

2.02 Venue is proper in this County pursuant to Section 15.001 *et seq* of the Texas Civil Practice and Remedies Code and pursuant to Section 15.01 *et seq* of the Texas Business and Commerce Code as one or more of the Defendants is a resident of this County.

3.0 Parties

3.01 Plaintiffs are individual Texas residents residing within and/or owning property located within Tarrant County, Texas.

3.02 Defendant, XTO Energy, Inc. ("XTO"), a foreign corporation organized and existing under the laws of the State of Delaware, whose principal office is located at 810 Houston Street, Suite 2000, Fort Worth, Texas, is authorized to conduct business in Texas and may be served with process by serving its registered agent for service of process, Frank G. McDonald, at 810 Houston Street, Suite 2000, Fort Worth, Texas, 76102.

3.03 Defendant Permian Land Company ("Permian") is apparently an unincorporated division of Devonian Enterprises, Inc. that does not appear to be licensed and/or registered to conduct business within the State of Texas and, therefore, Permian is deemed to have designated the Texas Secretary of State as its agent for service of process. Further, as Permian is not registered or licensed to conduct business in the State of Texas, its owner, Devonian Enterprises, Inc., is personally liable for all obligations, debts, and liabilities of Permian. Permian can be served with process through the Office of the Texas Secretary of State, which can then forward the citation and copy of the Plaintiffs' Original Petition together with all other documents by certified mail, return receipt requested, to the offices of Permian Land Company at its place of business, in Tarrant County, located at Permian Land Company, P.O. BOX 1226, Fort Worth, Texas, 76101.

3.04 Defendant Devonian Enterprises, Inc. (“Devonian”) is a foreign corporation that is not licensed and/or registered to conduct business in the State of Texas and, therefore, Devonian is deemed to have appointed the Texas Secretary of State as its agent for service of process. Further, as Devonian is not registered to conduct business in the State of Texas its owner, Fred W. Jones, is personally liable for all obligations, debts and liabilities of Permian, Devonian, and all purported employees of Permian and/or Devonian. Devonian can be served with process through the Texas Secretary of State’s Office, which can then forward the citation and copy of Plaintiffs’ Original Petition together with all other documents by certified mail, return receipt requested, to Devonian’s owner, Fred W. Jones, at his address, 4200 N. Meridian Avenue, Suite 939, Oklahoma City, Oklahoma 73112.

3.05 Defendant Fred W. Jones, individually and/or d/b/a Devonian Enterprises, Inc., is a citizen of the State of Oklahoma and the purported owner of Permian and Devonian, and does not maintain an agent for the service of process in the State of Texas. Accordingly, he is deemed to have appointed the Texas Secretary of State as his agent for service of process. Defendant Jones can be served with process through the Texas Secretary of State’s Office, which can then forward the citation and copy of Plaintiffs’ Original Petition together with all other documents by certified mail, return receipt requested, to Fred W. Jones, at his address, 4200 N. Meridian Avenue, Suite 939, Oklahoma City, Oklahoma 73112.

4.0 **Factual Background**

4.01 Plaintiffs, Willie Cannon and Shera Cannon, are the owners of real property known as [REDACTED], which is part of the Paxton Village

Addition (“the Cannon Property”). This lawsuit arises due to Defendant XTO, Permian, Devonian and Jones’ deceptive and unconscionable acts and XTO’s breach of the contract between the Plaintiff and XTO, due to XTO’s failure and refusal to comply with the terms and conditions of the agreement including issuing a check to the Plaintiff in the full amount owed for the bonus payment.

4.02 Plaintiff, Liliana Cereceres, is the owner of real property known as [REDACTED] [REDACTED] which is part of the Harwood Meadow Addition (“the Cereceres Property”). This lawsuit arises due to Defendant XTO, Permian, Devonian and Jones’ deceptive and unconscionable acts and XTO’s breach of the contract between the Plaintiff and XTO, due to XTO’s failure and refusal to comply with the terms and conditions of the agreement including issuing a check to the Plaintiff in the full amount owed for the bonus payment.

4.03 Plaintiffs, Ramón Córdova and Norma Córdova, are the owners of the real property known as [REDACTED], which is part of the Colson Estates Addition (“the Córdova Property”). This lawsuit arises due to Defendant XTO, Permian, Devonian and Jones’ deceptive and unconscionable acts and XTO’s breach of the contract between the Plaintiff and XTO, due to XTO’s failure and refusal to comply with the terms and conditions of the agreement including issuing a check to the Plaintiff in the full amount owed for the bonus payment.

