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

(1) Kunneman Properties LLC,
(2) DJM Family, LLC,
(3) Royse Family, L.L.C.,
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

(1) Marathon Oil Company,

Defendant.

Case No. 22-CV-274-KEW

CLASS ACTION COMPLAINT

Kunneman Properties LLC ("Kunneman"), DJM Family, LLC ("DJM"), and Royse Family, L.L.C. ("Royse") (collectively, "Plaintiffs"), on behalf of themselves and the Class of all other persons similarly situated, file this Class Action Complaint against Marathon Oil Company ("Marathon"), and allege and state the following.

SUMMARY OF ACTION

1. Plaintiffs and the Class bring claims against Marathon concerning Marathon's actual, knowing, and willful underpayment or non-payment of royalties on oil-and-gas proceeds from wells through improper accounting methods (such as not paying on the starting price for gas products but instead taking improper deductions) and by failing to account for and pay royalties, all as more fully described below.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the claims asserted in this complaint under 28 U.S.C. § 1332(d) because this is a class action where the amount in controversy

exceeds the sum of $5,000,000 and because members of the Class and Marathon are citizens of different states.

3. Venue is proper in this District under 28 U.S.C. § 1391 because Marathon transacts business within this District and a substantial part of the events giving rise to these claims occurred in this District. Marathon also consented to venue in this District.

PARTIES

4. Plaintiff Kunneman Properties LLC is an Oklahoma limited liability company and is a citizen of Oklahoma and Texas. Kunneman owns royalty interests in Marathon operated wells that produce gas. Kunneman holds oil-and-gas leases dated January 26, 1973 (recorded at Book 469, Pages 143–44 in the Kingfisher County, Oklahoma records) and June 19, 2014 (recorded at Book 2721, Pages 220–222 in the Kingfisher County, Oklahoma records), for which Marathon is lessee. Kunneman's oil-and-gas leases include an Express Off-Lease-Use Clause, which entitles Kunneman to royalty for all gas used off the leased premises.

5. Plaintiff DJM Family, LLC is an Oklahoma limited liability company and owns royalty interest in a Marathon-operated well that produces gas. DJM holds an oil-and-gas lease dated September 6, 1977 (recorded at Book 692, Page 492–94 in the Canadian County, Oklahoma records), for which Marathon is lessee. DJM's oil-and-gas lease includes an Express Off-Lease-Use Clause, which entitles DJM to royalty for all gas used off the leased premises.

6. Plaintiff Royse Family, L.L.C. is an Oklahoma limited liability company and owns royalty interest in a Marathon-operated wells that produce gas. Royse holds an oil-and-gas lease dated September 6, 1974 (recorded at Book 591, Pages 207–09 in the Canadian County, Oklahoma records), for which Marathon is lessee. Royse's oil-and-gas lease includes

an Express Off-Lease-Use Clause, which entitles Royse to royalty for all gas used off the leased premises.

7. Marathon is a corporation organized under Delaware law with its principal place of business in Texas and may be served with process by serving its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK 73128.

8. Marathon is in the business of producing and marketing oil-and-gas and constituent products from the wells in which Class members hold interests.

9. The acts charged in this Complaint as having been done by Marathon were authorized, ordered, or done by officers, agents, affiliates, employees, or representatives, while actively engaged in the conduct or management of Marathon's business or affairs, and within the scope of their employment or agency with Marathon.

CLASS ALLEGATIONS

10. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons who own or owned minerals in the State of Oklahoma subject to an oil-and-gas lease from September 1, 2011, through and including March 31, 2022, under which (1) they received royalty on the sale and disposition of gas from Marathon from Oklahoma oil-and-gas wells; and (2) their royalty payments were reduced for production volumes or production proceeds expended for marketing, gathering, compressing, dehydrating, treating, processing, transporting and fractionating natural gas liquids, or transporting of hydrocarbons produced from the unit.
>
> Excluded from the Class are: (1) agencies, departments or instrumentalities of the United States of America, including but not limited to the U.S. Department of the Interior (the United States, Indian tribes, and Indian allottees); (2) the State of Oklahoma or any of its agencies or departments that own royalty interests; (3) Defendant, its affiliates, predecessors, and employees, officers, and directors; (4) any publicly traded company or their affiliated entity that produces, gathers, processes, or markets gas; (5) overriding royalty owners and others whose interest was carved out from the lessee's interest; (6) royalty owners who have already filed and still have pending lawsuits for underpayment of royalties against Defendant, including: Fortis Sooner Trend,

