

**CAUSE NO. 11-01650-E**

LISA PARR, Individually and as Next	§	IN THE COUNTY COURT
Friend to her minor daughter, E.D.; and	§	
ROBERT "BOB" PARR,	§	
Plaintiffs,	§	
	§	
vs.	§	AT LAW NO. <u>5</u>
	§	
ARUBA PETROLEUM, INC.; and	§	
ENCANA OIL & GAS (USA) INC.,	§	
Defendants.	§	OF DALLAS COUNTY, TEXAS

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**PLAINTIFFS' ELEVENTH AMENDED PETITION**

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**I. INTRODUCTION**

1. Plaintiffs complain, *inter alia*, of cumulative<sup>1</sup> environmental contamination and polluting events caused by the conduct and activities of the various Defendants named herein. Defendants' releases, spills, emissions, and discharges of above-surface "air pollution" caused and continue to cause Plaintiffs and their property to be exposed to hazardous gases, chemicals, and industrial/hazardous wastes, which caused damages including but not limited to the following: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, deprivation of enjoyment of property; injury to Plaintiffs' animals and livestock; damage to

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<sup>1</sup> Remedying cumulative impacts and harm by multiple sources and by multiple chemical exposures have been a long-standing precedence in American civil jurisprudence. *See Mugler v. Kansas*, 123 US 623, 665 (1887); *see also Woodyear v. Schaefer*, 57 Md. 1, 10 (Md. 1881) (holding that "One drop of poison in a person's cup, may have no injurious effect. But, when a dozen, or twenty, or fifty, each put in a drop, fatal results may follow. It would not do to say that neither was to be held responsible. In that state of facts, as in the one presented by this case, each element of contributive injury is a part of one common whole, and to stop the mischief of the whole, each part in detail must be arrested and removed.") (emphasis added).

the natural resources of the environment in and around the Plaintiffs' property; loss of use and enjoyment of Plaintiffs' property; diminution of Plaintiffs' property value; constructive eviction of Plaintiffs from Plaintiffs' property; loss of Plaintiff's quality of life; and other damages. Plaintiffs hereby bring suit against Defendants and for causes of action would show unto this honorable Court the following:

## **II. DISCOVERY CONTROL PLAN**

2. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 because this suit concerns numerous defendants and deals with complex issues of fact, science, and medicine to warrant a tailored discovery control plan by this Court.

## **III. PARTIES**

3. Plaintiff, **Lisa Parr**, an individual, is a resident of Wise County, Texas.

4. Plaintiff, **Robert "Bob" Parr**, an individual, is a resident of Wise County, Texas.

5. Plaintiff, Lisa Parr, brings this suit individually and as next friend on behalf of **Emma Duvall**, a minor child. Plaintiff is a resident of Wise County, Texas; Emma Duvall, is a resident of Wise County, Texas.

6. Defendant **ARUBA PETROLEUM, INC.** is a Texas corporation whose registered office is 555 Republic Drive, Suite 505 Plano, TX 75074 in Collin County, Texas, may be served with process by serving its registered agent for service of process, James L. Poston at 555 Republic Drive, Suite 505, Plano, TX 75074, Collin County, Texas. Defendant ARUBA PETROLEUM, INC. has appeared by filing an Answer in this cause.

7. Defendant **ENCANA OIL & GAS (USA) INC.** is a foreign corporation, whose registered office is 1800, 855 – 2<sup>nd</sup> Street SW, Calgary, AB T2P 2S5, is authorized to do business in Texas and may be served with process by serving its registered agent for

service of process, C T Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, TX 75201-4234 in Dallas County, Texas. Defendant ENCANA OIL & GAS (USA) INC. has appeared by filing an Answer in this cause.

#### **IV. JURISDICTION**

8. This Court has jurisdiction over the lawsuit because the County Court at Law jurisdiction begins at \$10,000.00 and has concurrent jurisdiction with the District Court in civil cases regardless of the amount in controversy. In addition, this Court has jurisdiction over Defendants because Defendants purposefully availed themselves of the privileges and benefits of conducting business in Texas by engaging in business in the State of Texas. Finally, this Court has jurisdiction over Defendants because Defendants committed torts in whole or in part in Texas, which torts are the subject of this suit and which are set forth more fully below.

#### **V. VENUE**

9. Venue is proper in Dallas County under Texas Civil Practice & Remedies Code section 15.002 because one or more defendant corporations maintain its principal office in Texas in Dallas County. See Tex. Civ. Prac. & Rem. Code §15.002(a)(3).