4.04 Plaintiffs, Tien B. Dao and Linh T. Nguyen, are the owners of the real property known as [REDACTED] which is part of the Coldwater Creek Addition (“the Dao-Nguyen Property”). This lawsuit arises due to Defendant XTO, Permian, Devonian and Jones’ deceptive and unconscionable acts and XTO’s

breach of the contract between the Plaintiff and XTO, due to XTO's failure and refusal to comply with the terms and conditions of the agreement including issuing a check to the Plaintiff in the full amount owed for the bonus payment.

- 4.05 The Cannon, Cereceres, Córdova and Dao-Nguyen Properties (collectively referred to herein as “the Property”) overlay the geographic strata known as the Newark East Field, commonly referred to as the Barnett Shale, a known and recognized formation that is characterized by prolific natural gas production.
- 4.06 Beginning in or about 2007, Plaintiffs 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.
- 4.07 The Property is located within the boundaries of the homeowners' coalition known as the South East Arlington Communities of Texas (“SEACTX”). SEACTX is a coalition of homeowners, homeowners' associations and/or neighborhoods, which are located in reasonable geographic proximity to each other, that agreed to unite together and undertake negotiations with various oil and gas entities on behalf of the homeowners, whose lands are contained within its geographical boundaries, for the leasing of such lands (including the Property) on the most economically favorable terms that SEACTX could negotiate.
- 4.08 SEACTX, on behalf of the Plaintiffs and others similarly situated, undertook negotiations with Chesapeake, XTO, Vantage, and others to lease Plaintiffs' Property and on or about April 25, 2008, SEACTX and XTO agreed to the terms and conditions of a lease covering all lands within the SEACTX geographical boundaries, including the Property.

4.09 Defendants have since breached the agreement and have failed and refused to lease the Property on the agreed upon terms. As a result, Plaintiffs have 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 Plaintiffs believe constitutes a collusive agreement with others within the industry to drive down bonus payments.

5.00 First Cause of Action - Breach of Contract and Specific Performance

5.01 Plaintiffs incorporate Paragraphs 4.01 through 4.09 as if set forth herein again verbatim.

5.02 Plaintiffs have entered into a contractual agreement for the development of oil, gas and other minerals with Defendant XTO. The Plaintiffs accepted XTO's offer, creating a contractual agreement with XTO, and Plaintiffs are entitled to specific performance of the terms and conditions of the contract including the issuance of checks to the Plaintiffs 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. Plaintiffs have fully performed all obligations under the terms and conditions of the contract. XTO has breached the terms and conditions of the contract. Plaintiffs here and now sue for specific performance of all terms and conditions of the contract.

6.0 Second Cause of Action – Fraud

6.01 Plaintiffs incorporate Paragraphs 4.01 through 5.02 as if set forth herein again verbatim.

6.02 Plaintiffs would show that the actions of XTO by and through its agents, Permian, Devonian, and/or Jones constitute fraud for which the Plaintiffs are entitled to recover damages. These Defendants made representations to the Plaintiffs that 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 Plaintiffs would receive bonus checks, which was made with the intent that it be relied upon by the Plaintiffs and, consequently, induce/prevent the Plaintiffs from leasing the Property to anyone other than XTO and/or its agents. Plaintiffs justifiably relied upon such representations to their harm, detriment, and economic injury.

6.03 Plaintiffs here and now sue for recovery of all actual, consequential, exemplary and other damages permitted for fraud pursuant to the laws of the State of Texas.

7.0 Third Cause of Action - Negligent Misrepresentation

7.01 Plaintiffs incorporate Paragraphs 4.01 through 6.03 as if set forth herein again verbatim.

7.02 Plaintiffs would show that the actions of XTO by and through its agents, Permian, Devonian, and/or Jones constitute negligent misrepresentations for which the Plaintiffs are entitled to recover damages. These Defendants made representations to the Plaintiffs 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. One such representation includes, but is not limited to, the representation that Plaintiffs should receive bonus checks, which was made with the intent that it be relied upon by the Plaintiffs and, consequently, induce/prevent the Plaintiffs from leasing the Property to anyone other than XTO and/or its agents. Plaintiffs justifiably relied upon such representations to their harm, detriment and economic injury.