LLC; Fortis Minerals II, LLC; FMII STM, LLC; Sooner Trend Minerals, LLC; Phenom Minerals, LLC; Christopher W. Didier; Kari J. Didier; August Grant Didier; Dixie L. Didier Beth Ann Switzer; Kent L. Switzer; Gregory Vic Kirkpatrick; Milton Kent Kirkpatrick Revocable Trust; Emma Eugenia Kirkpatrick Family Trust; Jimmie Ice and Vicki Ice Trust; and Malcome Roy Oyler; and (7) royalty owners whose leases expressly authorize or expressly prohibit deductions under Oklahoma law.

11. The Claim Period means checks or payments dated between and including September 1, 2011, through and including March 31, 2022.

12. Marathon and Plaintiffs have entered into a Settlement Agreement to resolve the Released Claims for the Settlement Class.

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

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

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

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

a. Whether Plaintiffs and members of the Class are beneficiaries of the implied Marketable Condition Rule (MCR), which requires Marathon to sever the gas from the ground and to prepare the gas for market at Marathon's sole expense.

i. If so, whether: 1) the Midstream Costs of gathering, compression, dehydration, treatment, and processing (GCDTP) are costs associated with preparing the gas for market such that none of them should have been deducted from royalties but all of them were; or 2) whether the market for gas occurs before GCDTP are incurred such that the Class's claim is only for excessive deductions of Midstream Costs.

b. Whether Marathon paid royalty to Plaintiffs and members of the Class for all valuable constituents coming from their wells and which inured to Marathon's benefit either: 1) through credit toward the Midstream Costs; or 2) by contractual consideration in-kind to a midstream company (such as drip condensate, helium, liquefied nitrogen, some percentage of residue, some percentage of fractionated NGLs, plant fuel, or FL&U).

c. Whether Marathon (including any of its affiliates) paid royalty to Plaintiffs and members of the Class based on a starting price below what Marathon or its affiliates received in arm's-length sales transactions.

d. Whether the Express Off-Lease-Use Clauses in the Leases of the members of the Class require the payment of royalty on gas used off the leased premises and whether Marathon failed to pay for the gas from the Class Wells used off the leased premises.

f. Whether class-wide damages can be calculated for Plaintiffs' theories of liability.

17. Plaintiffs are typical of other class members because Marathon pays royalty to Plaintiffs and other Class members using a common method. Marathon pays royalty based on the net revenue it receives under its gas contracts, the terms of which royalty owners neither know nor approve of. The contracts are for services necessary to place the gas and its constituent parts into marketable condition so they can be sold into recognized, active, and competitive commercial markets.

18. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs are royalty owners to whom Marathon pays royalty, and their leases contain Express Off-Lease-Use Clauses. Plaintiffs understand their duties as Class representatives. Plaintiffs have retained counsel competent and experienced in class action and royalty owner litigation.

19. This action is properly maintainable as a class action. Common questions of law or fact exist as to all members of the Class, and those common questions predominate

over any questions solely affecting individual members. There is no need for individual Class members to testify in order to establish Marathon's liability to or damages sustained by Plaintiffs and the Class.

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

21. Class action treatment in this matter is further superior to the alternative of numerous individual lawsuits by all or some members of the Class. Joinder of all Class members would be either highly impracticable or impossible. And the amounts at stake for individual Class members, while significant in the aggregate, would be insufficient to enable them to retain competent legal counsel to pursue claims individually. In the absence of a class action in this matter, Marathon will likely retain the benefit of its wrongdoing.

GAS INDUSTRY BACKGROUND

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

23. Marathon's method for calculating royalty to the members of the Class is subject to uniform accounting procedures and implied marketable product law.

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

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

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

The Lessor-Lessee Relationship

27. The lessor owns minerals, including oil and gas; the lessee has the money, labor, and know-how to extract, condition, and market those minerals. The lessor and lessee enter a lease that allows the lessee to take the minerals from the lessor's land. In the past, the usual revenue split from a well was 1/8th to the lessor (royalty owner) and 7/8ths to the lessee. As the risk of finding oil and gas has diminished over time, due to the prevalence of wells delineating the field, better seismic technology, and increased efficiency of drilling rigs, royalty owners on more recent leases have received 3/16th or even 1/4th of the revenue.

28. But the oil-and-gas companies have used undisclosed internal accounting practices to try to keep for themselves as much of the well revenue as possible. These accounting practices are at the heart of every oil-and-gas royalty case.

