

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
)
EXTRACTION OIL & GAS, INC., *et al.*,¹) Case No. 20-11548 (CSS)
)
)
Reorganized Debtors.) (Jointly Administered)

ANNETTE LEAZER; TOM LEAZER;)
GORDON NISWENDER; JOY NISWENDER;)
H.L. WILLETT ESTATE; SAGLIO ENERGY)
LLC; OVERLAND OIL & GAS ADVISORY) Adv. Pro. No. 20-50963 (CSS)
LLC; OVERLAND MINERALS AND)
ROYALTIES LLC; OVERLAND ENERGY)
PARTNERS FUND I LLC; OVERLAND) **Re: D.I. 24 & 37**
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.)
)

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized 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 Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.



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NATURE AND STAGE OF THE PROCEEDINGS

Extraction Oil & Gas, Inc. (“Extraction”) filed its voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) on June 14, 2020. On January 19, 2021, Plaintiffs filed the operative *Second Amended Complaint* [A.D.I. 24] in response to issues raised in a prior motion to dismiss. On February 2, 2021, Extraction responded to the amended pleading with *Defendant’s Motion to Dismiss the Second Amended Complaint* [A.D.I. 25]. That dispositive motion is still pending. Extraction has not yet filed an answer to the *Second Amended Complaint*.

SUMMARY OF ARGUMENT

Extraction files the instant *Motion to Dismiss for Lack of Subject Matter Jurisdiction* under Rule 12 of the Federal Rules of Civil Procedure (the “Federal Rules”), as made applicable to this adversary proceeding by Rules 7001 and 7012 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking entry of an order dismissing Plaintiffs’ claims.

Plaintiffs assert various causes of action that stem from the allegation that Extraction underpaid Plaintiffs’ oil and gas royalties. Because the Colorado legislature committed resolution of royalty disputes to the Colorado Oil and Gas Conservation Commission (the “Commission”), Colorado courts (as well as federal courts applying Colorado law) have dismissed such claims for lack of subject matter jurisdiction. Despite this statutory command, Plaintiffs did not present their claims for underpayment of royalties to the Commission before filing them with this Court. Plaintiffs’ failure to exhaust their administrative remedies deprives the Court of subject matter jurisdiction and, therefore, the Court should dismiss Plaintiffs’ claims.

STATEMENT OF FACTS

I. COLORADO COURTS DISMISSED THE CLAIMS OF A PUTATIVE CLASS THAT INCLUDED THESE PLAINTIFFS FOR LACK OF JURISDICTION UNDER THE ADMINISTRATIVE EXHAUSTION DOCTRINE

Not long ago, a putative class brought royalty underpayment claims against Extraction in Colorado state court. The proposed class definition included the instant Plaintiffs and covered the claims raised here, and the putative class was even represented by the same counsel as Plaintiffs. Colorado courts dismissed the claims—*twice*—because the putative class failed to exhaust their administrative remedies via raising their claims for royalty underpayment with the Commission before filing suit.

A. The First Court Dismissed the Claims Because the Putative Class Failed to Exhaust Their Administrative Remedies with the Commission

On January 5, 2018, a putative class action was filed in the District Court of Colorado, Denver County. Exhibit A (Colorado Compl.) at 1. The named plaintiffs—C&M Resources, LLC and Winter Oil, LLC—brought claims against Extraction on behalf of a putative class of alleged royalty owners. *See id.* at 1–2. The proposed class definition was:

All persons and entities, including their respective successors and assigns, to whom Extraction has paid royalties, overriding royalties, or other payments (collectively, “Royalties”) from the sale of oil produced by Extraction from wells located in the state of Colorado since November, 2016 (“Class Period”) pursuant to leases, overriding royalty agreements or other agreements (“Royalty Agreements”).

Ex. A at 2. Thus, the putative class encompassed the instant Plaintiffs. Indeed, the putative class employed the same counsel as Plaintiffs. *See, e.g., id.* at 1 (identifying Mr. Steven Louis-Prescott as counsel for the putative class); *Notice of Substitution of Counsel* [D.I. 1662] (substituting Ms. Maria Sawczuk as counsel for the putative class).

The putative class argued there were two legal questions common to all class members: (1) whether Extraction’s method of calculating and paying “royalties on oil production under the

terms of the [r]oyalty [a]greements has resulted in the proper calculation and payment of royalties to [p]laintiffs and the [c]lass members; and” (2) whether future oil royalty payments “should be made without Extraction deducting or otherwise allocating fees or penalties incurred by Extraction due to its failure to meet oil delivery obligations under various third-party contracts.” Ex. A at 4–5. The putative class also raised similar allegations related to gas royalties. *See id.* at 5–6.

Factually, the putative class claimed to “hold certain oil and gas rights to wells within the Denver-Julesburg Basin.” *C&M Res., LLC v. Extraction Oil & Gas, Inc.*, No. 2017CV30685, 2018 Colo. Dist. LEXIS 336, at *1 (Colo. Dist., Mar. 2, 2018). The putative class also alleged that, “pursuant to applicable royalty agreements, [they] have been paid on oil and gas produced by [Extraction].” *Id.* The putative class claimed Extraction “underpaid the royalties owed them per the agreements, and [made] several claims for breach of contract and declaratory relief.” *Id.* More specifically, the putative class alleged that Extraction “improperly deducted penalties owed to third-parties and post-production costs from the royalties owed to them.” *Id.* at *2.

Extraction moved to dismiss the claims “for lack of subject matter jurisdiction, arguing that [p]laintiffs failed to exhaust the administrative remedies available to them prior to bringing the instant action.” *Id.* The court agreed and granted Extraction’s motion to dismiss. *Id.* at *12. The court explained that because “[p]laintiffs’ claims constitute[d] a factual dispute regarding the amount of proceeds due to them under oil and gas royalty agreements, the proper forum to resolve this dispute [was] an administrative proceeding before” the Commission. *Id.* Thus, the putative class “failed to carry their burden of showing subject matter jurisdiction.” *Id.*

B. A Second Court Dismissed the Refiled Claims for the Same Reason

The putative class refused to follow the first Colorado court’s instructions. Instead, they admit they simply “refiled their class action complaint in the District Court for the City and County of Denver, Colorado” *Mot. of Class Claimants for Leave to File Class Proof of Claim* [D.I.

