538, 1857111,

1857783, 1868889, 1872567, 1884516, 1897469, 2126566, 4508740, 3782086, 3791451, 3796179, 3985177, and 4180256 for Atomic Capital Minerals, LLC in Weld County, Colorado.

16. Timnath Lands LLC and Rawah Resources LLC are related limited liability companies with their principal place of business located in Timnath, Colorado. They are party to oil and gas leases governing the Defendant's production of their oil and gas and payment of royalties for the sale thereof that are recorded at Reception Numbers 3923133, 3858112, and 3843511 for Rawah Resources, LLC and 3974109 for Timnath Lands LLC, in Weld County, Colorado.

17. Thunder Ridge Resources LLC is a Colorado limited liability company with its principal place of business located in Arvada, Colorado. Thunder Ridge Resources, LLC is party to an oil and gas lease governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 1135123 in Weld County, Colorado.

18. TRG Oil and Gas is a Colorado limited liability company with its principal place of business located in Boulder, Colorado. TRG Oil and Gas is party to an oil and gas lease governing the Defendant's production of its oil and gas and payment of royalties for the sale thereof to it that is recorded at Reception Number 2019000010529 in Adams County, Colorado.

19. J Moody and Valerie Moody are individuals who reside in Eaton, Colorado. Alaskan Oil and Resources, LLC is a related limited liability company with a principal place of business also in Eaton, Colorado. They are party to oil and gas leases governing

the Defendant's production of their oil and gas and payment of royalties for the sale thereof that are recorded at Reception Numbers 3955471, 3895012, 3891497, 3955472, 3983462, 4098316, and 4098317 in Weld County, Colorado.

20. Defendant Extraction Oil & Gas, Inc. is a Delaware corporation with its principal place of business located in the State of Colorado. Extraction is an oil and natural gas development company that conducts business within the State of Colorado.

#### **IV. FACTUAL ALLEGATIONS**

21. The Plaintiffs own interests in oil and gas<sup>2</sup> that has been and continues to be produced and sold by the Defendant. Plaintiffs' oil and gas interests are subject to oil and gas leases (the "Leases") which determine the rights and obligations of Plaintiffs and the Defendant related to the production and sale of Plaintiffs' oil and gas rights.

22. The Defendant has extensive mineral title work related to the ownership of interests in the oil and gas produced by the Defendant's wells. The Defendant has every Lease and associated instruments related to Plaintiffs' oil and gas ownership and rights subject to the Defendant's wells, including those that Plaintiffs may have failed to list herein and which are incorporated herein by reference. This includes the instruments that create the overriding royalty interests in Leases owned by Plaintiffs H.L. Willett, Saglio Energy, LLC and J and Valerie Moody.

23. The Plaintiffs are compensated on the production and sale of their oil and gas rights by the payment of royalties by the Defendant after it sells the oil and gas. Royalties

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<sup>2</sup> As used herein, "oil and gas" includes associated hydrocarbon productions, including natural gas liquids.

are a portion of the proceeds derived from the sale of the oil and gas and are calculated and paid pursuant to the terms of the Leases and Colorado law.

24. The Defendant has underpaid royalties to Plaintiffs on their oil and gas interests for years, but the specific amount of time is unknown due to the Defendant intentionally withholding information related thereto from the Plaintiffs.

25. The Defendant submits royalty payments to the Plaintiffs each month with information related to the production and sale of Plaintiffs' oil and gas rights. The Defendant fails to include sufficient information for Plaintiffs to know whether the Defendant is underpaying the royalties to them and the exact amounts associated therewith.

*Produced and Unsold Oil and Gas*

26. Every Lease requires the Defendant to pay the Plaintiffs a set royalty percentage of the proceeds derived from the production of their oil and gas interests.

27. The Defendant has produced Plaintiffs' oil and gas interests but failed to sell all of the oil and gas produced.

28. The Defendant and/or third parties who contract with the Defendant allowed Plaintiffs' gas to be used or lost in the production and transportation thereof, resulting in nonpayment on some of Plaintiffs' oil and gas interests produced by the Defendant.