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

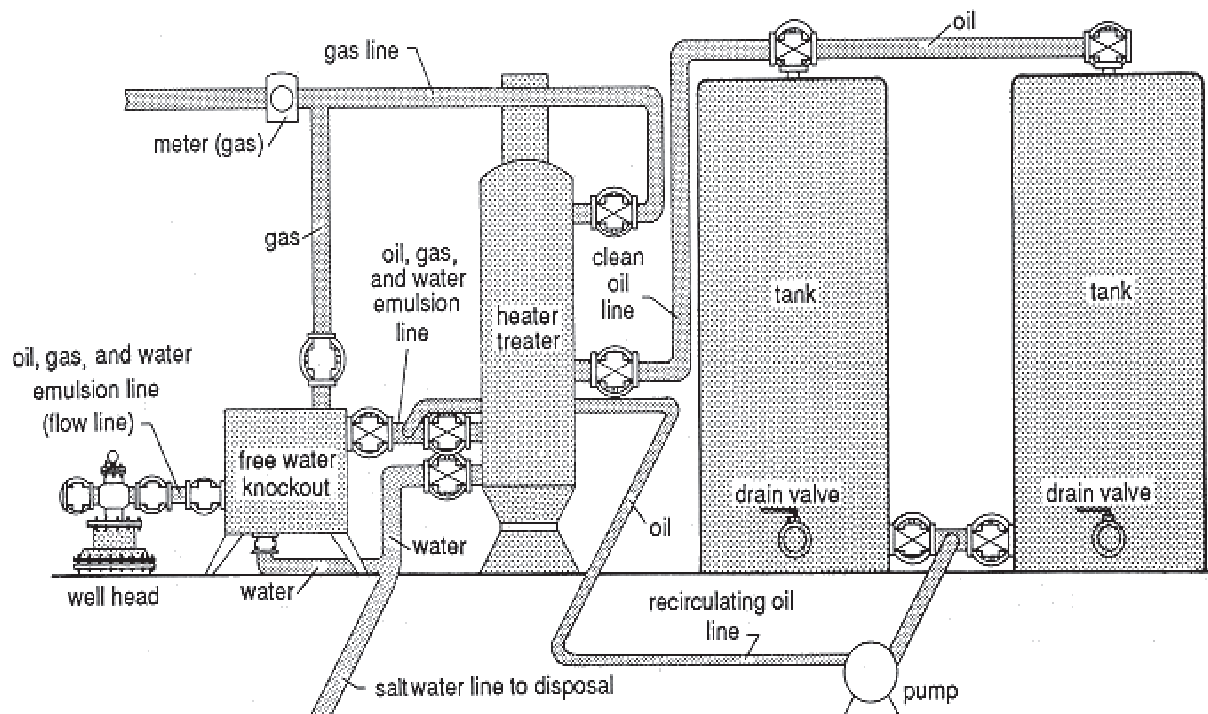
30. If and when one or more of the royalty owners learn of the "breach," the royalty owner has only three options—all of which are poor: (1) confront the lessee and maybe get paid while the lessee continues to retain improperly garnered gas revenues from thousands of other unknowing royalty owners; (2)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

Residue Gas, Helium, Nitrogen and Natural Gas Liquids Production

31. The gas is gathered from each well, dehydrated and compressed, through underground gathering lines crossing many miles of land to processing plants where the raw gas is transformed into two primary products: methane and fractionated natural gas liquids ("NGLs"). Once homogenized as fungible products, the residue gas and NGLs are sold in the commercial market.

Wellhead (Basic Separation and Gas Measurement)

32. The diagram below illustrates the gas conditioning process:



See http://www.kgs.ku.edu/Publications/Oil/primer13.html (last visited Sept. 12, 2019).

33. Wells produce oil, gas, and a host of other products, such as water, helium, nitrogen, etc., all mixed together in the gas stream.[1] After the stream comes out of the ground, it enters the free water knockout (a/k/a three-phase separator) which separates the products by gravity, water at the bottom, oil in the middle, and gas going out the top. Due to the low technology, the separator is not expensive (the "separation cost"). The gaseous mixture (with helium, nitrogen, NGLs, and other gaseous substances) passes from the separator into the gas line.[2] The remaining fluid goes through the heater-treater where heat, gravity segregation,

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

[2] A minute portion of this raw gas may be used on a few leased lands to heat the farm house pursuant to a free gas clause in the lease. Although title to the gas sometimes is purportedly transferred, this is not a true sale. Some producers sell less than 3% of the raw gas to a

chemical additives and electric current break down the mixture more clearly in oil and water. The heater-treater is installed, maintained and takes fuel to operate (the "heater-treater cost"). The water is drained off and sent for saltwater disposal. The oil that is separated at the well-head is collected in a tank, usually trucked out and sold (the payment of oil royalties is not at issue in this Class).

