

3.02 All Defendants have answered and are properly before this Court.

4.0 FACTUAL BACKGROUND

4.01 Plaintiff is the owner of real property known as [REDACTED], which is part of the Matthew Maise Addition (“the Property”).

4.02 This lawsuit arises as a result of Defendants XTO, Permian, Devonian and Jones’ deceptive and unconscionable acts and XTO/Permian’s breach of its agreement with SEACTX to offer all unleased mineral interest owners whose properties are located within the geographic boundaries of SEACTX the agreed upon Lease.

4.03 The Property overlays the geographic strata known as the Newark East Field, commonly referred to as the Barnett Shale, a known and recognized formation which is characterized by prolific natural gas production.

4.04 Beginning in or about 2005, Plaintiff began receiving unsolicited offers to lease the Property for the production of oil, gas and other minerals from several different persons and entities purporting to represent various gas companies.

4.05 The Property also lies within the boundaries of the homeowners' coalition known as the South East Arlington Communities of Texas ("SEACTX"), which is an unincorporated association. SEACTX is a coalition of homeowners, homeowners' associations and/or neighborhoods, including the Plaintiff and other homeowners, which are located in reasonable geographic proximity to each other and which agreed to cooperate with each other and to undertake negotiations with various oil and gas entities on behalf of the group of homeowners, neighborhoods and homeowners' associations whose lands are contained within its geographical boundaries for the leasing of such lands (including the Property), on the most favorable terms that SEACTX could negotiate.

- 4.06 SEACTX, on behalf of the group of homeowners, neighborhoods, and homeowners' associations (including the Plaintiff) undertook negotiations via email with XTO, Chesapeake Exploration Company, LLC, Antero Resources and others to lease Plaintiff's Property. Defendants knew that SEACTX was acting for and on behalf of a large group of homeowners, neighborhoods, and homeowners' associations which owned property within the geographic boundaries of SEACTX, and that many such homeowners, neighborhoods, and homeowners' associations were waiting to lease their lands until the SEACTX negotiations with various candidates, including Defendants, had concluded.
- 4.07 In late April and/or early May of 2008, SEACTX and XTO reached a "two-tiered agreement" pursuant to which XTO agreed to offer to lease any and all unleased mineral estate interests in lands lying within the SEACTX geographical boundaries ("the Agreement"). The SEACTX negotiators first worked with Defendants and their counsel on the basic terms of a mineral lease that included bonus payments, royalties, primary term, surface use and other common terms in a lease. After agreeing on those basic terms, XTO and SEACTX negotiated and arrived at an agreed lease form to be used by Defendants to lease all unleased mineral estate interests within the geographic boundaries of SEACTX. XTO and SEACTX then negotiated a process and/or method that would be used to provide leases to everyone with an unleased mineral estate located within SEACTX. The combination of the lease form and the leasing process/method formed the first-tier of the Agreement ("the Procedure"). The second-tier consisted of the execution of the lease form that would be provided through the Procedure and the distribution of signing bonus checks to everyone with an unleased mineral estate located within SEACTX ("the Lease Execution").

- 4.08 Defendants all knew and understood that SEACTX was not an owner of any real property interest and that all discussions, negotiations and agreements arrived at were intended to be for the direct benefit of the group of homeowners, neighborhoods, and homeowners' associations which owned unleased mineral estate interests located within the geographic boundaries of SEACTX. Defendants and SEACTX consented to the terms and intended that the Agreement, the Procedure, and the Lease Execution would provide significant benefits to all unleased owners of the mineral estates within the geographic boundaries of SEACTX ("Intended Beneficiaries"), including the Plaintiff. Both Defendants and SEACTX intended that such benefits would be direct, and not merely incidental, benefits to the unleased mineral estate owners, including the Plaintiff.
- 4.09 Defendants intended to and did publicize their intention to lease any and all unleased mineral estate interests located within SEACTX by various methods including, but not limited to, postcards, flyers, yard signs, press releases, and postings on the SEACTX website. All such communications indicated the agreed Procedure would be used.
- 4.10 Defendants' communications of the Agreement, the Procedure, and the Lease Execution were intended to reach all Intended Beneficiaries and to assure them that Defendants would offer all Intended Beneficiaries the opportunity to lease their minerals upon the agreed on terms and conditions which were clear and definite. SEACTX, on behalf of all the Intended Beneficiaries, accepted the offer by Defendants and rejected other offers from competing gas companies. All necessary terms and conditions of both tiers of the Agreement were set forth so that no further negotiations concerning any terms of either tier of the Agreement were left open. Defendants and SEACTX then began performance of the Procedure with the Intended Beneficiaries in accordance with the Agreement.