29. The Defendant entered into contracts with related and/or unrelated third parties for the sale of Plaintiffs' oil and gas ("Third Party Contracts") and allowed said third parties to retain a portion of the oil and gas without paying for it.

30. As a result, the Defendant receives payment on lower volumes than produced and/or lowered prices to account for unsold but produced volumes.



31. The Defendant does not report to Plaintiffs the portion of Plaintiffs' oil and gas rights that it failed to sell.

32. The Defendant does not pay Plaintiffs on the produced by unsold oil and gas, in violation of the Leases and Colorado law.

*Third Party Fees, Recoupments, Adjustments, and Penalties ("Deductions")*

33. The Defendant entered into Third Party Contracts to gather, load, treat, transport, and buy Plaintiffs' oil and gas.

34. Pursuant to the Third Party Contracts, various Deductions related directly and indirectly to the services provided are taken from the price paid for oil and gas.

35. For example, the Defendant pays loading, gathering, and transportation fees/tariffs for the oil it produces and sells. Such fees and tariffs are taken into account by the price the Defendant receives for the oil it sells. The Defendant pays the Plaintiffs based on the artificially lowered price it receives. None of the Leases expressly allow such Deductions.

36. The Defendant also pays facility expansion and other infrastructure fees associated with the gas system owned by its gas purchaser(s) under the Third Party Contracts. Such fees are taken into account by the price the Defendant receives on the gas it sells. The Defendant pays Plaintiffs based on the artificially lowered price it receives, in contradiction to the Leases and the law. None of the Leases expressly allow such deductions.

37. The Defendant does not report the various Deductions applied to its sale of Plaintiffs' oil and gas rights to Plaintiffs.

*Market Price*

38. Some of the Leases expressly require the Defendant to sell Plaintiffs' oil and/or gas rights at the "market" price or equivalent thereof. The rest of the Leases are silent on the sales price, meaning the Defendant has a duty to act a prudent operator and market the oil and gas at the best price available, i.e., market prices. Therefore, under every Lease, the Defendant is required to sell Plaintiffs' oil and gas at market prices.

39. The Defendant has failed to sell Plaintiffs' oil and gas at market prices.

40. The Defendant regularly sells Plaintiffs' oil for at least \$2.00 to \$3.00 per barrel below the market price. Some months, Defendant has sold Plaintiffs' oil for more than \$10.00 per barrel below the market price.

41. The Defendant has failed to sell Plaintiffs' gas at market prices.

42. The Defendant regularly sells Plaintiffs' gas for at least \$0.38 to \$1.33 per mcf below the market price.

43. The Defendant has sold Plaintiffs' gas at negative prices, thereby reducing the value of the oil produce in association therewith.

*Taxes*

44. Most of the Leases expressly allow the Defendant to deduct Plaintiffs' proportionate share of taxes from the royalties. Therefore, most Plaintiffs do not complain where the Defendant has deducted their share of taxes.

45. Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer signed Leases that contained negotiated addendums, stated to supersede the plain language of the Leases, that expressly prohibit

taking any deductions from their royalties. The prohibition includes deducting their proportionate share of taxes.

46. The intent of the addendum language was to shift their share of the tax burden associated with the production and sale of their oil and gas to the Defendant.

47. The Defendant deducts taxes from the royalties paid to Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer despite said prohibition.

*Title Error*

48. The Defendant pays royalties to Plaintiffs based on their ownership interest, on an acreage basis, of the oil and gas produced by each well. To determine the correct amount to pay, the Defendant must determine the correct amount of ownership for each Plaintiff. Most of the Plaintiffs do not have reason to believe Extraction erred in determining their oil and gas ownership.

49. However, the Defendant did not determine the correct amount of oil and gas ownership of Plaintiffs J and Valerie Moody, Alaskan Oil and Resources LLC, and J A Investments under the Leases recorded at Reception Numbers 3983462, 4098317, and 4098316.

50. The Defendant has under-accounted for and underpaid royalties to Plaintiffs J and Valerie Moody, Alaskan Oil and Resources LLC, and J A Investments due to its title error.

51. The following wells are subject to the Defendant's title error: Mickey 1, Mickey 2, Mickey 3, Mickey 4, Mickey 5, Mickey 6Z, Mickey 7, Mickey 8, Mickey 9, Mickey 10, Mickey 11, Mickey 12, and Mickey 13 (the "Mickey Wells").