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

35. The gaseous mixture produced from a single well cannot be processed economically, so the mixtures from many wells are "gathered" together through gathering lines and delivered to a processing plant for transformation into marketable products and sale into commercial markets. This results in a gathering cost (G). The below diagram provides an overview of the midstream services deduction process. Marathon does not improperly deduct from royalty any of the costs before the gathering line inlet (#1 on the diagram). But it improperly deducts the costs after the gathering line inlet and before the interstate pipeline inlet (#2 on the diagram), the market in which Marathon chooses to participate.

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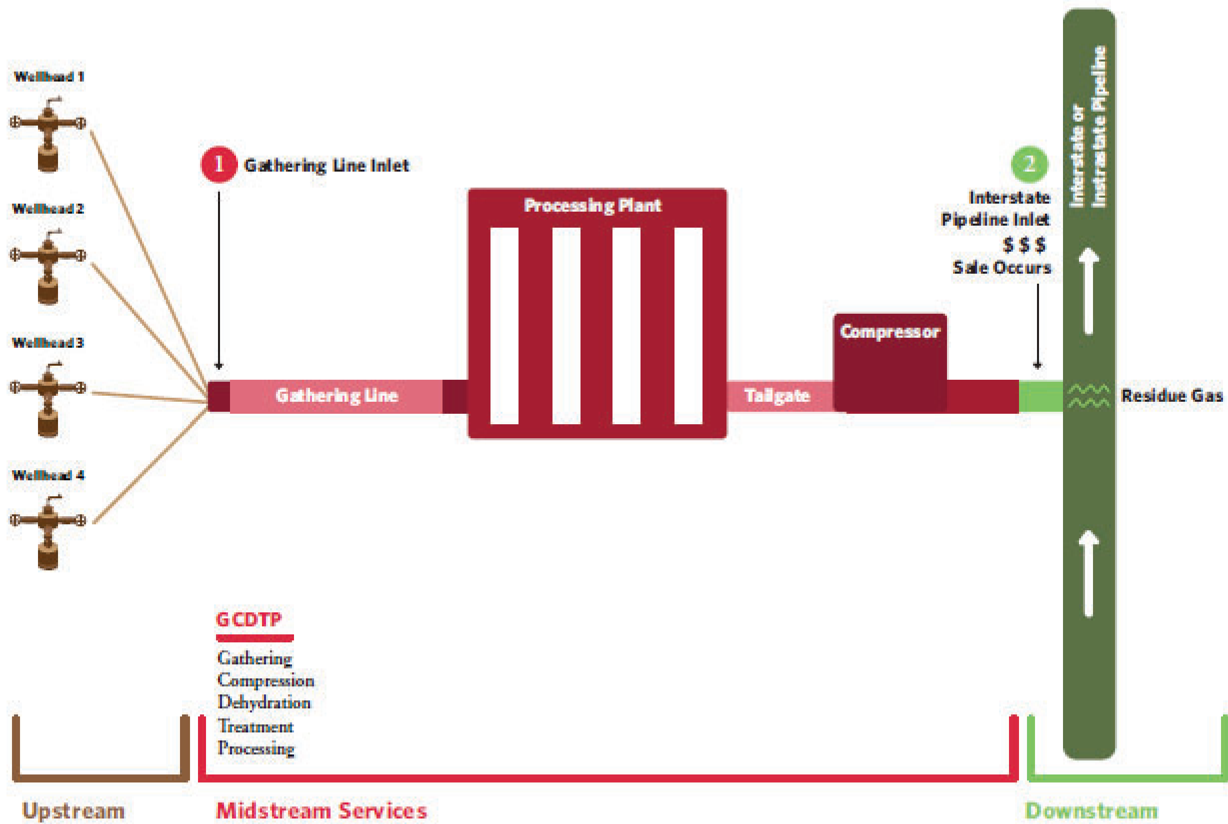
local irrigator during the summer months for agricultural purposes, but this is not the economic market for which the wells are drilled.