- 4.11 Each of these communications was intended to and did evidence the fact that anyone, including the Plaintiff, who owned an unleased mineral estate interest within SEACTX, was entitled, as an Intended Beneficiary of the agreement, to an offer to lease its mineral interests to XTO in accordance with the Procedure. These communications frequently contained language such as “Thank you for being a member of SEACTX and leasing your minerals to XTO.” These communications also instructed the Intended Beneficiaries that they would receive additional information, such as where and when to attend signing events, and told the Plaintiff and others similarly situated that they only needed to wait until they were told when and where to attend the appropriate signing event and not to lease to any of XTO’s competitors.
- 4.12 Defendants further reinforced this understanding by specifically agreeing not to revoke their willingness to continue with the Procedure and complete the Lease Execution under the terms provided in the lease form to all SEACTX residents. Such promises not to revoke were contained in oral statements and in numerous written statements such as “. . . no one will go without a lease within SEACTX,” and “. . . no one will be left out,” that XTO was willing to make its lease available to “everyone who is interested in executing a lease with XTO,” and that XTO would “be in the area for at least a [sic] 6 more months picking up stragglers [sic]” and/or words of similar meaning.
- 4.13 The Plaintiff is an owner of an unleased mineral estate located within the geographic boundaries of SEACTX and, as such, is an Intended Beneficiary of the Agreement. The Procedure gave Plaintiff a right to an offer from Defendants to lease its unleased mineral interests. Pursuant to the terms and conditions of the Procedure, Plaintiff was granted the power to accept the terms of the lease form at a signing event as provided by the

Procedure. Plaintiff accepted Defendants' offer to utilize the Procedure by following instructions not to lease its mineral interests to other competing gas companies and by waiting patiently for its opportunity to attend a signing event where the agreed upon Lease Execution would be performed by Plaintiff.

- 4.14 In accordance with the agreed Procedure, Plaintiff did not seek other competing bids, turned down other higher offers from competing gas companies, and waited for instructions from XTO and/or its agents of the date and time Plaintiff should attend a signing event and perform the Lease Execution.
- 4.15 Plaintiff contacted XTO through its agent, Permian and requested a W-9 form to begin the leasing process. Plaintiff then fully completed and mailed in a W-9 form and waited for Defendants to determine when it would attend a signing event covering the Property.
- 4.16 Defendants have since breached the Agreement and have failed and refused to continue the Procedure intended to result in the Lease Execution on the Property on the agreed upon terms. As a result, Plaintiff has now lost the opportunity to lease the Property to other persons and/or entities because the market has changed dramatically due, at least in part, to conduct which the Plaintiff believes constitutes a collusive agreement with others within the industry to drive down bonus payments.

5.0 FIRST CAUSE OF ACTION - Breach of Contract and Specific Performance

- 5.01 Plaintiff incorporates Paragraphs 4.01 through 4.16 as if set forth herein again verbatim.
- 5.02 Plaintiff has entered into a contractual agreement with Defendants pursuant to which Defendants agreed to lease Plaintiff's mineral estate interest upon specific terms and conditions to be offered to the Plaintiff. The Plaintiff, by and through the SEACTX leadership, accepted Defendants' offer, creating a contractual agreement with

Defendants, and Plaintiff is entitled to specific performance of the terms and conditions of the Procedure for leasing its mineral interests to Defendants upon the agreed upon terms including a bonus payment to Plaintiff in the full amount owed of Twenty Six Thousand Five Hundred Seventeen and no/100 Dollars (\$26,517.00) per net mineral acre. Plaintiff has fully performed all obligations under the terms and conditions of the Procedure. Defendants have breached the terms and conditions of the Procedure. Plaintiff here and now sues for specific performance of all terms and conditions of the Procedure, including offering the Plaintiff the opportunity to execute a lease and payment of the agreed upon bonus.

5.03 Plaintiff here and now sues for specific performance, as well as recovery of all legal, equitable, actual, reliance, consequential, exemplary and other damages permitted for such breaches pursuant to the laws of the State of Texas.