7.03 Plaintiffs here and now sue for recovery of all actual, consequential, exemplary and other damages permitted for negligent misrepresentations pursuant to the laws of the State of Texas.

8.0 Fourth Cause of Action - Fraud in Connection with the Sale of Real Estate

- 8.01 Plaintiffs incorporate Paragraphs 4.01 through 7.03 as if set forth herein again verbatim.
- 8.02 Plaintiffs 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. Plaintiffs have not received the promised bonus, and accordingly, have been damaged in the amount of the bonus owed.
- 8.03 Plaintiffs here and now sue for recovery of all actual, 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.

9.0 Fifth Cause of Action -- Civil Conspiracy

- 9.01 Plaintiffs incorporate Paragraphs 4.01 through 8.03 as if set forth herein again verbatim.
- 9.02 Plaintiffs 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 on behalf of all the major entities, including but not limited to these Defendants, was taken. 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.

- 9.03 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 Plaintiffs.
- 9.04 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 Plaintiffs of the fair market value of their mineral estate, and the attendant rights associated with such mineral estate.
- 9.05 As a direct and proximate result of this conspiracy, Plaintiffs have 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.
- 9.06 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.
- 10.0 Sixth Cause of Action – Violation of the Texas Free Enterprise and Antitrust Act of 1983.**
- 10.01 Plaintiffs incorporate Paragraphs 4.01 through 9.06 as if set forth herein again verbatim.
- 10.02 Plaintiffs 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.

- 10.03 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.
- 10.04 Plaintiffs are persons as defined by the Texas Free Enterprise and Antitrust Act of 1983, and are entitled to pursue their claims for damages and injuries pursuant to Section 15.21(a)(1), and bring this action pursuant to such section.
- 10.05 Simultaneously with the filing of this action, Plaintiffs are providing notification of their claims to the Texas Attorney General pursuant to Section 15.21(c) of the Texas Business and Commerce Code.
- 10.06 Plaintiffs would show that they are entitled to recovery of actual damages, together with interest thereon, as well as the award of attorneys' fees pursuant to the terms and conditions of Section 15.01 *et seq.* of the Texas Business and Commerce Code.
- 10.07 Plaintiffs would show that the agreement(s) between Defendants and others was/were entered into willfully or flagrantly in violation of the rights of the Plaintiffs 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 Plaintiffs to treble damages.

11.0 Attorneys' Fees

11.01 Plaintiffs are entitled to recovery of attorneys' fees pursuant to Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code as well as pursuant to Section 15.01 *et seq.* and Section 27.01 *et seq.* of the Texas Business and Commerce Code.

11.02 Plaintiffs have 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. Plaintiffs seek recovery of reasonable attorneys' fees in addition to the damages set forth herein.

12.0 Request for Jury Trial

12.01 Plaintiffs here and now request a jury trial and tender the required jury fee.

13.0 Requests for Disclosure

13.01 Plaintiffs request that the Defendants provide all information responsive to Texas Rules of Civil Procedure Rule 194.2 (a) through (l) in accordance with such rules.

14.0 PRAYER

14.01 WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray:

14.01.1 That Defendant XTO be ordered to specifically perform in accordance with the contract terms and issue bonus checks to the Plaintiffs 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.

14.01.2 That the Defendants be found to have engaged in concerted action that caused indivisible injuries, thereby making each of them jointly and severally liable for the acts and omissions of each other.

- 14.01.3 That Defendants be found to be jointly and severally liable for the harm and damage that they have caused to Plaintiffs by engaging in and carrying on the conspiracy to keep bonus and royalty payments to Plaintiffs and others similarly situated artificially low.
- 14.01.4 That Plaintiffs be awarded attorneys' fees in accordance with Section 15.01 *et seq.*, Section 27.01 *et seq.*, and/or Section 17.41 *et seq.* of the Texas Business and Commerce Code and/or Section 38.001 *et seq.* of the Texas Civil Practice and Remedies Code.
- 14.01.5 That the Court enter a finding that Defendants acted willfully or flagrantly and that Plaintiffs' damages, including attorneys' fees, be trebled in accordance with Section 15.01 *et seq.* of the Texas Business and Commerce Code.
- 14.01.6 That the Court award punitive/exemplary damages to the Plaintiffs in an amount to be determined by the jury.
- 14.01.9 That Plaintiffs 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 Plaintiffs may show themselves to be entitled.


Respectfully submitted,

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