459] (the “Class Motion”) at 4. Unsurprisingly, the subsequent court held that the complaint was “precluded by the prior case in which [p]laintiffs made, and lost, th[e] same jurisdictional argument” *See Order* [D.I. 459-7] at 2. The court emphasized the refusal to heed the prior court: “Plaintiffs did not appeal that dismissal, and ***did not even try to exhaust their administrative remedies*** as directed by Judge Whitney. Instead, they simply waited nine months then refiled what is essentially the same district court complaint.” *Id.* (emphasis added). Thus, the second Colorado court granted Extraction’s motion to dismiss, holding—like the first Colorado court—that it lacked subject matter jurisdiction because the putative class failed to exhaust its administrative remedies with the Commission. *See id.* at 2–3.

C. The Putative Class Filed Their Claims a Third Time

Without heeding the prior courts’ directives, the putative class filed their claims a third time before raising them with the Commission. *See Class Mot.* [D.I. 459] at 4. Their excuse was that they wanted to preempt certain statute of limitations defenses. *See The Parties Joint Mot. to Stay this Case While Issues Directly Affecting this Court’s Subject Matter Jurisdiction are Resolved on Appeal or, in the Alternative, for an Ext. of Time for the Def. to Respond to the Class Action Compl.* [D.I. 459-9] (the “Joint Motion”) at 4. This case remains stayed pending resolution of an appeal before the Colorado Court of Appeals concerning exhaustion of administrative remedies with the Commission before seeking relief in court. *See Class Mot.* [D.I. 459] at 4–5.

II. PLAINTIFFS BROUGHT SUIT HERE WITHOUT EXHAUSTING THEIR ADMINISTRATIVE REMEDIES

Without first presenting their claims to the Commission, the instant Plaintiffs filed the *Complaint* [A.D.I. 1] on October 26, 2020. Three days later, Plaintiffs filed the *Amended Complaint* [A.D.I. 4] to address an issue in the case’s caption. On January 19, 2021, Plaintiffs filed the *Second Amended Complaint* [A.D.I. 24] to respond to issues that Extraction raised in a

motion to dismiss and withdrawing all claims against defendants other than Extraction. Plaintiffs have never presented their royalty claims to the Commission. Exhibit B (Decl.) at ¶ 3.

Plaintiffs allege that they are royalty interest owners under oil and gas leases with Extraction. *See Second Am. Compl.* [A.D.I. 24] at 3–7. Plaintiffs also allege that Extraction underpaid their royalties. *See id.* at 7–12. Specifically, Plaintiffs claim “the produced but unsold oil and gas, prohibited [d]eductions, failure to pay market price, title errors, and nonpayments, and associated calculation errors have resulted in the estimated underpayment of [r]oyalties to Plaintiffs of more than \$2,000,000” *Id.* at 13. Plaintiffs have not pleaded exhaustion of their administrative remedies. *See generally id.*

LEGAL STANDARD

Under Federal Rule 12(h)(3), “[w]henver it appears by suggestion of the parties or otherwise that the [C]ourt lacks jurisdiction of the subject matter, the [C]ourt shall dismiss the action.” *Intellectual Ventures I LLC v. AT & T Mobility, LLC*, 203 F. Supp. 3d 436, 442 (D. Del. 2016) (quoting *Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.2d 874, 879 n. 3 (3d Cir. 1992)). Because the Court lacks subject matter jurisdiction, Extraction moves to dismiss Plaintiffs’ complaint under Federal Rule 12(b)(1).¹

¹ If the Court determines a motion under this Rule is inappropriate, Extraction alternatively brings its motion under Federal Rule 12(h)(3). For purposes of the Court’s jurisdiction, there is no difference between the effects of the two rules because “the difference between the two rules is merely procedural.” *Coulter v. Paul Laurence Dunbar Cmty. Ctr.*, 685 F. App’x 161, 165 (3d Cir. 2017) (citing *Berkshire Fashions, Inc.*, 954 F.2d at 879, n. 3). Indeed, in *Coulter*, the Third Circuit relied on standards governing Federal Rule 12(b)(1) despite reviewing the grant of a motion under Federal Rule 12(h)(3). *See id.*

ARGUMENT

I. COURTS LACK SUBJECT MATTER JURISDICTION WHERE PLAINTIFFS FAIL TO EXHAUST THEIR ADMINISTRATIVE REMEDIES WITH THE COMMISSION PURSUANT TO COLORADO STATUTORY LAW

The Colorado legislature committed the resolution of royalty disputes under Colorado law to the Commission. Thus, Plaintiffs need to exhaust their administrative remedies with the Commission before seeking relief for underpayment of royalties from the Court. Plaintiffs' failure to do so deprives this Court of subject matter jurisdiction.

Colorado statutory law expressly requires royalty claimants to present their claims to the Commission, the administrative body vested with jurisdiction to handle such matters:

Absent a bona fide dispute over the interpretation of a contract for payment, the [Commission] shall have jurisdiction to determine the following: (a) The date on which payment of proceeds² is due a payee under subsection (2) of this section; (b) The existence or nonexistence of an occurrence pursuant to subsection (3) of this section which would justifiably cause a delay in payment; and (c) The amount of the proceeds plus interest, if any, due a payee by a payer.

Colo. Rev. Stat. § 34-60-118.5(5). Plainly, the Commission “shall have jurisdiction” over disputes concerning the “amount of the proceeds . . . due a payee by a payer.” *Id.* Thus, the Commission must be the first arbiter of Plaintiffs' claims because they “involve[] causes of action related to underpayments of royalties to the Plaintiffs on oil and natural gas produced and sold by [Extraction] from wells located in Colorado.” *Second Am. Compl.* [A.D.I. 24] at 2.