6.0 SECOND CAUSE OF ACTION – Third Party Beneficiary Claims

6.01 Plaintiff incorporates Paragraphs 4.01 through 5.03 as if set forth herein again verbatim.

6.02 Alternatively, and/or additionally, Plaintiff is not party to the Agreement between SEACTX and Defendants, but the Agreement as negotiated was intended to provide benefits to the group of homeowners, neighborhoods and homeowners' associations (including the Plaintiff) with unleased mineral estate interests located within SEACTX. The Agreement created a two-tiered third party beneficiary contract, and the Plaintiff is a third party beneficiary of the Agreement. As an Intended Beneficiary of the Agreement, Plaintiff is vested with various rights under the Agreement. Specifically, the first tier of the Agreement vested Plaintiff and others similarly situated with a right to accept

Defendants' offer when the Procedure, contemplated under the first-tier of the Agreement, resulted in the Lease Execution being offered to Plaintiff.

- 6.03 The right to accept the terms and conditions of the Lease was an irrevocable right which vested in the Plaintiff at the time the Agreement established the Procedure, and Plaintiff was entitled to exercise its power of acceptance within a reasonable period of time thereafter. Defendants provided information and representations which made it clear that the Intended Beneficiaries, including the Plaintiff, need only wait to hear when it should attend a signing event.
- 6.04 In accordance with the instructions regarding the Procedure from Defendants, Plaintiff sent in its W-9 and waited on notification from Defendants to attend a signing event in order to execute the Lease. Several promises were made regarding the status of its Lease, and each of these statements was made to induce Plaintiff and others similarly situated to lease only to XTO and/or its agents through the agreed upon Procedure, and to reassure the Plaintiff that it would not be excluded from the benefits it was entitled to under the Procedure, the Agreement, and/or the Lease Execution. Such statements and reassurances were made by Defendants with the intention that both SEACTX and Plaintiff would rely upon such statements and reassurances. SEACTX and Plaintiff both reasonably relied upon such statements and reassurances and Plaintiff did not seek other opportunities to lease its mineral estate or accept any competing offers to lease its mineral estate.
- 6.05 Despite such statements and reassurances, Defendants breached the terms and conditions of the Agreement by preventing Plaintiff from exercising its right to accept Defendants' offer to lease because Defendants have refused to follow through with the Procedure agreed to in tier-one of the Agreement. Defendants have refused to fulfill their agreement

to adhere to the Procedure without justification and in breach of the Plaintiff's contractual rights as a third party beneficiary.

6.06 Plaintiff here and now sues for specific enforcement of its third party beneficiary rights, as well as recovery of all legal, equitable, actual, reliance, consequential, exemplary and other damages permitted for such breaches pursuant to the laws of the State of Texas.

7.0 THIRD CAUSE OF ACTION – Breach of Contract, Specific Performance, and Third Party Beneficiary Rights Under the Texas Uniform Electronic Transactions Act

7.01 Plaintiff incorporates Paragraphs 4.01 through 6.06 as if set forth herein again verbatim.

7.02 Additionally, and/or alternatively, SEACTX and/or Plaintiff has a valid existing contract with Defendants as set forth above pursuant to the Uniform Electronic Transactions Act (“UETA”).

7.03 Plaintiff here and now sues for specific enforcement of the contract and/or specific performance of its third party beneficiary rights, as well as recovery of all legal, equitable, actual, reliance, consequential, exemplary and other damages permitted for such breaches pursuant to the laws of the State of Texas.

8.0 FOURTH CAUSE OF ACTION – Promissory Estoppel

8.01 Plaintiff incorporates Paragraphs 4.01 through 7.03 as if set forth herein again verbatim.

8.02 Additionally, and/or alternatively, SEACTX and/or Plaintiff has a valid existing contract with Defendants as set forth above. Defendants are estopped to deny the existence of the contract by the doctrine of promissory estoppel.

8.03 Moreover, the doctrine of promissory estoppel prevents the Defendants from raising the Statute of Frauds as a defense in this case as Defendants promised to lease Plaintiff's

mineral estate upon terms and conditions that Defendants could reasonably foresee SEACTX and/or Plaintiff would rely upon, and SEACTX and/or Plaintiff relied upon such promises to their detriment, by forgoing other opportunities to lease mineral estates to other competing companies. Injustice to the Plaintiff and others similarly situated can only be avoided by enforcement of the promise.