52. Based on the records available to Plaintiffs J and Valerie Moody, Alaskan Oil and Resources LLC, and J A Investments, the Defendant has produced from but failed to lease additional oil and gas rights they own, resulting taking and producing their oil and gas by the Mickey Wells without permission or compensation.

*Royalty Non-Payments*

53. The Defendant has failed to recognize and pay Plaintiff Valerie Moody and J. Moody on production from the Defendants' Varra 2 and 3 wells for their non-participating royalty interest(s).

54. The Defendant has failed to pay any royalties owed to Salgio Energy, LLC since May, 2020.

*Bankruptcy*

55. The Defendant filed for chapter 11 bankruptcy protection on June 15, 2020.

56. As of the Petition Date, all actions against the Defendant were stayed under 11 U.S.C. § 362.

57. During the pendency of the bankruptcy cases, the Defendant asked for, and the Court granted, permission to continue to make Royalty payments.

58. In Debtors' *Motion for Entry of Interim and Final Orders (I) Authorizing Payment of (A) Mineral Payments, (B) Working Interest Disbursements, and (C) Joint Interest Billings and (II) Granting Related Relief* [Doc. No. 12] (hereinafter, "Royalty

Payment Motion”), the Defendant admitted that the royalty payments and overriding royalty owners’ share of production revenues from the Defendant’s wells are not property of the Debtors’ estates.

59. The Defendant holds both the pre- and post-petition revenues for unpaid royalties in trust for the Plaintiffs. Proceeds of oil and gas sales that remain as a result of underpayments to Plaintiffs are not property or part of the Debtors’ bankruptcy estates.

60. Plaintiffs allege that the produced but unsold oil and gas, prohibited Deductions, failure to pay market price, title errors, and nonpayments, and associated calculation errors have resulted in the estimated underpayment of Royalties to Plaintiffs of more than \$2,000,000.00, not including any interest or penalties.

**FIRST CLAIM FOR RELIEF**  
**(Determination of the Validity, Scope, and Extent of the Under Payments Owed)**  
**(All Plaintiffs)**

61. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 60 of the Complaint as though set forth in full in this Claim for Relief.

62. 28 U.S.C. § 2201 provides, in pertinent part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon a filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

63. Under 28 U.S.C. § 2201 and 11 U.S.C. § 105(a), this Court has the power to declare and adjudicate the rights and obligations of the parties and to grant such other and

further relief as may be necessary to enforce the rights and obligations of parties relative to the Plaintiffs' Leases.

64. A substantial and actual controversy exists between the Plaintiffs and Defendant. Uncertainty and insecurity currently exist with respect to the rights, status, and other legal relations between the parties concerning the validity, scope and extent of Plaintiffs' Leases and the Defendant's produced but unsold oil and gas, prohibited Deductions, price determinations, title work, , and royalty calculations as set forth below. Failure to resolve such controversies may result in further underpayments by the Defendant and/or its successors in interest to Plaintiffs.

65. Based on the factual allegations above, the Plaintiffs seek a declaratory judgment determining the validity, scope and extent of their claims for unpaid royalties and the amounts owed to the Plaintiffs.

**SECOND CLAIM FOR RELIEF**  
**(Determination that the Underpayments Owed are not Property of the Estate)**  
**(All Plaintiffs)**

66. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 65 of the Complaint as though set forth in full in this Claim for Relief.

67. The Plaintiffs further seek a declaration that their royalties and any royalty underpayments are not property of the Defendant's bankruptcy estate and must be turned over to Plaintiffs.

68. Section 541(a)(1) of the Bankruptcy Code generally provides that all property to which a debtor has a legal or equitable interest becomes property of the estate upon the commencement of a Chapter 11 case. However, section 541 does not create new

legal or equitable interests in property. Rather, property interests are created and defined by state law.

69. If a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor's estate under § 541 of the Bankruptcy Code and the debtor cannot retain or distribute such property to its creditors.