Indeed, as described in detail above, two Colorado courts already considered this statute in the context of royalty underpayment claims against Extraction and held that the Commission must be first to consider the claims. *See generally C&M Res., LLC*, 2018 Colo. Dist. LEXIS 336; *Order* [D.I. 459-7]. There is even party crossover between this case and the Colorado cases, the latter of

² “‘Proceeds’ is statutorily defined as any payment to which a payee is legally entitled ‘derived from the sale of oil, gas, or associated products from a well in Colorado.’” *See C&M Res., LLC*, 2018 Colo. Dist. LEXIS 336, *3–4 (quoting Colo. Rev. Stat. § 34-60-118.5(1)(1)).

which were brought on behalf of a putative class that, as defined, would include Plaintiffs. *See Ex. A* at 2. Plaintiffs’ counsel even represented the putative class. *See id.* (concerning Mr. Steven Louis-Prescott); *Notice of Substitution of Counsel* [D.I. 1662] (concerning Ms. Maria Sawczuk). These Colorado cases are factually and legally on-point, and the same outcome should result here: dismissal for lack of subject matter jurisdiction.

First, in the original case, the putative class alleged that, “[s]ince December 1, 2013, and pursuant to applicable royalty agreements, [p]laintiffs have been paid royalties on oil and gas produced” by Extraction. *C&M Res., LLC*, 2018 Colo. Dist. LEXIS 336 at *1. The putative class argued Extraction “improperly deducted penalties owed to third-parties and post-production costs from the royalties owed to them.” *Id.* In response, Extraction filed a motion to dismiss “for lack of subject matter jurisdiction, arguing that [the putative class] failed to exhaust the administrative remedies available to them prior to bringing the” action. *Id.* at *2. When deciding the motion to dismiss, the court began by reciting the Colorado analogs of Federal Rule 12 and the administrative exhaustion doctrine. *See id.* at *2–3. Afterward, the court abridged the putative class’s royalty allegations by stating they claimed Extraction acted wrongfully:

(1) by deducting penalties imposed by third-party pipeline operators from the royalties; (2) by falsely reporting the per-barrel price of oil sold as post-penalty rather than pre-penalty; (3) by failing to properly calculate, report, and pay royalties; and (4) by deducting post-production costs for rendering natural gas marketable from the royalties.

Id. at *6. The court concluded the putative class was “alleging *underpayment* of royalties, not lack of payment entirely.” *Id.* (emphasis in original). The court determined “resolution of such disputes is squarely within [the Commission’s] jurisdiction.” *Id.*

Second, in the subsequent case, another division of the court held that the putative class’s claims were “precluded by the prior case in which [p]laintiffs made, and lost, this same jurisdictional argument.” *Order* [D.I. 459-7] at 2 (citing *C&M Res. LLC*, 2018 Colo. Dist. LEXIS

336). The court noted the putative class “did not appeal that dismissal, and did not even try to exhaust their administrative remedies as directed by Judge Whitney.” *Id.* “Instead, they simply waited nine months then refiled what is essentially the same district court complaint.” *Id.* Thus, the second court dismissed the claims as precluded by the prior decision. *See id.*

The second court, however, also *independently* examined its jurisdiction. *See id.* at 2–3. The court concluded it was “*clear* . . . that [the Commission] has jurisdiction of this dispute and that [p]laintiffs must first exhaust that administrative remedy” *Id.* at 3 (emphasis added). Thus, the court held that the “case is again DISMISSED, again without prejudice to [p]laintiffs’ right to seek administrative relief with” the Commission. *Id.* (emphasis in original).

Plaintiffs need to present their royalty claims to the Commission before seeking judicial relief. *See Boulter v. Noble Energy, Inc.*, No. 20-CV-861-WJM-KLM, 2021 WL 615413, at *4 (D. Colo. Feb. 17, 2021) (dismissing a claim for lack of subject matter jurisdiction when a plaintiff failed to present their claims to the Commission). Indeed, it “is a basic tenet of administrative law that a plaintiff must exhaust all required administrative remedies before bringing a claim for judicial relief.” *McDuffie v. Stewart Title Guar. Co.*, 897 F. Supp. 2d 294, 296 (E.D. Pa. 2009) (quoting *Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997)). “Therefore, a court need not pass upon the merits of a plaintiff’s substantive claim until it satisfies itself that the claim is properly before it, including determining whether the plaintiff properly exhausted administrative remedies.” *Id.* (quoting *Wilson v. MVM, Inc.*, 475 F.3d 166, 173 (3d Cir. 2007)). The Court should grant a motion to dismiss where—as here—plaintiffs fail to exhaust their administrative remedies. *See id.* at 300 (granting a motion to dismiss because a plaintiff failed to exhaust all administrative remedies under the Pennsylvania Title Insurance Companies Act).

II. PLAINTIFFS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES WITH THE COMMISSION, DEFEATING SUBJECT MATTER JURISDICTION

Plaintiffs filed their claims without first presenting them to the Commission. Because Plaintiffs' claims fall squarely within the scope of the Commission's jurisdiction, Plaintiffs' failure deprives the Court of subject matter jurisdiction.

A. Plaintiffs' Claims for Royalty Underpayments Fall within the Commission's Jurisdiction.

Plaintiffs' claims are within the Commission's jurisdiction. The "[c]omplaint involves causes of action related to *underpayments of royalties*" *Second Am. Compl.* [A.D.I. 24] at 2 (emphasis added). The *Second Amended Complaint* is replete with assertions that royalty underpayments are the object of Plaintiffs' claims.³ The Commission decides such disputes in the first instance. *See C&M Res., LLC*, 2018 Dist. LEXIS 336 at *6–7.

Although the Commission may decide only those royalty disputes that do not implicate "a bona fide dispute over the interpretation of a contract,"⁴ *the Commission* determines whether such a bona fide dispute exists. Specifically:

Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the [Commission] shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the [C]ommission finds that such a dispute

³ *See, e.g., Second Am. Compl.* [A.D.I. 24] at 8 ("[Extraction] has *underpaid royalties* to Plaintiffs on their oil and gas interests for years" (emphasis added); *id.* at 11 ("[Extraction] has under-accounted and *underpaid royalties* to Plaintiffs . . . due to its title error." (emphasis added); *id.* (alleging various errors "resulted in the *estimated underpayment of [r]oyalties* to Plaintiffs" (emphasis added); *id.* at 14 ("Failure to resolve such controversies may result in further *underpayments*" (emphasis added); *id.* at 17 ("Plaintiffs therefore request a determination that all proceeds attributable to *unpaid and underpaid royalty interests* be turned over to them." (emphasis added); *id.* at 18 ("Plaintiffs suffered injury and were *underpaid* as a result." (emphasis added); *id.* at 19 ("By paying less than the amount due under the [l]eases [Extraction] has damaged the Plaintiffs in the aggregate amount of the *underpayments*." (emphasis added); *id.* at 21 ("Defendants [sic] have damaged the Plaintiffs in the aggregate amount of the *underpayments*." (emphasis added); *id.* at 25 ("Plaintiffs respectfully request that the Court order payment from [Extraction] to compensate Plaintiffs for any *underpayment*" (emphasis added); *id.* at 30 (requesting imposition of a trust "for the *unpaid or underpaid royalties*" (emphasis added); *id.* (requesting injunctions to prevent alleged "*underpayment and nonpayment* of Plaintiffs' royalties") (emphasis added).