8.04 Plaintiff here and now sues for specific enforcement of the Procedure as well as recovery of all legal, equitable, actual, reliance, consequential, exemplary and other damages permitted for such breaches pursuant to the laws of the State of Texas.

9.0 FIFTH CAUSE OF ACTION – Fraudulent Inducement

9.01 Plaintiff incorporates Paragraphs 4.01 through 8.04 as if set forth herein again verbatim.

9.02 Additionally, and/or in the alternative, Plaintiff would show that the Agreement between SEACTX and Defendants created a two-tiered binding contract benefitting the Plaintiff and providing the Procedure to lease its mineral estate.

9.03 In accordance with the terms and conditions of the contract, Plaintiff accepted the contract, communicated acceptance of the contract to Defendants, and engaged in partial performance of the contract by not seeking and/or accepting competing offers to lease its mineral estates and waiting patiently in accordance with the instructions from XTO and/or its agents until notified to attend a signing event.

9.04 Plaintiff was induced to accept the terms and conditions of the XTO lease contract by misleading and deceptive statements that XTO and/or its representatives made, reassuring them that all unleased mineral estate interests within SEACTX would get the opportunity to lease their mineral interests in accordance with the Agreement, the Procedure and the Lease Execution.

- 9.05 Plaintiff was induced to accept the terms and conditions of the XTO lease by a series of misleading and deceptive statements that XTO and/or its representatives made assuring and reassuring it. Moreover, Defendants sought to induce the Plaintiff to patiently rely on Defendants to work through the signing Procedure in tier one of the Agreement in reliance upon the agreement to provide the Lease to everyone as contemplated in the second tier of the Agreement.
- 9.06 Plaintiff reasonably relied to its harm and detriment on the two-tiered agreement between SEACTX and Defendants, as well as relying on Defendants misleading and deceptive statements.
- 9.07 Plaintiff here and now sues for specific enforcement of the promise to lease, as well as recovery of all legal, equitable, actual, reliance, consequential, exemplary and other damages permitted for such fraudulent inducements pursuant to the laws of the State of Texas.

10.0 SIXTH CAUSE OF ACTION – Fraudulent Misrepresentation

- 10.01 Plaintiff incorporates Paragraphs 4.01 through 9.07 as if set forth herein again verbatim.
- 10.02 Additionally, and/or alternatively, Plaintiff would show that the actions of XTO by and through its agents, Permian, Devonian, and/or Jones constitute fraud for which the Plaintiff is entitled to recover damages. These Defendants made representations to SEACTX which they knew were false at the time they were made or which in the exercise of ordinary care such Defendants should have known were false. Such representations include, but are not limited to, the representation that the Plaintiff would receive bonus checks and that XTO would sign all people in SEACTX to the SEACTX lease, “. . . no one will go without a lease within SEACTX”, “. . . no one will be left out”,

that XTO was willing to make its lease available to “everyone who is interested in executing a lease with XTO”, and that XTO would “be in the area for at least a [sic] 6 more months picking up straglers [sic]” and/or words of similar meaning. Such statements, whether taken individually, collectively, or in some combination, were made with the intention of inducing/preventing Plaintiff from leasing the Property to anyone other than XTO and its agents and with the intention that such statements be relied upon by the Plaintiff. Plaintiff justifiably relied upon such representations to its harm, detriment and economic injury.

10.03 Plaintiff here and now sues for recovery of all actual, reliance, consequential, exemplary and other damages permitted for fraudulent misrepresentations pursuant to the laws of the State of Texas.

11.0 SEVENTH CAUSE OF ACTION - Negligent Misrepresentation

11.01 Plaintiff incorporates Paragraphs 4.01 through 10.03 as if set forth herein again verbatim.

11.02 Additionally, and/or alternatively, Plaintiff would show that the actions of XTO by and through its agents, Permian, Devonian, and/or Jones constitute negligent misrepresentations for which the Plaintiff is entitled to recover damages. These Defendants made representations to SEACTX and/or the Plaintiff which they knew were false at the time they were made or which were made with reckless disregard for whether they were true or not. Such representations include, but are not limited to, the representation that Plaintiff would receive bonus checks and that XTO would sign all people in SEACTX to the SEACTX lease, which were made with the intention of inducing and/or of preventing Plaintiff from leasing the Property to anyone other than

XTO and its agents and with the intention that it be relied upon by the Plaintiff. Plaintiff justifiably relied upon such representations to its harm, detriment and economic injury.