70. Further, 11 U.S.C. § 541(d) provides that property for which a debtor holds only bare legal title is not property of the estate. Additionally, a debtor who holds proceeds attributable to real property owned by another holds at most bare legal title to such proceeds.

71. Under Colorado law, a royalty interest is an interest in real property. *United Bank v. Ferris*, 847 P.2d 146, 149 (Colo. App. 1992) ("the parties do not dispute that the royalty interest seized and sold was an interest in real property, and the federal tax authorities similarly dealt with the property as an interest in real estate. The royalty interest here is considered one in real property by both Colorado and New Mexico.") (citing *Page v. Fees-Krey, Inc.*, 617 P.2d 1188 (Colo. 1980)). Once created, a royalty interest becomes the property of its owner. Consequently, when the oil and gas production attributable to a royalty interest is sold and the proceeds are held by a bankrupt debtor, the proceeds belong to the owner of the royalty interest are not property of the bankruptcy estate and they must be paid to the owner under the contract terms.

72. To the extent Colorado law does not govern, § 541(b)(4)(B) would exclude Plaintiffs' royalty interests and the attributable royalties from property of the Defendant's bankruptcy estate.

73. Because royalty interests are not property of the estate either by application of Colorado law or pursuant to section 541(b) of the Bankruptcy Code, any proceeds or profits that the Defendant wrongly withheld which are attributable to the Plaintiffs' royalty interests are not property of the estate under section 541(a)(6) of the Bankruptcy Code.

74. The Defendant only takes possession of proceeds from the sale of the Plaintiffs' share of oil and gas production because it markets and sells the oil and gas production on behalf of the Plaintiffs pursuant to the Leases. The Defendant merely holds the proceeds from the sale of production attributable to the royalty interests in the Leases in trust for the purpose of distributing them to the Plaintiffs.

75. Courts have also held that in such situations, a resulting or constructive trust is established on behalf of the owners of the interests and that the property subject to the trust is not property of the bankruptcy estate. *See Vess Oil Corp. v. SemCrude, L.P. (In re SemCrude, L.P.)*, 418 B.R. 98, 106 (holding that funds in debtors' possession held on behalf of royalty interest holders were held in a resulting trust and that such funds were not property of the estate); *see also United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) ("Congress plainly excluded [from section 541] property of others held by the debtor in trust at the time of the filing of the petition."). Indeed, the Defendant plainly admits that the royalties and disputed amounts related thereto are held in trust and therefore do not constitute property of the estate. *See Royalty Payment Motion*, at ¶¶ 16–22.

76. Because the Plaintiffs' royalties and any proceeds attributable to produced but unsold oil and gas, prohibited Deductions, price determinations, title work, royalty calculations and other underpayments are not property of the bankruptcy estate, the



Defendant has no right to distribute any such proceeds to its creditors or otherwise dispose of them. The Plaintiffs therefore request a determination that all proceeds attributable to unpaid and underpaid royalty interests be turned over to them.

**THIRD CLAIM FOR RELIEF  
(Fraud and Misrepresentation)  
(All Plaintiffs)**

77. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 76 of the Complaint as though set forth in full in this Claim for Relief.

78. Colorado law requires oil and gas operators, such as the Defendant, to provide certain information related to royalty calculations and payments with each monthly royalty payment. Colo. Rev. Stat. § 34-60-118.5. The required information includes the true price received for each barrel of oil and mcf of gas sold, the payee's share of the sale before any deductions or adjustments made by the payer or identified with the payment, and the payee's share of the sale after any deductions or adjustments made by the payer or identified with the payment.

79. The Defendant receives statements from the third parties it has Third Party Contracts with for services related to the sale of oil and gas. The contracts themselves and the statements the Defendant receives identify the amount of oil and gas that goes unsold, the Deductions applied, and the price the purchaser is paying for the oil and gas that is sold after accounting for the foregoing.

80. The Defendant knowingly made uniform misrepresentations and/or omissions on the Plaintiffs' monthly royalty statements when it failed to identify the

amounts of Plaintiffs' oil and gas that were produced and unsold, the Deductions applied, and the true price of the oil and gas before adjustment.