#### **VI. STATUTE OF LIMITATIONS TOLLED**

10. The recurring wrongful conduct of Defendants, as alleged herein, which has been repeated over a period of time, constitutes a continuing tort. Pursuant to the Continuing Tort Doctrine, a claim for a continuing tort does not accrue until the tortuous conduct ceases, and Defendants' wrongful conduct has not ceased. The Continuing Tort Doctrine operates to toll the running of the two-year limitations period under §16.003 of the Texas Civil Practices and Remedies Code. In addition, Plaintiffs assert the Discovery Rule to toll

the running of any statute of limitations. Finally, Plaintiffs assert the Tex. Civ. Prac. & Rem. Code Ann. § 16.068, under the Relation Back Doctrine.

## **VII. NO BASIS FOR REMOVAL**

11. There is no basis for removal of this case to federal court. There is no federal question at issue pursuant to 28 USC §1441(b). There is no total diversity of citizenship pursuant to 28 USC §1441 and 28 USC §1332, because one or more of the Defendants is a citizen of the state of Texas. See 28 USC §1441(b) and 28 USC §1332(c). Plaintiff is not asserting any claims against any Defendant whom was acting under any officer of the United States or any such agency thereof, or person acting under him, or for any act under color of such office, or against any Defendant during a time period when its facility was a federal enclave. Accordingly, there is no basis for removal of this case to federal court, and any attempt to do so by any Defendant will be met with an immediate motion to remand and a motion for sanctions.

## **VIII. FACTS**

12. Plaintiff Bob Parr, a mason and cattleman by trade, built the home located on Star Shell Rd., Decatur, Texas in Wise County on or about 2001. The home is built on approximately 40 acres of land that is used for residential living, farming, and cattle-raising. Plaintiffs' home and the approximately 40 acres that comprise Plaintiffs' property will hereinafter be referred to as "Plaintiffs' Property."

13. Plaintiffs' Property sits below the surrounding area, where significant natural gas drilling, completions, and production take place. At present, there is no natural gas drilling, completions, and production taking place on the approximately 40 acre surface estate that comprises Plaintiffs' Property.

14. Thereafter, on or about May of 2008, Plaintiffs Bob and Lisa Parr were married. Prior to this time, Mrs. Parr and her minor daughter, Emma Duvall, spent significant time on Plaintiffs' Property and thereafter moved into the home located on Plaintiffs' Property in and around August of 2007. During this time, Plaintiffs did not experience any ill health effects that they attribute to Defendants' Natural Gas Activities, as set forth below.

15. After 2008 and continuing thereafter, significant natural gas drilling, completions, and production activity began taking place in Wise County – especially in close proximity to Plaintiffs' Property. Specifically, natural gas drilling, completions, and production resulted in numerous well sites, including the well sites as follows:

No.	Well API	Operator	Well Lease Name	Gas Well Lease IDs
1	497-37071	Aruba	Mara	1H
2	497-37074	Aruba	Mara	2H
3	497-37111	Aruba	Mara	3H
4	497-37107	Aruba	Mara	4H
5	497-37119	Aruba	Mara	5H
6	497-37120	Aruba	Mara	6H
7	497-37154	Aruba	Redwine	1H
8	497-37161	Aruba	Redwine	2H
9	497-36949	Aruba	Wright	13AH
10	497-36948	Aruba	Wright	13BH
11	497-36907	Aruba	Wright	14H
12	497-36908	Aruba	Wright	17H
13	497-36887	Aruba	Wright	15H
14	497-36891	Aruba	Wright	16H
15	497-36693	Aruba	Wright	1AH
16	497-36686	Aruba	Wright	4H
17	497-36683	Aruba	Wright	5H
18	497-36892	Aruba	Wright	6H
19	497-36915	Aruba	Wright	7H
20	497-36916	Aruba	Wright	8H
21	497-36658	Aruba	Wright	2H
22	497-36659	Aruba	Wright	3H
23	497-35916	Encana	Caswell "B"	1H
24	497-35872	Encana	Caswell "D"	1 H
25	497-35923	Encana	Childers	2H