11.03 Plaintiff here and now sues for recovery of all actual, reliance, consequential, exemplary and other damages permitted for negligent misrepresentations pursuant to the laws of the State of Texas.

12.0 EIGHTH CAUSE OF ACTION - Fraud in Connection with the Sale of Real Estate

12.01 Plaintiff incorporates Paragraphs 4.01 through 11.03 as if set forth herein again verbatim.

12.02 Additionally, and/or alternatively, Plaintiff would show that the actions of XTO by and through its agents, Permian, Devonian, and/or Jones constitute fraud in connection with the sale of real estate as Texas law holds that the execution of an oil and gas lease effectuates a sale of the minerals with a potential right of reverter. Plaintiff has not received the promised bonus, and accordingly, has been damaged in the amount of the bonus owed.

12.03 Plaintiff here and now sues for recovery of all actual, reliance, consequential, exemplary and other damages permitted for fraud in connection with the sale of real estate pursuant to the laws of the State of Texas including, but not limited to, Section 27.01 *et seq.* of the Texas Business and Commerce Code.

13.0 NINTH CAUSE OF ACTION – Civil Conspiracy

13.01 Plaintiff incorporates Paragraphs 4.01 through 12.03 as if set forth herein again verbatim. *Plaintiff acknowledges that this Court has already ruled that it lacks standing to bring antitrust and conspiracy claims in a related case. However, Plaintiff believes this was error and intends to appeal. Plaintiff must therefore maintain these claims in each and every petition filed.*

13.02 Plaintiff would show that during the summer of 2008, Defendants and others engaged in acquiring leases in the Barnett Shale area recognized that the amounts being paid for bonuses in the Barnett Shale area, particularly in the Tarrant County, Denton County, and Johnson County area where the Defendants were actively engaged in competition to acquire leases, were far higher than had been paid historically for the acquisition of leases in the State of Texas. Defendants concluded there was no likelihood that these amounts were going to stabilize unless some concerted action was taken on behalf of all the major entities, including, but not limited to, these Defendants. Upon information and belief, Defendants conceived a plan or scheme in concert with each other and with others, which was intended to, and did, drive the bonus and royalty payments down to a far lower amount than was being paid at the time.

13.03 The object of such plan or scheme was to prevent the natural market forces which had been setting prices for the bonus and royalty payments from continuing, and instead substituting an artificially low price for bonus and royalty payments, thereby increasing the profits each participant would receive at the expense and injury of individual landowners such as the Plaintiff.

13.04 In furtherance of this plan or scheme, Defendants and other participants made a collective decision to terminate virtually all lease agreements covering the Barnett Shale formation in Tarrant County, and announced the decision to terminate the agreements reached with SEACTX and other similar neighborhood coalitions. Defendants and each of the other participants made such announcements within days of each other. Defendants and the other participants effectively sought to and have conspired to defraud Plaintiff of the fair

market value of its mineral estate, and the attendant rights associated with such mineral estate.

13.05 As a direct and proximate result of this conspiracy, Plaintiff has been harmed and injured by not being able to lease the Property at a fair and reasonable market driven rate for the bonus and the royalty payments.

13.06 As members of a civil conspiracy, each of the Defendants is jointly and severally liable for the acts and/or omissions of the other Defendants.

14.0 TENTH CAUSE OF ACTION – Violation of the Texas Free Enterprise and Antitrust Act of 1983.

14.01 Plaintiff incorporates Paragraphs 4.01 through 13.06 as if set forth herein again verbatim.

14.02 Plaintiff would show that the agreement(s) between the Defendants and others constitutes an agreement with the intended purpose and effect of lessening competition in the market to lease lands within the geographic boundaries of the Barnett Shale, including the Property, by keeping prices for bonus payments and royalty payments at an artificially low level.

14.03 Such agreement(s) constitute an improper contract, combination or conspiracy in restraint of trade or commerce in violation of Section 15.01 *et seq.* of the Texas Business and Commerce Code, commonly referred to as the Texas Free Enterprise and Antitrust Act of 1983.