⁴ Colo. Rev. Stat. § 34-60-118.5(5).

exists, the [C]ommission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court.

Colo. Rev. Stat. § 34-60-118.5(5.5). In other words, under the statute’s plain language, a party may file claims for underpayment of royalties in court only after the Commission declines jurisdiction. *See id.*

Indeed, within the last month, the United States District Court for the District of Colorado reached exactly this conclusion. *See Boulter*, 2021 WL 615413, at *4. In *Boulter*, the defendants argued the Commission had jurisdiction over the plaintiffs’ contract and declaratory judgment claims. *See id.* The plaintiffs argued the Commission did not have jurisdiction because the claims involved a bona fide dispute about contractual interpretation. *See id.* The court rejected this argument and dismissed the litigation because it was “*clear that the [Commission] has jurisdiction to determine in the first instance whether there is a bona fide dispute.*” *See id.* at *5 (emphasis added).

Regardless of the Commission’s role as the threshold arbiter, however, this case does not fall within the exception. “The key question . . . is therefore whether the issue is one that requires a factual determination of proceeds due under a royalty agreement, or one that requires interpretation of the applicable contractual provisions.” *C&M Res., LLC*, 2018 Dist. LEXIS 336 at *5. Allegations that Extraction deducted costs imposed by third parties, falsely reported the prices of hydrocarbons sold, failed to properly calculate or report royalties, or deducted improper post-production costs “do not suggest that any contractual interpretation is necessary.” *Id.* at *6 (discussing such allegations). These are the exact type of allegations Plaintiffs raise here.⁵ Indeed,

⁵ *See, e.g., Second Am. Compl.* [A.D.I. 24] at 2 (“[Extraction] failed to sell and pay for all Plaintiffs’ oil and gas [Extraction] 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.”).

in an effort to avoid the arguments in Extraction’s motion to dismiss under Federal Rule 12(b)(6), Plaintiffs themselves argue their claims are not dependent upon interpretation of contracts, and go so far as to argue that some claims are not covered by contract at all but arise under the very statute that grants the Commission jurisdiction.⁶ As in the Colorado cases, nobody is “disputing Plaintiffs’ entitlement to proceeds under the royalty agreements [between the parties]; they are merely disputing [Extraction’s] method of calculating the amounts due.” *Id.* As a result, the “allegations constitute factual disputes, and *resolution of such disputes is squarely within [the Commission’s] jurisdiction.*” *Id.* (emphasis added).

B. Plaintiffs Failed to Raise Their Claims Before the Commission.

Plaintiffs cannot carry their burden of establishing jurisdiction because they did not present their claims to the Commission. Plaintiffs did not allege that they exhausted their administrative remedies, nor does the operative pleading reference the Commission. *See generally Second Am. Compl.* [A.D.I. 24]. Plaintiffs’ allegations assert only that the Court “has jurisdiction over the subject matter of this adversary proceeding under” the Bankruptcy Code. *See id.* at 3. The failure to allege exhaustion alone is fatal to Plaintiffs’ claims. *See Hickman v. Amazon Fullfilment*, 662 F. App’x 176, 178–79 (3d Cir. 2016) (affirming dismissal because “Hickman has never alleged that he exhausted administrative remedies”). Moreover, here, Plaintiffs have in fact refused to raise their claims before the Commission. *See Ex. B* at ¶ 3. Therefore, the Commission has threshold jurisdiction over Plaintiffs’ claims, Plaintiffs refused to present their claims to the

⁶ *See, e.g., Brief in Opposition to Defendant’s Motion to Dismiss the Second Amended Complaint* [A.D.I. 28] at 11 (“Extraction fails to recognize that Plaintiffs’ fraud and conversion claims arise, or may arise, independent of any contractual duty.”); *id.* (“Plaintiffs’ fraud claim arises under [the exact statute giving jurisdiction to the Commission], not the leases”); *id.* at 12 (“Furthermore, there are realistic scenarios where a contract does not govern Extraction’s payment obligations with respect to Plaintiffs’ conversion claim.”); *id.* at 16–18 (arguing the breach of implied covenant claims are not duplicative of the breach of contract claims); *id.* at 18 (“When Extraction produces and keeps Plaintiffs’ oil and gas without paying for it and without a lease, Extraction has converted Plaintiffs’ oil and gas.”); *id.* at 20 (“Plaintiffs alleged facts related to production of their oil and gas by Extraction in the absence of a lease.”).

Commission in contravention of Colorado law, and the Court should dismiss Plaintiffs' claims for lack of subject matter jurisdiction. *See C&M Res., LLC*, 2018 Dist. LEXIS 336 at at *7.

CONCLUSION

When they filed suit in this Court for royalty underpayments, Plaintiffs were assuredly aware of the Commission's jurisdiction. Nevertheless, Plaintiffs failed to first petition the Commission. Plaintiffs' failure to exhaust their administrative remedies deprives the Court of subject matter jurisdiction, and the Court should dismiss Plaintiffs' claims.