81. The Defendant is responsible for the underpayments and inaccurate accounting for the royalties.

82. The Defendant made material representations that were false and/or omitted one or more material facts needed to make what was stated not misleading when they submitted royalty statements to the Plaintiffs. Upon information and belief, the Defendants knew their material representations were false or misleading and/or made the representations recklessly without any knowledge of their truth or made them with the intent that the Plaintiffs would rely on them.

83. Plaintiffs 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, and Plaintiffs suffered injury and were underpaid as a result. Plaintiffs have been underpaid for an unknown period of time due to the Defendant's material omissions in the royalty statements, taking away Plaintiffs' opportunity to benefit from such proceeds.

84. The Defendant had a duty to properly account to the Plaintiffs by providing the information in the royalty statements on a monthly basis to the Plaintiffs. The Defendant had a duty to make a full and fair disclosure of all relevant facts given the Defendant superior knowledge and access to information as compared to that of the Plaintiffs.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Contract)**  
**(All Plaintiffs)**

85. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 84 of the Complaint as though set forth in full in this Claim for Relief.

86. Plaintiff's Leases identify the royalty amount owed to Plaintiffs and do not expressly allow their oil and gas interests to be produced and not sold, allow the Deductions taken in the Defendant's sale of oil and gas to third parties; or allow their oil and gas interests to be sold at below market prices.

87. The Defendant breached the Leases by failing to pay the full royalty amount owed due to failing to sell all Plaintiffs' oil and gas produced, allowing Deductions to be taken in the sale of oil and gas to third parties; and selling Plaintiffs' oil and gas interests at below market prices.

88. By paying less than the amount due under the Leases the Defendant has damaged the Plaintiffs in the aggregate amount of the underpayments.

**FIFTH CLAIM FOR RELIEF**  
**(Breach of Contract)**  
**(Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC,**  
**J A Investments, Annette and Tom Leazer)**

89. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 88 of the Complaint as though set forth in full in this Claim for Relief.

90. For Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer, whose Leases expressly prohibit any

deductions, including deductions for taxes, the Defendant breached their Leases by deducting taxes from their royalty payments.

91. Said Plaintiffs also have Leases that grant to each of them the right to examine books and records related to the production and sale of their oil and gas going back five years. The Defendant refused reasonable requests by said Plaintiffs to review such books and records, in further breach of their Leases.

92. By paying less than the amount due under the Leases the Defendant has damaged the Plaintiffs in the aggregate amount of the underpayments.

93. By refusing to allow Plaintiffs to review the books and records applicable to their royalty payments, the Defendant intentionally hid and proactively refused to disclose information related to its improper conduct complained of herein.

**SIXTH CLAIM FOR RELIEF  
(Breach of Implied Covenants)  
(All Plaintiffs)**

94. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 93 of the Complaint as though set forth in full in this Claim for Relief.

95. Under Colorado law, the Defendant owes Plaintiffs an implied duty to act as a prudent operator, which requires Extraction to engage in conduct reasonably expected of all operators of ordinary prudence, having regard for the interest of both lessor and lessee.

96. The Defendant also owes Plaintiffs an implied duty to market, which includes the duty to bear costs associated with getting oil and gas into a marketable product and to a commercial market.

97. Pursuant to the Leases and under Colorado law, the Defendant has a duty of good faith and fair dealing to Plaintiffs.

98. The Defendant breached its duties when it, by way of example, failed to adhere to Leases; failed to sell all oil and gas produced; allowed Deductions to be taken from the sale of Plaintiffs' oil and gas; failed to market and sell oil and gas at market prices; failed to enter into Third Party Contracts that are customary and not injurious to the interests of Plaintiffs; failed to accurately determine Plaintiffs' mineral acreage; and failed to provide complete and accurate information in the royalty statements.

99. By breaching its implied covenants, the Defendants have damaged the Plaintiffs in the aggregate amount of the underpayments.

**SEVENTH CLAIM FOR RELIEF  
(Conversion)  
(All Plaintiffs)**

100. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 99 of the Complaint as though set forth in full in this Claim for Relief.

101. The Leases require the Defendant to pay royalties on all their oil and gas produced by the Defendant. Defendant produced but failed to sell some of Plaintiffs' oil and gas interests. As a result, the Defendant took their oil and gas without permission or compensation.