Midstream Services (GCDTP) Deductions



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

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

38. Gas will not move downstream from the well unless it is pressurized sufficiently to overcome the in-line back pressure and friction in the gathering line. So large gas compressors are installed to move the gas from the gathering line inlet to the processing plant. These compressors are expensive and require fuel to operate. This results in a compression cost (C).

39. The gathering pipelines themselves cost money to lay and maintain, though most have been in place for decades. Gas condensate (gas condensed into liquid as it cools and is pressurized) ("Drip Condensate") is collected at points along the gathering lines as a result of cleaning or "pigging the line" and is captured for fractionation and sale later. Generally lessees pay no royalty on the revenue generated from the sale of the drip condensate even though the drip condensate is produced from the wells.

40. Finally, gathering lines leak, especially as they age, resulting in lost and unaccounted for gas ("L&U"). Lessees pay no royalty on the volume of L&U.

Natural Gas Processing

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

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

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

44. The final cost, processing (P), involves services to transform the gas mixture into methane gas (also called "residue gas"), NGLs raw make, and in the Panhandle of Oklahoma, crude helium.

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

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

c. Helium is processed into Grade A helium at new processing plants or into crude helium (contaminated with nitrogen) at older plants which is then processed into Grade A helium at a nearby helium processor (often a few hundred feet away).

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

46. At the tailgate of the processing plant, at least two products emerge: (1) residue gas (or methane gas); and, (2) NGLs (usually a mixture of NGLs, known as "raw make" or

"Y" grade). In helium rich production areas, Grade A or crude helium, along with liquefied nitrogen also emerges. But none of these products are commercially marketable at this point.

Marketable Condition for the Products

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

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

49. *Drip Condensate*. Drip Condensate is recovered on the gathering lines and at the inlet to the processing plant and is essentially in marketable condition when collected. Marathon pays no royalty on the drip condensate it takes from the Class Wells.

50. *Other Products*. In some areas of the country (e.g., in the Hugoton Field, which stretches across Southwest Kansas, the Oklahoma Panhandle, the Texas Panhandle, and into parts of Wyoming), helium is produced in commercial quantities and recovered, along with liquefied nitrogen. Other areas of the country produce sulfur and carbon dioxide in commercial quantities. When such products are available in commercial quantities, processing and treatment plants recover these valuable constituents but lessees pay little or nothing to the royalty owners. Royalty owners should be paid for the gas and all constituents taken.

Sale of Products

51. To turn the marketable products into money, the producer sells them (or contracts to have them sold) in the commercial marketplace in an arm's length transaction. No

money exchanges hands until the residue gas is sold at the Index pool, the fractionated NGLs at OPIS, and any other marketable products at the prices established by their respective commercial markets. Lessees attempt to obscure this fact with self-serving language in gas marketing contracts about title transfer or even by creating a wholly-owned affiliate to manufacture a fictitious "sale" before the gas reaches commercial quality for sale.

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

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

a. Some lessees contract with affiliated gathering companies or other affiliated gas service providers before the products (residue gas and/or NGLs) are in Marketable Condition in an effort to: (1) artificially, and improperly, create a commercial market where none truly exists so they may justify deducting costs from royalty, or not paying for all of the gas or constituent products produced; (2) charge "marketing fees" to royalty owners even though the lessee is already obligated under the lease to prepare the gas for market and

market the gas and constituent products; and/or (3) pay on the lower lessee/affiliate sale price and not the higher affiliate/third party price.

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

54. Fictitious "sales" (also known as sham sales or conditional sales) are created by lessees to pass off a non-commercial market sale as if it should be the starting point for royalty payments. But none of these efforts comport with economic reality or are in good faith with respect to royalty owners. For instance:

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

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

c. Gas could be sold at the bottom of the hole when it is severed from the surrounding rock and enters the downhole pipe. Although a contract driller might be willing to accept some percentage of the future sale of oil or gas in the real marketplace as compensation for his drilling services, that agreement does not make the transaction a real market sale.

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

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

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

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

h. Nor does a contract saying title transfers at a custody transfer point create a sale of marketable products in a real commercial market. Some gas contracts with Midstream companies that provide GCDTP services purport to do that, but other parts of the gas contract demonstrate that it is a poorly attempted legal sleight of hand as (i) the risk of loss that usually passes with a true title transfer and market sale does not happen; (ii) the cost of future downstream services that usually passes with a true title transfer and market sale does not happen; (iii) the starting price that would occur with a true title transfer and market sale does not happen. Indeed, the paper title transfer is

unnecessary to receiving the Midstream services as the gas could (and sometimes does) receive the exact same Midstream services without the paper title transfer.