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Dated: March 16, 2021
Wilmington, Delaware

/s/ Stephen B. Gerald

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⁷ Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

EXHIBIT A

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: January 5, 2018 11:48 AM FILING ID: AB09FB1A5A016 CASE NUMBER: 2017CV30685
Plaintiffs: C & M RESOURCES, LLC, a Colorado limited liability company, and WINTER OILL, LLC a Colorado limited liability company, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, v. Defendant: EXTRACTION OIL & GAS, INC., a Delaware corporation, F/K/A EXTRACTION OIL & GAS, LLC	
Attorneys for Plaintiffs and the Proposed Class <div style="margin-left: 100px;"> Lance F. Astrella, Co. Bar No. 5183 Steven Louis-Prescott, Co. Bar No. 46330 Astrella Law P.C. 1801 Broadway, Suite 1600 Denver, CO 80202 Phone: (303) 292-9021 Fax: (303) 296-6347 Email: lance@astrellalaw.com steven@astrellalaw.com </div> <div style="margin-left: 100px; margin-top: 20px;"> George A. Barton, Mo. Bar No. 26249 Stacy A. Burrows, Co. Bar No. 49199 Law Offices of George A. Barton, P.C. 7227 Metcalf Ave., Ste. 301 Overland Park, KS 66204 Phone: (816) 300-6250 Fax: (816) 300-6259 Email: gab@georgebartonlaw.com stacy@georgebartonlaw.com </div>	<div style="text-align: center;">▲ COURT USE ONLY ▲</div> <hr/> Case Number: 2017CV030685 Div./Ctrm: 203
SECOND AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL	

Plaintiffs C & M Resources, LLC, and Winter Oil, LLC (“Plaintiffs”), on behalf of

themselves and the classes of royalty owners defined below for this class action complaint against Defendant Extraction Oil & Gas, Inc. f/k/a Extraction Oil & Gas, LLC (“Extraction”), state as follows:

INTRODUCTION

1. This litigation involves Plaintiffs’ claims that Extraction has underpaid royalties to them, and to all other similarly situated members of the classes defined in Paragraph 2 below, on oil and gas produced and sold by Extraction from wells located in the state of Colorado.

2. Plaintiffs bring this action individually and on behalf of the Class and Sub Class of similarly situated persons and entities pursuant to C.R.C.P. 23(b)(3) and 23(b)(2). The Class includes all Extraction royalty owners consisting of:

All persons and entities, including their respective successors and assigns, to whom Extraction has paid royalties, overriding royalties, or other payments (collectively, “Royalties”) from the sale of oil produced by Extraction from wells located in the state of Colorado since November, 2016 (“Class Period”) pursuant to leases, overriding royalty agreements or other agreements (“Royalty Agreements”).

The defined oil Class excludes: (1) agencies, departments, or instrumentalities of the United States of America; and, (2) Extraction and its affiliates.

The Sub Class includes the following Extraction royalty owners consisting of:

All persons and entities, including their respective successors and assigns, to whom Extraction has paid royalties on natural gas production, including natural gas liquids (“NGLs”) extracted therefrom after it is severed from the wellhead (collectively referred to herein as “Natural Gas”), produced from wells located in the state of Colorado from December 1, 2013 to present (“Sub Class Period”), pursuant to leases or overriding royalty agreements (collectively referred to as, “Royalty Agreements”) which do not expressly authorize the deduction of costs incurred in order to market such gas after it is severed from the wellhead in the calculation of royalties.

The defined natural gas royalty Sub Class excludes: (1) agencies, departments, or instrumentalities of the United States of America; (2)

publicly traded oil and gas exploration companies and their affiliates; (3) royalty owners that are paid only under an express deduction lease; (4) working interest owners in a Colorado Extraction well; and (5) Extraction and its affiliates.

3. All members of the Sub Class are members of the Class, but not all members of the Class are members of the Sub Class.

JURISDICTION, VENUE, AND PARTIES

4. Plaintiff C & M Resources, LLC is a Colorado limited liability company with its principle place of business located at 16 Sunset Circle, Longmont, Colorado 80501, and has been paid royalties on oil and Natural Gas produced by Extraction under a Royalty Agreement since December 1, 2013.

5. Plaintiff Winter Oil, LLC is a Colorado limited liability company with its principle place of business located at 38117 CR 37, Eaton, Colorado, 80615, and has been paid royalties on oil and Natural Gas produced by Extraction under Royalty Agreements at various times since December 1, 2013.

6. Defendant Extraction is a Delaware Corporation which has its principle place of business at 370 17th Street, Suite 5300, Denver, Colorado 80202, and its registered agent in Colorado is the Doida Law Group LLC, 8480 E. Orchard Rd. Ste. 2000, Glenwood Village, CO 80111.

7. This Court has personal jurisdiction over Extraction because Extraction has conducted and continues to conduct substantial business activities in the state of Colorado and the acts and conduct giving rise to the claims asserted in this Class Action Complaint occurred in Colorado.

8. Venue is proper in this Court because Extraction may be found and served in Denver County, Colorado. Although Extraction is a nonresident of Colorado, this complaint

designates venue in Denver County, Colorado pursuant to Colo. R. Civ. P. 98(c)(1), because the course of conduct performed by Extraction which gives rise to the claims asserted herein, including its corporate decision-making, occurred, in substantial part, at its principle place of business located in Denver County, Colorado. In addition, because Extraction maintains its principle place of business in Denver County, Colorado, it conducts substantial business in this judicial district. Finally, the named Plaintiffs and the proposed Class and Sub Class members have sustained the damages referenced herein from Extraction's conduct and business activities in this judicial district.

CLASS ACTION ALLEGATIONS

9. The number of persons included within each, the Class and the Sub Class, are so numerous that joinder of all royalty owners in this litigation is impracticable.

10. There are two questions of law or fact which are common to the Class and the questions of law and fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class. The common questions that apply to Plaintiffs and the Class as a whole include, without limitation, the following:

- a) Whether the method utilized by Extraction to calculate and pay royalties on oil production under the terms of the Royalty Agreements has resulted in the proper calculation and payment of royalties to Plaintiffs and the Class members; and
- b) Whether, under Colorado law, the royalties paid by Extraction to Plaintiffs and the Class members on future oil production should be made without Extraction deducting or otherwise allocating fees or penalties incurred by

Extraction due to its failure to meet oil delivery obligations under various third-party contracts.