102. The Defendant kept without justification Plaintiffs' oil and gas, for its own benefit to the detriment of said Plaintiffs. The Defendant's actions were committed intentionally and maliciously, or at a minimum with reckless disregard for the rights of the Plaintiffs. Accordingly, said Plaintiffs are entitled to recover both actual and punitive

damages from the Defendant, as well as, pre-judgment interest, post judgment interest, monthly reporting penalties, attorneys' fees and costs as permitted under Colorado Law.

**EIGHTH CLAIM FOR RELIEF**  
**(Conversion)**  
**(Plaintiffs J and Valerie Moody, Alaskan Oil and Resources LLC,**  
**and J A Investments)**

103. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 102 of the Complaint as though set forth in full in this Claim for Relief.

104. Plaintiffs J and Valerie Moody, Alaskan Oil and Resources LLC, and J A Investments relied on the Defendant to obtain and/or maintain accurate title work related to their oil and gas interests. By making title errors and failing to enter into a lease for all of the mineral acreage owned by said Plaintiffs the Defendant has taken, produced, and sold their oil and gas without permission or compensation.

105. The Defendant kept without justification Plaintiffs' oil and gas, for its own benefit to the detriment of said Plaintiffs. The Defendant's actions were committed intentionally and maliciously, or at a minimum with reckless disregard for the rights of the Plaintiffs. Accordingly, said Plaintiffs are entitled to recover both actual and punitive damages from the Defendant, as well as, pre-judgment interest, post judgment interest, monthly reporting penalties, attorneys' fees and costs as permitted under Colorado Law.

**NINTH CLAIM FOR RELIEF**  
**(Constructive and Resulting Trust as a Remedy)**  
**(All Plaintiffs)**

106. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 105 of the Complaint as though set forth in full in this Claim for Relief.

107. Under Colorado law, a constructive trust is a judicially created equitable remedy applied to prevent unjust enrichment. *In re Marriage of Allen*, 724 P.2d 651, 657 (Colo. 1986). The doctrine of constructive trusts is “extremely flexible[,]” *Sandstead-Corona v. Sandstead*, 415 P.3d 310, 318 (Colo. 2018) (quoting *Mancuso v. United Bank of Pueblo*, 818 P.2d 732, 737 (Colo. 1991) (internal quotation marks omitted)), and is often imposed where there is an inference from the circumstances of the transaction that the person taking title to the property is not intended to own the beneficial interest in that property. *See Sandstead*, 415 P.3d at 319–20.

108. A resulting trust, on the other hand, is imposed where “the circumstances surrounding the transfer of property raise the inference that the parties intended to create a trust.” *Mancuso*, 818 P.2d at 738–39. As a general rule, a resulting trust arises when the purchase price is paid by one person and the property is transferred to another. *Id.* As with a constructive trust, the beneficiary of a resulting trust obtains equitable title to the trust res, with legal title remaining in the trustee. *E.g.*, *Valley State Bank v. Dean*, 97 Colo. 151, 47 P.2d 924 (1935).

109. As a consequence of the fraudulent, wrongful, unlawful and inequitable conduct of the Defendants, they have obtained proceeds attributable to the Plaintiffs’ oil and gas interests which belong to the Plaintiffs. The unpaid royalty amounts are not the

Defendant's property, and it therefore holds those payments in trust for the benefit of the Plaintiffs.

110. The Defendant also holds all profits derived from the use of such money and any assets purchased with such money. Plaintiffs have an equitable lien on wrongfully withheld royalty payments. Accordingly, ownership of all such property interests, sums and assets must be accounted for and adjudicated to be vested in the Plaintiffs.

111. Plaintiffs are entitled to a judgment against the Defendant, imposing a constructive or resulting trust upon and requiring an accounting for all sums paid to or received by the Defendant from the sale of oil and/or gas from wells encumbered by the Leases, together with all profits derived from the use or investment of money received by the Defendant.

**TENTH CLAIM FOR RELIEF  
(Unjust Enrichment)  
(All Plaintiffs)**

112. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 111 of the Complaint as though set forth in full in this Claim for Relief.