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

j. Midstream services providers are not buyers and resellers of raw gas. They are service providers that convert raw gas into pipeline quality gas so it can enter the Index or OPIS market pools. Indeed, they are called Midstream servicers, not Midstream purchasers.

Different Ways Marathon Underpays Royalty Owners

55. The extraordinarily large dollars at stake and the one-sided nature of the gas lessor-lessee relationship are constant temptations to lessees to wrongfully retain gas revenues. All payment formulas, all affiliate and non-affiliate contractual relationships, and all calculations are firmly kept in the exclusive control of lessees, *and* they involve undisclosed accounting and operational practices. As a result, there are many ways that royalty owners are underpaid on their royalty interests, and they never know it. The common thread through all these schemes is that they are typically buried in the internal lessee accounting systems or royalty-payment formulas.

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

57. Marathon underpays royalty to Plaintiffs and other Class Members in one or more of the following ways:

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

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

c. *Drip Condensate*. Plaintiffs and the Class Members' wells produce heavy hydrocarbons that condense in the pipeline. Marathon, or a third-party on behalf of Marathon (gatherers and/or processors), recovers those hydrocarbons for sale. Marathon fails to pay any royalty for that Drip Condensate.

d. *Other Products*. Helium is contained in the well-stream produced from Plaintiffs and many of the Class Members' wells, but Marathon: (i) fails to pay

royalty for all of the helium produced (some is lost and unaccounted for in the gathering and processing process); (ii) deducts processing fees and costs even though the helium is not yet in commercial grade; and (iii) pays at a lower than commercial Grade A price. Often, Marathon does not pay any royalty at all for Helium, for liquid nitrogen, or other products taken from Plaintiffs and the Class Members' wells.

58. Marathon underpays Plaintiffs and the Class Members by failing to pay royalties on gas used off the lease premises—including field fuel, L&U, drip condensate, plant fuel, and POP % retained—despite express contractual obligations to do so.

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

59. The underpayment and non-payment of royalties are done with Marathon's actual and willful knowledge and intent.

60. Marathon is well familiar with the fact that many other producers in Oklahoma have resolved the same claims for hundreds of millions, if not billions, of dollars or have changed their royalty payment practices to cease the improper deductions described here.

61. In fact, Marathon itself settled an identical class action for an identical Class definition Plaintiffs allege here, and that Class definition was certified on June 9, 2010, in *Hill v. Marathon Oil Co.*, No. CIV–8–37–R in the United States District Court for the Western District of Oklahoma.[3]

62. Nevertheless, Marathon continues its improper payment practices with actual and willful knowledge and intent.

[3] At this time, Plaintiffs do not assert claims for breach of the class settlement agreement in *Hill v. Marathon Oil Co*.

CAUSES OF ACTION
COUNT 1 – BREACH OF LEASE

63. The allegations set forth above are incorporated herein by reference.

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

65. Marathon breached the terms of the leases, including the implied covenants, by its actions and/or inactions in underpaying royalty or not paying royalty on all products sold from the gas stream or all products used off leased premises.

66. As a result of Marathon's breaches, Plaintiffs and the Class Members have been damaged through underpayment of the actual amounts due.

67. Further, Plaintiffs and the Members of the Class are entitled to other damages provided by Oklahoma statute, including compounding interest and punitive damages. *See* OKLA. STAT. tit. 52, § 570.1, *et seq.*

PRAYER FOR RELIEF

Wherefore, premises considered, Plaintiffs seek:

1. An order preliminarily certifying the Class for settlement purposes and allowing this case to proceed as a class action with Plaintiffs as class representatives and the undersigned counsel as class counsel;

2. An order requiring Defendant to pay Plaintiffs and all of the Class Members' actual damages to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Defendant's breaches and/or unlawful conduct;

3. An order requiring Defendant to pay interest in the future, as required by law, to Plaintiffs as representatives of the Class;

4. An order awarding punitive damages as determined by the jury and in accordance with Oklahoma law on each of Defendant's wrongful acts, as alleged in this Complaint;

5. An order requiring Defendant to pay the attorney fees and litigation costs of the Plaintiffs and Class as provided by statute; and

6. Such costs and other relief as this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all matters so triable.

Respectfully submitted,

/s/ *Reagan E. Bradford*
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