11. There are numerous questions of law or fact which are common to the claims of the named Plaintiffs and the Sub Class and the questions of law and fact which are common to Plaintiffs and members of the Sub Class predominate over any questions affecting only individual members of the Sub Class. The common questions to the Sub Class as a whole include, without limitation, the following:

- a) Whether Extraction had a common obligation to pay Royalties on Natural Gas to Plaintiffs and the Sub Class based upon prices received at the first commercial market for residue gas and NGL products;
- b) Whether the location of the first commercial market for the residue gas was beyond the tailgate of the gas processing plant and at the location where Extraction delivered and sold the residue gas to third-party purchasers;
- c) Whether the location of the first commercial market for the NGL products, which were produced from the gas wells at issue, was at the location where the natural gas liquid mix was fractionated into five marketable natural gas liquid products, ethane, propane, butane, isobutane and pentane, and sold to third-party purchasers;
- d) Whether Extraction is calculating and paying Royalties to Plaintiffs and the Sub Class members on the Natural Gas on a net, rather than gross, natural gas sales value;

- e) Whether under the terms of the Royalty Agreements and under Colorado law it is it proper for Extraction to pay Royalties on the Natural Gas on a net, rather than gross, gas sales value;
- f) Whether Royalties paid on Natural Gas were to be paid on the value of the gas before or after gathering and processing and the Natural Gas had been placed into a marketable condition; and
- g) Whether, under Colorado law, Royalties on the natural gas must be paid on individual NGL products after fractionation.

12. The claims of Plaintiffs are typical of the claims of the members of the Class and Sub Class because there is a clear nexus between their claims and those of the Class and Sub Class as there are common questions of fact and law which unite not only the Class, but also the Sub Class.

13. Plaintiffs are adequate representatives of the Class and Sub Class, and Plaintiffs' interests do not conflict with the interests of any other members of the Class and Sub Class in that both Plaintiffs and the other members of the Class and Sub Class were subject to the same conduct which supports Plaintiffs' claims against Extraction. Moreover, Plaintiffs and their attorneys will fairly and adequately protect the interests of both the Class and Sub Class.

14. The predominance requirement under C.R.C.P. 23(b)(3) is also satisfied. Plaintiffs' claims and the claims of each of the Class and Sub Class members arise out of the same operative facts, are based on the same legal theories, and involve common issues of fact and law that will predominate in this case.

15. The maintenance of this case as a class action on behalf of the defined Class and Sub Class is superior to other available methods for the fair and efficient adjudication of the

claims of the members of the proposed Class and Sub Class against Extraction. It would be burdensome to this Court to have numerous individual claims in separate lawsuits, every one of which would present the exact same issues which are presented in this lawsuit.

GENERAL FACTUAL ALLEGATIONS OF THE CLASS

16. Extraction is an operator of oil and gas wells in the Denver-Julesburg Basin (“DJ Basin”) in Colorado.

17. Extraction has entered into a contract or contracts with third-parties for the delivery of oil it produces in the DJ Basin in Colorado into pipelines (“Pipeline Contract(s)”), namely the Grand Mesa Pipeline.

18. Under Extraction’s Pipeline Contract(s), Extraction has contracted to buy capacity in the pipeline(s), namely the Grand Mesa Pipeline, whereby Extraction has agreed to deliver a certain number of barrels of oil per day to the pipeline(s) (“Oil Obligations”).

19. Under Extraction’s Pipeline Contract(s), Extraction has also contracted with the third-party pipeline company or companies to pay a penalty or fine if Extraction cannot deliver the agreed-upon barrels of oil as set forth under its Oil Obligations. These are generally referred to in the industry as “Take-or-Pay Fees.”

20. Neither Plaintiffs nor the Class members are parties to the Pipeline Contract(s).

21. On information and belief, Extraction has repeatedly failed to meet its Oil Obligations under the Pipeline Contract(s) since at least November, 2016, and therefore has been required to pay “Take-or-Pay Fees” to the third-party pipeline companies.

22. On information and belief, Extraction has repeatedly passed on these Take-or-Pay Fees to Plaintiffs and the Class members by deducting Take-or-Pay Fees from Plaintiffs’ and the Class members’ royalties.

23. None of the Royalty Agreements at issue in this litigation authorize Extraction to deduct Take-or-Pay Fees from Plaintiffs' or the Class members' royalty payments.

24. Therefore, Extraction does not have contractual or legal authority or permission from Plaintiffs or the Class members to deduct such Take-or-Pay Fees from Plaintiffs' and Class members' royalties.

25. Extraction has not identified these deductions for Take-or-Pay Fees in the revenue statements provided to Plaintiffs and the Class members for royalty payments ("Royalty Statements"); instead, Extraction has intentionally withheld such deduction information by reporting to Plaintiffs and the Class members lesser per barrel oil prices than the prices for which Extraction actually sells the oil production at issue.

26. Extraction and other operators in the DJ Basin sell and deliver oil to the Grand Mesa Pipeline and other pipelines in order to deliver the oil to a common delivery point in Cushing, Oklahoma.

27. During the Class Period, the per barrel oil prices reported by Extraction on its Royalty Statements have been significantly lower than the posted prices for barrels of oil at Cushing, OK, after deducting the standard transportation and oil quality differential, and the Colorado Crude Oil First Purchase Price reported by the U.S. Energy Information Administration.

GENERAL FACTUAL ALLEGATIONS OF THE SUB CLASS

28. Extraction started producing Natural Gas in Colorado in December, 2013.

29. The Royalty Agreements under which Plaintiffs and members of the Sub Class are paid Royalties on Natural Gas do not expressly authorize the deduction of costs incurred after the Natural Gas is severed from the wellhead in order to render production marketable and

deliver it to the commercial market, such as fees and charges for gathering, dehydration, compression, transportation, fuel, treating, processing, and other marketing costs (collectively referred to herein as “Costs”).

30. Thus, under those Royalty Agreements, Extraction has an implied duty to market the gas produced from the wells subject to those Royalty Agreements, and to pay Royalties to Plaintiffs and the Sub Class members based upon prices received for marketable Natural Gas products at the location of the first commercial market.

31. The location of the first commercial market for the residue gas which was produced from the wells at issue is at the delivery points at various interconnects to the long distance transportation pipelines, where it is believed that Extraction sold the residue gas to third-party purchasers.

32. The location of the first commercial market for the NGLs which were produced from the gas wells at issue is at the location where such NGLs were fractionated into marketable NGL products, including propane, butane, isobutane, natural gasoline, and ethane, and were sold to third-party purchasers for prices based upon market index prices for such NGL products, or similar prices.