113. The Defendant's conduct resulted in their withholding or miscalculating of royalties owed to the Plaintiffs. The Defendant unfairly and improperly received a benefit to the detriment of the Plaintiffs.

114. The Plaintiffs are entitled to recover the value of the benefit conferred as damages from the Defendants.



**ELEVENTH CLAIM FOR RELIEF**  
**(Request for an Accounting)**  
**(All Plaintiffs)**

115. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 114 of the Complaint as though set forth in full in this Claim for Relief.

116. As lessee and operator of certain wells, the Defendant is obligated to report in accordance with C.R.S. § 34-60-118.5 and the Leases and make royalty payments to Plaintiffs.

117. The Defendant is required to accurately, properly and timely report, account for and distribute Plaintiffs' royalties and the information used to calculate these royalties to Plaintiffs. The Defendant has exclusive control over and access to the information related to Plaintiffs' royalty payments.

118. Plaintiffs request an accounting relating to any and all matters necessary to determine whether Plaintiffs have fully and fairly received their rightful share of royalties from the production from the Leases and wells that are burdened by the Leases.

119. To the extent the accounting reveals an underpayment of royalties, Plaintiffs respectfully request that the Court order payment from the Defendant to compensate Plaintiffs for any underpayment, and to pay appropriate interest, monthly reporting penalties, attorneys' fees, costs and expenses associated with this action for the recovery of royalties.

**TWELFTH CLAIM FOR RELIEF**  
**(Preliminary Injunction)**  
**(All Plaintiffs)**

120. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 119 of the Complaint as though set forth in full in this Claim for Relief.

121. Plaintiffs request a preliminary injunction enjoining the Defendant from: allowing Plaintiffs' oil and gas to be taken and produced but not sold; allowing Deductions from the sale of Plaintiffs' oil and gas; failing to sell Plaintiffs' oil and gas at below market prices, maintaining title errors, and otherwise failing to pay Plaintiffs as required under their Lease and the law.

122. Plaintiffs will suffer irreparable harm if the Defendant is not enjoined during the pendency of this adversary from using royalty payments that belong to Plaintiffs. The Defendant continues to appropriate Plaintiffs' property for its benefit. By failing to segregate Plaintiffs' royalty payments, money that belongs to Plaintiffs becomes comingled with the assets of the Debtors' estates that could be distributed to creditors, which would be difficult to trace. Such commingling may cause Plaintiffs' funds to be converted to property of the estates.

123. There is a substantial likelihood that Plaintiffs will prevail on the merits in this Adversary proceeding, as case law, Colorado state law, the Leases and other supporting facts prohibit the deductions taken and other misconduct by the Defendant.

124. The harm which may result to Plaintiffs outweighs the harm that may be sustained, if any, by the Defendant if the preliminary injunction were granted. Because the

Defendant continues to receive proceeds attributable to Plaintiffs' royalties each month, no additional bond or security is required.

125. Public interest and public policy would also be served by granting of a preliminary injunction. Public interest and public policy are served by preventing on-going conversion by oil companies to the detriment of landowners.

126. Accordingly, Plaintiffs respectfully request that this Court set their application for preliminary injunction for hearing and, after hearing the request, issue a preliminary injunction against the Defendants.

**THIRTEENTH CLAIM FOR RELIEF  
(Preliminary Injunction)  
(Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC,  
J A Investments, and Annette and Tom Leazer)**

127. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 126 of the Complaint as though set forth in full in this Claim for Relief.

128. Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer request a preliminary injunction enjoining the Defendant from deducting taxes from their royalty payments.

129. Plaintiffs will suffer irreparable harm if the Defendant is not enjoined during the pendency of this adversary from using royalty payments that belong to Plaintiffs. The Defendant continues to appropriate Plaintiffs' property for its benefit. By failing to segregate Plaintiffs' royalty payments, money that belongs to Plaintiffs becomes comingled with the assets of the Debtors' estates that could be distributed to creditors,

which would be difficult to trace. Such commingling may cause Plaintiffs' funds to be converted to property of the estates.

130. There is a substantial likelihood that Plaintiffs will prevail on the merits in this Adversary proceeding, as case law, Colorado state law, the Leases and other supporting facts prohibit the deductions taken and other misconduct by the Defendant.

