

VICKIE ANNE MAKEHAM,	§	IN THE DISTRICT COURT OF
STEVEN D. NGUYEN, and wife, Y. MINH	§	
NGUYEN, RICK SCIVALLY, and wife,	§	
JENETH SCIVALLY, ROMEO SUN, and	§	
FLORDELIZA DUE,	§	
Plaintiffs,	§	
	§	
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	§	
v.	§	TARRANT COUNTY, TEXAS
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	§	
XTO ENERGY, INC.,	§	
PERMIAN LAND COMPANY, a Division of	§	
DEVONIAN ENTERPRISES, INC., FRED W.	§	
JONES, Individually and/or d/b/a DEVONIAN	§	
ENTERPRISES, INC.,	§	
Defendants.	§	17TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

NOW COMES Vickie Anne Makeham, Steven D. Nguyen, and wife, Y. Minh Nguyen, Rick Scivally, and wife, Jeneth Scivally, and Romeo Sun, Plaintiffs herein, complaining of XTO ENERGY INC., PERMIAN LAND COMPANY, a division of DEVONIAN ENTERPRISES, DEVONIAN ENTERPRISES, INC. and FRED W. JONES, individually and/or d/b/a DEVONIAN ENTERPRISES, INC., and for cause of action would show this Honorable Court as follows:

1.0 Discovery Level

1.01 Plaintiffs intend to conduct discovery in this case as a Level 2 case pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

2.0 Jurisdiction and Venue

2.01 Jurisdiction is proper in this Court as the amount in controversy is within the jurisdictional limits of this Court.

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") is a Delaware corporation licensed to do business in the State of Texas, and maintains its principal place of business within Tarrant County, Texas at 810 Houston Street, Suite 2000, Fort Worth, Texas. Defendant XTO can be served by serving its agent for service of process, Frank G. McDonald, 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 do business within the State of Texas, and is therefore deemed to have designated the Texas Secretary of State as its agent for service of process. Further, as Permian is not registered to do 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 Texas Secretary of State's Office, which can then forward the citation and copy of the Plaintiffs' First Amended 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., is apparently a foreign corporation which is not licensed and/or registered to do business in the State of Texas, and is therefore deemed to have appointed the Texas Secretary of State as its agent for service of process. Further, as Devonian is not registered to do 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 either 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' First Amended 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 Fred W. Jones, Individually and/or d/b/a Devonian Enterprises, Inc., is apparently 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' First Amended 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 Plaintiff Vickie Anne Makeham is the owner of real property known as [REDACTED], [REDACTED], which is part of the Windmill Meadows Neighborhood ("the Makeham Property"). This lawsuit arises as a result of Defendant

XTO, Permian, Devonian and Jones' deceptive and unconscionable acts and XTO's breach of a lease between the Plaintiff and XTO due to XTO's failure and refusal to pay the agreed upon bonus to Plaintiff.

4.02 Plaintiffs Steven D. Nguyen and wife, Y. Minh Nguyen, are the owners of real property known as [REDACTED] which is part of the Webb-Britton Estates Neighborhood ("the Nguyen Property"). This lawsuit arises as a result of Defendant XTO, Permian, Devonian and Jones' deceptive and unconscionable acts and XTO's breach of a lease between the Plaintiffs and XTO due to XTO's failure and refusal to pay the agreed upon bonus to Plaintiffs.

4.03 Plaintiffs Rick and Jeneth Scivally are the owners of the real property known as [REDACTED] which is part of the Lake Port Village Neighborhood ("the Scivally Property"). This lawsuit arises as a result of Defendant XTO, Permian, Devonian and Jones' deceptive and unconscionable acts and XTO's breach of a lease between the Plaintiffs and XTO due to XTO's failure and refusal to pay the agreed upon bonus to Plaintiffs.

4.04 Plaintiff Romeo Sun and Flordeliza Due are the co-owners of real property known as [REDACTED] which is part of the Paxton Village Neighborhood ("the Sun-Due Property"). This lawsuit arises as a result of Defendant XTO, Permian, Devonian and Jones' deceptive and unconscionable acts and XTO's breach of a lease between the Plaintiff and XTO due to XTO's failure and refusal to pay the agreed upon bonus to Plaintiff.

4.05 The Makeham, Nguyen, Scivally and Sun-Due 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 which is characterized by prolific natural gas production.

4.06 Beginning in or about early 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 also lies 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, including the Plaintiffs 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 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 XTO, Chesapeake Exploration Company, LLC, Vantage Energy, LLC, 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 Plaintiffs were notified of the agreement with SEACTX and XTO, have accepted the terms that were offered, and have complied with every term of the contract. They have done everything XTO and its agents have asked of them.

- 4.10 Each of the Plaintiffs contacted XTO through its agent, Permian, in order to determine when they would attend a signing event covering their property, and each was delayed by Permian.
- 4.11 Plaintiffs were never told by an employee of Permian or XTO that the offer was withdrawn or that all lease acquisition activity within the SEACTX geographical area was being terminated.
- 4.12 Plaintiffs followed all instructions provided as requested by the Defendants, in good faith based upon the representations made by employees of Permian, XTO's agents, that they would receive the agreed upon bonuses. Plaintiffs reasonably relied upon such representations and did not accept other offers to lease the Property in reliance upon the Defendants' representations that Defendants were leasing the Property. Plaintiffs have now lost the opportunity to lease to such 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 4.12 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 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 Plaintiffs would receive bonus checks, which was made with the intention of inducing/preventing Plaintiffs from leasing the Property to anyone other than XTO and its agents and with the intention that it be relied upon by the Plaintiffs. 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. Such representations include, but are not limited to, the representation that Plaintiffs should receive bonus checks, which were made with the intention of inducing and/or of preventing Plaintiffs from leasing the Property to anyone other than XTO and its agents and with the intention that it be relied upon by the Plaintiffs. 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. Further, Plaintiffs were induced not to sell their minerals to anyone other than XTO by representations made by one or more of the Defendants XTO, Permian, Devonian, and/or Jones, and would have entered into a contract for the sale of their minerals with other gas companies but for the representations by Defendants XTO, Permian, Devonian, and/or Jones that they were going to lease Plaintiffs' minerals, and that they would receive a bonus in the amount of Twenty Six Thousand Five Hundred Seventeen and no/100 Dollars (\$26,517.00) per net mineral acre as a signing bonus. Plaintiffs have not received the promised bonuses, and accordingly, have been damaged in the amount of the bonuses 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 Texas Business and Commerce Code Section 27.01, *et seq.*

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)(I), 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 pursuant to the terms and conditions of Section 15.01 *et seq* of the Texas Business and Commerce Code, they are entitled to recovery of actual damages, together with interest thereon, as well as the award of attorneys' fees.
- 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 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 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.

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.

14.01.7 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.

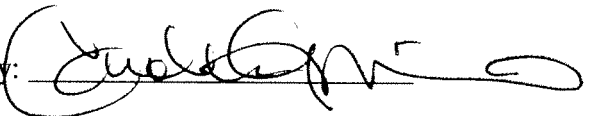
Respectfully submitted,

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