33. Extraction has and continues to breach its royalty payment obligations to Plaintiffs and the Sub Class members on its Natural Gas production by underpaying the Royalties owed to them under the Royalty Agreements pursuant to Colorado law. Extraction has underpaid the Royalties owed on its Natural Gas production, by failing to pay Royalties to Plaintiffs and the Sub Class members based upon prices received for marketable residue gas at the location of the first commercial market, and by failing to pay to Plaintiffs and the Sub Class members royalties for prices received for marketable NGL products – including propane, butane,

isobutane, natural gasoline and ethane – at the location of the first commercial market, as referenced above.

34. Pursuant to the implied duty to market owed by Extraction to Plaintiffs and the Sub Class members, Extraction has had the obligation to incur all of the post-production costs necessary to place the Natural Gas at issue into a condition acceptable for the commercial market, and all of the costs of delivering the marketable Natural Gas products to the location of the first commercial market. Plaintiffs and the Sub Class members are not obligated to share in any of these costs. Extraction has further breached its obligations under the Royalty Agreements by improperly charging Plaintiffs and the Sub Class members for various post-production costs necessary to place the Natural Gas produced from the wells at issue into a marketable condition acceptable for the commercial market, and for the costs of transporting the Natural Gas to the location of the first commercial market.

FIRST CLAIM FOR RELIEF – CLASS
(Breach of Contract)

35. The allegations contained in Paragraphs 1 through 34, inclusive, are restated and incorporated by reference herein.

36. Extraction has failed to properly pay Royalties to Plaintiffs and the Class members on oil production as follows:

- (a) Extraction entered into Pipeline Contracts with third-party pipeline companies to deliver a certain amount of oil into third-party pipelines (Oil Obligations), such as the Grand Mesa Pipeline;
- (b) Extraction agreed in the Pipeline Contracts to pay Take-or-Pay Fees if it failed to deliver the agreed-upon amount of oil into third-party pipelines;

(c) Since at least November, 2016, Extraction has failed to meet its Oil Obligations, which required it to pay Take-or-Pay Fees under its third-party contracts;

(d) Extraction has deducted the Take-or-Pay Fees from Plaintiffs' and the Class members' Royalties by reporting and paying on per barrel prices of oil that are significantly lower than the per barrel prices of oil for which Extraction sold the oil it produced from wells in the DJ Basin.

37. Extraction has breached the provisions of the applicable Royalty Agreements by failing to properly calculate and pay Royalties on oil production to Plaintiffs and the Class members in the manner described *supra*.

38. Plaintiffs and the Class have sustained substantial damages as a direct consequence of such breaches, and are entitled to judgment in their favor and against Extraction in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF – CLASS
(Breach of Implied Duty to Operate Prudently)

39. The allegations contained in Paragraphs 1 through 38, inclusive, are restated and incorporated by reference herein.

40. Under Colorado law, Extraction owes Plaintiffs and the Class members 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 to the interest of both lessor and lessee.

41. Extraction has breached its implied duty to act as a prudent operator by falsely reporting to Plaintiffs and the Class members the per-barrel price of oil actually sold by Extraction in the manner described *supra*.

42. Extraction has also breached its implied duty to act as a prudent operator by deducting its Take-or-Pay Fees from Plaintiffs' and the Class members' Royalties in the manner described *supra*.

43. As a direct consequence of Extraction's breaches of its implied duty to act as a prudent operator, Plaintiffs and the Class members have suffered substantial damages and are entitled to judgment in their favor and against Extraction in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF – CLASS
(Breach of Good Faith and Fair Dealing)

44. The allegations contained in Paragraphs 1 through 43, inclusive, are restated and incorporated by reference herein.

45. Pursuant to the Royalty Agreements and under Colorado law, Extraction has a duty of good faith and fair dealing to Plaintiffs and the Class members.

46. By failing to properly calculate, report, and pay Royalties to Plaintiffs and the Class as set forth herein and by concealing improper deductions of "Take-or-Pay Fees," Extraction has breached its duty of good faith and fair dealing owed to Plaintiffs and the Class members.

47. As a direct consequence of Extraction's breach of its implied duty of good faith and fair dealing, Plaintiffs and the Class have suffered substantial damages and are entitled to judgment in their favor and against Extraction in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF – CLASS
(Declaratory Relief)

48. The allegations contained in Paragraphs 1 through 47, inclusive, are restated and incorporated by reference herein.

49. A controversy exists between Extraction and Plaintiffs and the Class regarding the manner in which royalties for oil production from the wells subject to the Royalty Agreements should have been calculated, reported, and paid to Plaintiffs and the Class not only for the past, but also in the future.

50. Plaintiffs and the Class are entitled to a declaratory judgment against Extraction, which includes the following:

(a) A determination that the method utilized by Extraction to calculate and pay royalties to Plaintiffs and the Class members under the applicable Royalty Agreements during the Class Period has resulted in an underpayment of the amounts due and owing to Plaintiffs and the Class under the Royalty Agreements; and

(b) A determination that under the terms of the Royalty Agreements, royalties paid by Extraction in the future should be paid to Plaintiffs and the Class without the deduction of the Take-or-Pay Fees incurred under Pipeline Contracts with third-parties due to Extraction's failure to meet its Oil Obligations.

51. Pursuant to the applicable Colorado law, this Court should enter its Order for the declarations requested above.

FIRST CLAIM FOR RELIEF – SUB CLASS
(Breach of Contract – Including the Implied Duty to Market)

52. The allegations contained in Paragraphs 1 through 51, inclusive, are restated and incorporated by reference herein.

53. Extraction has failed to properly pay Royalties to Plaintiffs and the Sub Class members in at least the following respects: (a) by deducting a proportionate share of the fees and Costs for gathering, compression, dehydration, treatment, processing, and other marketing costs incurred to make the natural gas marketable, in the calculation of the royalties paid to Plaintiffs and the members of the Sub Class; (b) by failing to pay Royalties on the full commercial market value of the Natural Gas or the full amount of production proceeds received on sales of the

residue gas and NGLs to third-party purchasers of such residue gas and NGLs in the commercial market; and (c) by engaging in transactions that have unreasonably reduced the amount of the Royalties paid by purporting to sell natural gas and NGLs before they are in marketable condition.

54. Extraction has breached the provisions of the applicable Royalty Agreements by failing to properly calculate and pay Royalties to the Plaintiffs and the Sub Class members, in the manner described herein.

55. Extraction owes Plaintiffs and the Sub Class members an implied duty to market the natural gas, including the NGLs, at its sole cost and expense.