14.04 Plaintiff is a person as defined by the Texas Free Enterprise and Antitrust Act of 1983, and is entitled to pursue its claims for damages and injuries pursuant to Section 15.21(a)(I), and bring this action pursuant to such section.

14.05 Plaintiff has previously provided notification of its claims to the Texas Attorney General pursuant to Section 15.21(c) of the Texas Business and Commerce Code.

14.06 Plaintiff would show that pursuant to the terms and conditions of Section 15.01 *et seq.* of the Texas Business and Commerce Code, it is entitled to recovery of actual damages, together with interest thereon, as well as the award of attorneys' fees.

14.07 Plaintiff would show that the agreement(s) between Defendants and others was/were entered into willfully or flagrantly in violation of the rights of the Plaintiff and others similarly situated, and that such actions merit a finding by the trier of fact that Defendants' conduct was willful or flagrant entitling the Plaintiff to treble damages.

15.0 ATTORNEYS' FEES

15.01 Plaintiff is entitled to recovery of attorneys' fees under the common law, as well as pursuant to Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code and in accordance with to Section 15.01 *et seq.* and Section 27.01 *et seq.* of the Texas Business and Commerce Code.

15.02 Plaintiff has agreed to pay the undersigned counsel a fair and reasonable fee for the services rendered in connection with the preparation, prosecution, and, if necessary, the appeal of this case. Plaintiff seeks recovery of attorneys' fees in addition to the damages set forth herein.

16.0 REQUEST FOR JURY TRIAL

16.01 Plaintiff has previously requested a jury trial and has tendered the required jury fee.

17.0 UPDATED REQUESTS FOR DISCLOSURE AND RESPONSES TO DISCOVERY

17.01 Plaintiff requests that the Defendants provide all updated information responsive to Texas Rules of Civil Procedure Rule 194.2 (a) through (l) in accordance with such rules, and

that Defendants provide updated and supplemental responses to previously served Interrogatories and Requests for Production in accordance with the applicable Texas Rules of Civil Procedure.

18.0 PRAYER

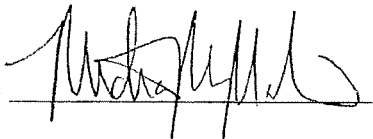
18.01 WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays:

- a. That Defendant XTO be ordered to specifically perform in accordance with the Agreement, Procedure and Lease Execution terms as set forth above and offer to lease the Plaintiff's mineral estate upon the agreed terms and conditions and issue bonus checks to the Plaintiff in the full amount owed for the bonus payments of Twenty Six Thousand Five Hundred Seventeen and no/100 Dollars (\$26,517.00) per net mineral acre (pending a precise measurement of the property and any strips, gores, easements, roadways or other land that may be properly included in the lease) together with interest thereon at the highest rate permitted;
- b. That the Court enter an Order finding that the Defendants engaged in concerted action which caused indivisible injuries, thereby making each of them jointly and severally liable for the acts and omissions of each other.
- c. That Defendants be found to be jointly and severally liable for the harm and damage that they have caused to Plaintiff by engaging in and carrying on the conspiracy to keep bonus and royalty payments to Plaintiff and others similarly situated artificially low.
- d. That Plaintiff be awarded attorneys' fees in accordance with the common law, Section 15.01 *et seq.* of the Texas Business and Commerce Code, Section 27.01 *et seq.* of the Texas Business and Commerce Code and/or Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code.

- e. That the Court enter a finding that Defendants acted willfully or flagrantly and that Plaintiff's damages, including attorneys' fees, be trebled in accordance with Section 15.01 *et seq.* of the Texas Business and Commerce Code.
- f. That the Court award punitive/exemplary damages to the Plaintiff in an amount to be determined by the jury.
- g. That Plaintiff recover costs of court, interest on all damages as permitted by law and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may show itself to be entitled.

Respectfully submitted,

PETROFF & ASSOCIATES

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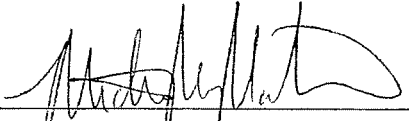
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

Pursuant to Rule 21 of the Tex. R. Civ. P., I hereby certify that on the ^{26th} day of August, 2010, a true and correct copy of this document has been forwarded to all counsel of record by e-mail, United States Postal Services, return receipt requested, United States Postal Services, regular postal delivery, facsimile and/or hand delivery.



Michael T. McMahan