131. The harm which may result to Plaintiffs outweighs the harm that may be sustained, if any, by the Defendant if the preliminary injunction were granted. Because the Defendant continues to receive proceeds attributable to Plaintiffs' royalties each month, no additional bond or security is required.

132. Public interest and public policy would also be served by granting of a preliminary injunction. Public interest and public policy are served by preventing on-going conversion by oil companies to the detriment of landowners.

133. Accordingly, Plaintiffs respectfully request that this Court set their application for preliminary injunction for hearing and, after hearing the request, issue a preliminary injunction against the Defendants.

**FOURTEENTH CLAIM FOR RELIEF  
(Application for Permanent Injunction)  
(All Plaintiffs)**

134. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 133 of the Complaint as though set forth in full in this Claim for Relief.

135. Plaintiffs ask the Court to set their application for injunctive relief for a full trial on the issues in this Complaint and, after such trial, to issue a permanent injunction

against the Defendant enjoining it from allowing Plaintiffs' oil and gas to be taken, produced and not sold, allowing Deductions from the sale of Plaintiffs' oil and gas, failing to sell Plaintiffs' oil and gas at below market prices, maintaining title errors, and otherwise failing to pay Plaintiffs as required under their Lease and the law; and for Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer, from deducting taxes from their royalty payments.

**FIFTEENTH CLAIM FOR RELIEF**  
**(Application for Permanent Injunction)**  
**(Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC,**  
**J A Investments, Annette and Tom Leazer)**

136. The Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 135 of the Complaint as though set forth in full in this Claim for Relief.

137. Plaintiffs J Moody, Valerie Moody, Alaskan Oil and Resources LLC, J A Investments, and Annette and Tom Leazer ask the Court to set their application for injunctive relief for a full trial on the issues in this Complaint and, after such trial, to issue a permanent injunction against the Defendant enjoining it from deducting taxes from their royalty payments.

**V. PRAYER FOR RELIEF**

Wherefore, the Plaintiffs respectfully request that this matter be set for trial, and that, after final hearing, judgment be entered in their favor and against the Defendant for the following relief:

1. Declaratory relief as requested;

2. Award Plaintiffs actual and compensatory damages;
3. Enter a judgment disgorging from the Defendant all royalty funds and other valuable consideration the Defendant received as a result of having been unjustly enriched or which they are estopped from retaining, both prepetition and post-petition;
4. Enter a judgment imposing a constructive and resulting trust on the Defendants for the unpaid or underpaid royalties;
5. Enter a preliminary injunction enjoining the Defendants from taking actions that result in underpayment and nonpayment of Plaintiffs' royalties;
6. Enter a permanent injunction enjoining the Defendants from taking actions that result in underpayment and nonpayment of Plaintiffs' royalties
7. Enter a judgment requiring the Defendants to provide an accounting as requested above to accurately and fully account for funds attributable to Plaintiffs' based on royalty non-payments and/or underpayments;
8. Award Plaintiffs moratory or statutory interest, as appropriate;
9. Award Plaintiffs costs, attorney fees, and further damages as appropriate;
9. Such other or further relief that the Court deems just and proper.

Respectfully submitted this 19th day of January, 2021.

**GOLDSTEIN & MCCLINTOCK LLP**

/s/Maria Aprile Sawczuk

Maria Aprile Sawczuk (DE Bar # 3320)

501 Silverside Road, Suite 65

Wilmington, DE 19809

302-444-6710

marias@goldmclaw.com

--and--

Steven Louis-Prescott (admitted *pro hac vice*)  
HAMRE, RODRIGUEZ,  
OSTRANDER & DINGESS, P.C.  
3600 S. Yosemite Street , Suite 500  
Denver, CO 80237-1829  
(303) 779-0200  
poolsteven@hrodllaw.com

--and--

Matthew D. Skeen Jr. (admitted *pro hac vice*)  
SKEEN & SKEEN, P.C.  
217 East 7th Avenue  
Denver, CO 80203  
(720) 507-0270  
jrskeen@skeen-skeen.com

*Counsel for Plaintiffs*