56. Extraction has breached its implied duty to market which it owes to Plaintiffs and the Sub Class by calculating and paying royalties to the members of the Sub Class in the consistent manner described above.

57. Plaintiffs and the Sub Class have sustained substantial damages as a direct consequence of such breaches, and are entitled to judgment in their favor and against Extraction in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF – SUB CLASS
(Declaratory Relief)

58. The allegations contained in Paragraphs 1 through 57, inclusive, are restated and incorporated by reference herein.

59. A controversy exists between Extraction and Plaintiffs and the Sub Class regarding the manner in which Royalties for Natural Gas production from the wells subject to the Royalty Agreements should have been calculated and paid to Plaintiffs and the Sub Class not only for the past, but also in the future.

60. Plaintiffs and the Sub Class are entitled to a declaratory judgment against Extraction, which includes the following:

- (a) a determination that the implied duty to market under Colorado law is applicable to each of the Royalty Agreements in the Sub Class;
- (b) a determination that the method utilized by Extraction to calculate the amount of Royalties to be paid to Plaintiffs and the Sub Class under the applicable Royalty Agreements has resulted in an underpayment of the amounts due and owing to the Plaintiffs and the Sub Class under the Royalty Agreements; and
- (c) a determination that under the terms of the Royalty Agreements and Colorado law, all Royalties on Natural Gas in the future should be paid to Plaintiffs and the Sub Class based on the full price of the Natural Gas at the commercial market for that production without deduction of the above-referenced Costs incurred to place the gas in a marketable condition.

61. Pursuant to the applicable Colorado law, this Court should enter its Order for the declarations requested above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. An Order or Orders that the claims asserted herein by Plaintiffs, on behalf of the defined Class and Sub Class, should be certified as class actions pursuant to C.R.C.P. 23(b)(3) and 23(b)(2), that Plaintiffs C & M Resources and Winter Oil, LLC be appointed as Class and Sub Class Representatives, and that Plaintiffs' counsel be appointed as Class Counsel

B. A judgment in favor of Plaintiffs and the Class against Extraction for damages suffered on oil production as a result of Extraction's breach of the Royalty Agreements, Extraction's breach of its implied duty to operate prudently, and Extraction's breach of its implied covenant of good faith and fair dealing;

C. A judgment in favor of Plaintiffs and the Sub Class against Extraction for damages suffered on Natural Gas production as a result of Extraction's breach of the Royalty Agreements, including the implied duty to market;

D. An Order setting forth the declarations sought herein for the Class, including the following:

1. A determination that the method utilized by Extraction to calculate and pay Royalties to Plaintiffs and the Class on oil production under the applicable Royalty Agreements during the Class Period has resulted in an underpayment of the amounts due and owing to Plaintiffs and the Class under the Royalty Agreements; and

2. A determination that under the terms of the Royalty Agreements, royalties on future oil production should be paid to Plaintiffs and the Class members without deduction of Take-or-Pay Fees or the like which are often incurred under Pipeline Contracts with third-parties due to failure to meet its Oil Obligations.

E. An Order setting forth the declarations sought herein for the Sub Class, including the following:

1. Determining that the methods utilized by Extraction to calculate Royalty payments under the terms of the Royalty Agreements have not in fact resulted in the proper calculation and payment of Royalties to the Plaintiffs and the Sub Class on Natural Gas production, and have resulted in an underpayment of the amount of Royalties owed to Plaintiffs and the Sub Class; and

2. Determining that Royalties should be paid to Plaintiffs and the Sub Class on future Natural Gas production by Extraction based on the proceeds received for the sale of the natural gas at the commercial market, only after such natural gas has been gathered and processed at a processing plant, and the residue gas is sold to third-party purchasers and/or delivered into a long distance transportation pipeline and after the natural gas liquid products have been fractionated and sold as individual components to third-purchasers.

F. An award of prejudgment interest on all royalty underpayments at the Colorado statutory rate of eight percent per annum, compounded annually, pursuant to C.R.S. 5-12-102;

- G. An award of court costs; and
- H. Such further relief as the Court deems just.

JURY DEMAND

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED: January 5, 2018

/s/ Steven Louis-Prescott

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**ATTORNEYS FOR PLAINTIFF AND THE
PROPOSED CLASS**

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
)	
EXTRACTION OIL & GAS, INC., ¹)	Case No. 20-11548 (CSS)
)	
<i>Reorganized Debtors.</i>)	(Jointly Administered)

ANNETTE LEAZER; TOM LEAZER;)	
GORDON NISWENDER; JOY NISWENDER;)	
H.L. WILLETT ESTATE; SAGLIO ENERGY)	
LLC; OVERLAND OIL & GAS ADVISORY)	Adversary Proceeding
LLC; OVERLAND MINERALS AND)	
ROYALTIES LLC; OVERLAND ENERGY)	Case No. 20-50963 (CSS)
PARTNERS FUND I LLC; OVERLAND)	
ENERGY PARTNERS FUND II LLC; J A)	Re: D.I. 24 & 37
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,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
EXTRACTION OIL & GAS, INC.,)	
)	
<i>Defendant.</i>)	

**DECLARATION OF KENNETH E. WARNER, SENIOR COUNSEL FOR
DEFENDANT, IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION**

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized 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 Reorganized Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

Kenneth E. Warner, Senior Counsel for Defendant, pursuant to 28 U.S.C. section 1746 hereby declares as follows:

1. I am over eighteen years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this Declaration is based on my personal knowledge. The statements in this Declaration are true and accurate to the best of my knowledge.

2. I am in-house Senior Counsel for Extraction Oil & Gas, Inc. ("Extraction"). My job responsibilities include advising Extraction about legal, transactional, and regulatory risks. In my capacity as in-house Senior Counsel, I am familiar with the above-captioned Plaintiffs and the claims in the above-captioned case.

3. The above-captioned Plaintiffs have not raised the royalty claims asserted in the above-captioned case before the Colorado Oil and Gas Conservation Commission (the "Commission"). Instead, the above-captioned Plaintiffs filed their claims with the Court without ever seeking any administrative remedy from the Commission.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 16, 2021.

/s/ Kenneth E. Warner
Kenneth E. Warner
Senior Counsel, Extraction Oil & Gas, Inc.