26	497-35497	Encana	Cole	10A
27	497-35533	Encana	Cole	11A
28	497-35725	Encana	Cole	14AH
29	497-35074	Encana	Cole	6A
30	497-35462	Encana	Cole	8A
31	497-35490	Encana	Cole	9AH
32	497-34681	Encana	Downe	1
33	497-34801	Encana	Downe	2
34	497-35025	Encana	Downe	3
35	497-35049	Encana	Downe	4
36	497-35096	Encana	Downe	5
37	497-34969	Encana	NCLE	2
38	497-34995	Encana	NCLE	3
39	497-35026	Encana	NCLE	4
40	497-35043	Encana	NCLE	5
41	497-35938	Encana	Cole	12AH
42	121-30905	Encana	Barnett - BJA	1
43	121-31174	Encana	Barnett - BJA	2
44	121-30827	Encana	Barnett - Skip	1
45	121-31186	Encana	Barnett - Skip	2
46	121-31568	Encana	Barnett - Skip	5
47	497-35819	Encana	Caswell "C"	1
48	497-34602	Encana	Caswell	1
49	497-34462	Encana	Cole	1A
50	497-34498	Encana	Cole	2A
51	497-34565	Encana	Cole	3A
52	497-34902	Encana	Cole	5A
53	497-34918	Encana	NCLE	1
54	121-31557	Encana	Westridge Est	1
55	121-31581	Encana	Westridge Est	2
56	121-31640	Encana	Westridge Est	3
57	497-35927	Encana	Winder	1H
58	497-35305	Encana	Cole MT	7
59	497-34659	Encana	Cole MT	4A
60	497-37162	Encana	Cole	13H
61	497-37164	Encana	Cole	15H
62	497-37163	Encana	Cole	16H
63	121-31342	Encana	Barnett-Skip	3
64	121-31533	Encana	Barnett-Skip	4

16. The actions and inactions of Defendants **ARUBA PETROLEUM, INC and ENCANA OIL & GAS (USA) INC.** (hereinafter collectively referred to as “Defendants”) and their

agents, assigns, and/or predecessors-in-interest, whether taken separately or together, caused both sudden and continual releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes, which caused damages to Plaintiffs including but not limited to the following: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, deprivation of enjoyment of property; injury to Plaintiffs' animals and livestock; damage to the natural resources of the environment in and around the Plaintiffs' property; loss of use and enjoyment of Plaintiffs' property; diminution of Plaintiffs' property value; constructive eviction of Plaintiffs from Plaintiffs' property; loss of Plaintiff's quality of life; and other damages. Plaintiffs' causes of action and damages stem from the actions and inactions of Defendants from their natural gas drilling, completions, and production activities at the various well sites identified above.

17. Defendants **ARUBA PETROLEUM, INC. and ENCANA OIL & GAS (USA) INC.** (hereinafter collectively referred to as "Natural Gas Operators") are natural gas extraction companies and well site operators that are responsible for exploring, contracting, licensing, supplying, manufacturing, building, erecting, assembling, drilling, fracking, extracting, operating, using, supervising, and/or managing personnel, equipment, and/or machinery used in natural gas drilling, completions, and production (hereinafter collectively referred to as "Natural Gas Activities"), which equipment, machinery, and/or processes include but are not limited to the drill rigs, pipes, pumps, valves, tanks, engines, motors, compressors, trucks, burners, condensate tanks, and/or separator (hereinafter referred to as

“instrumentalities”), which Natural Gas Activities and instrumentalities are dangerous and within Defendants’ exclusive control. Upon information and belief, these Natural Gas Operators are responsible for all Natural Gas Activities, actions, and/or inactions and the well sites identified above respectively.

18. At all times relevant hereto, Defendants’ Natural Gas Activities required the use of equipment, machinery, and/or processes, including but not limited to those identified below, which equipment, machinery, and/or processes produced releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes – to wit:

- **Vehicles and Engines:** Drilling, completion, work-over trucks, rigs, and equipment such as pumps, operating both on and off of Defendants’ work sites, run off of diesel-powered and/or gasoline-powered engines. The exhaust fumes from diesel and/or gasoline fuels produce great quantities of emissions. Polycyclic aromatic hydrocarbons (PAHs) are found in exhausts from gasoline and diesel engines. A long list of other air pollutants, including nitrogen oxides, carbon monoxide, BTEX, formaldehyde, and metals are also contained in the gasoline and diesel engines used by Defendants. Due to Defendants’ Natural Gas Activities, actions, and/or inactions, operating both on and off of Defendants’ work sites, Plaintiffs are/were forced breathe and inhale PAH, nitrogen oxides, carbon monoxide, BTEX, formaldehyde, and metals on an almost daily basis, which substantially contributed to Plaintiffs’ injuries.
- **Construction and Trucking Activity:** Construction and Trucking Activity accompanies every phase of natural gas drilling, completions, and production (exploration, field organization, production, and site abandonment). Each requires disturbing the soil to some degree through the use of construction machinery and trucking activity for transport. These activities, operating both on and off of Defendants’ work sites, generate particulate matter and stir up dust, which in turn react with the other prerequisites to form ground-level ozone and/or smog. Due to Defendants’ Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale ground-level ozone, smog, and particulate matter on an almost daily basis, which substantially contributed to Plaintiffs’ injuries.
- **Pits:** Earthen pits are used to store or evaporate produced water and wastewater from natural gas dehydration or natural gas separation units. Additionally, prior to disposal of drilling wastes (muds and cements) and hydraulic fracturing (fracking) wastes, these wastes are often stored in earthen or metal pits that are open to the air. Hundreds of different chemicals are used during drilling, fracking, and work-



over procedures, including acids, biocides, surfactants, solvents, lubricants and other chemicals. Chemical compounds that are naturally present in natural gas or chemicals that have been injected down-hole during drilling, hydraulic fracturing, or well work-over operations, will be present in the water or wastes that are held in pits. Some of the lighter or more volatile chemicals and compounds, such as benzene, toluene, and hydrogen sulfide will escape from the produced water pits into the atmosphere. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale these chemicals on a consistent basis, which substantially contributed to Plaintiffs' injuries.

- **Condensate Tanks:** Natural gas wells produce a semi-liquid condensate along with the gas. Condensates are hydrocarbons that are in a gaseous state within the reservoir (prior to production), but become liquid during the production process and are composed of hydrocarbons, as well as aromatic hydrocarbons such as benzene, toluene, xylenes and ethylbenzene (BTEX). Condensates give off a characteristic hydrocarbon or petroleum-type odor, and benzene gives off a sweet odor. The Occupational Safety and Health Administration (OSHA) has set maximum exposure levels for workers' exposure to benzene at 1 ppm (over an 8-hour period) and 5 ppm (over a 15-minute period). At levels at or around 150 ppm, some people may begin to experience serious and irreversible health effects. Most people can smell benzene when it reaches levels of approximately 1.5 - 5 parts of benzene ppm. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced to smell, breathe, and inhale benzene and hydrocarbons on an almost daily basis, which substantially contributed to Plaintiffs' injuries.
- **Dehydrators:** Natural gas wells use glycol dehydrators to remove water from the gas. The dehydrator releases aromatic organic chemicals to the atmosphere. If the natural gas undergoing dehydration contains benzene, toluene, or other volatile organic compounds, significant quantities of these compounds are released when the glycol solution undergoes regeneration. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale volatile organic compounds on an almost daily basis, which substantially contributed to Plaintiffs' injuries.
- **Flaring:** Flaring is the practice of burning gas. Flaring results in hydrogen sulfide emissions, emissions from the drilling or hydraulic fracturing process that are converted to a gaseous form, and emissions of other chemicals and compounds including but not limited to benzene, formaldehyde, PAH (including naphthalene), acetaldehyde, acrolein, propylene, toluene, xylenes, ethyl benzene, and hexane. Due to Defendants' Natural Gas Activities, actions and/or inactions and occasional flaring, Plaintiffs are/were forced to breathe and inhale various toxic and deadly chemicals and compounds on a consistent basis, which substantially contributed to Plaintiffs' injuries.
- **Fugitive Emissions:** Fugitive emissions are "unintentional" leaks of gases. This

occurs from breaks or cracks in seals, tubing, valves or pipelines, as well when lids or caps on equipment or tanks have not been properly closed or tightened. When natural gas escapes via fugitive emissions, methane as well as volatile organic compounds (VOCs) and any other contaminants in the gas (e.g., hydrogen sulfide) are released into the atmosphere. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale fugitive emissions on an almost daily basis, which substantially contributed to Plaintiffs' injuries.

- **Venting:** Venting is the release of gas to the atmosphere. Venting occurs at a number of points in the natural gas development process (well completion; well maintenance; pipeline maintenance; tank maintenance; etc.). During natural gas development, huge quantities of gas are vented to the atmosphere. For example, during well completion, after a well is drilled and stimulated (e.g., hydraulically fractured), the wellbore and surrounding formation must be cleaned out. The solids and fluids from the well go into pits, while the gases are allowed to escape into the atmosphere. These gases include but are not limited to hazardous air pollutants such as benzene, toluene, ethylbenzene, xylene, hexanes, methane, ethane, propane, butane, and pentanes, hydrogen sulfide (H<sub>2</sub>S), carbon dioxide, helium, nitrogen, and other compounds. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale these chemicals on a consistent basis, which substantially contributed to Plaintiffs' injuries.
- **Fracking:** Fracking is a process that results in the creation of fractures in rocks through the high-pressure injection of thousands to millions of gallons of water and other fracking chemicals in a borehole and into targeted rock formations. The fracture width is typically maintained after the injection by introducing a proppant into the injected fluid. Significant environmental safety and health concerns have emerged concerning fracking, which include mishandling of solid toxic waste, a deterioration in air quality, the contamination of ground water, and the unintended migration of gases and hydraulic fracturing chemicals to the surface within a given radius of drilling operations, and the release of fracking chemicals into the air, which fracking chemicals include but are not limited to kerosene, benzene, toluene, xylene, and formaldehyde. Due to Defendants' Natural Gas Activities, actions and/or inactions, Plaintiffs are/were forced breathe and inhale these chemicals on a consistent basis, which substantially contributed to Plaintiffs' injuries.

19. Defendants have been aware for decades that exposure to hydrocarbons, BTEX, and various other chemicals, compounds, and/or metals present in Natural Gas Activities create various adverse health effects to individuals exposed thereto, which various adverse health effects include but are not limited to the following – to wit:

- **Pulmonary effects:** Pulmonary toxicity is the result of hydrocarbon aspiration. The lower the viscosity and higher the volatility, the greater the risk of pulmonary aspiration. The hydrophobic nature of hydrocarbons allows them to penetrate deep into the tracheobronchial tree, producing inflammation and bronchospasm. The volatile chemical may displace alveolar oxygen, leading to hypoxia. Direct contact with alveolar membranes can lead to hemorrhage, hyperemia, edema, surfactant inactivation, leukocyte infiltration, and vascular thrombosis. The result is poor oxygen exchange, atelectasis, and pneumonitis. Respiratory symptoms generally begin in the first few hours after exposure and usually resolve in 2-8 days. Complications include hypoxia, barotrauma due to mechanical ventilation, and acute respiratory distress syndrome (ARDS). Prolonged hypoxia may result in encephalopathy, seizures, and death.
- **GI effects:** Local irritation is the usual GI manifestation of hydrocarbon ingestion. Abdominal pain and nausea are common complaints. Vomiting increases the likelihood of pulmonary aspiration.
- **CNS effects:** Hydrocarbon toxicity produces various CNS effects. Initial effects are similar to the effects observed in patients with alcohol intoxication. Narcotic-like depression may also be observed. Euphoria may develop, as in alcohol or narcotic toxicity. Eventually, lethargy, headache, obtundation, and coma may follow. Seizures are uncommon and are believed to be due to hypoxia.
- **Cardiac effects:** Dysrhythmias are a major concern. Etiologies include hypoxia, myocardial sensitization to catecholamines, and direct myocardial damage. Sudden death has been reported as a result of coronary vasospasm due to hydrocarbon inhalation.
- **Other effects:** Hydrocarbons are reported to cause bone marrow toxicity and hemolysis. Chlorinated hydrocarbon toxicity may cause hepatic and renal failure, and toluene toxicity may lead to renal tubular acidosis. Direct contact with the skin and mucous membranes may cause effects ranging from local irritation to extensive chemical burns. In addition, a myriad of other health effects include but are not limited to the following: headaches; migraines; body aches; rashes; scarring; sores in the nose, ears, and throughout body; nose bleeding; ringing in the ears; dizziness; nausea; drowsiness; rapid or irregular heartbeat; tremors; confusion; irritation of the stomach; coughing; choking; fever; tachypnea; grunting; wheezing; lethargy; ataxia; abdominal pain; arrhythmia; anisocoria; depression; asthma; and toxic encephalopathy.

20. Despite Defendants' knowledge, Defendants engaged in Natural Gas Activities, actions and/or inactions around Plaintiffs' Property at the various well sites identified above.

21. Defendants' Natural Gas Activities, actions, and/or inactions, individually and/or collectively, have created an atmosphere where Plaintiffs are/were under constant, perpetual, and inescapable assault of Defendants' releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes created by Defendants, which included but are not limited to exposure from Vehicles and Engines; Construction and Trucking Activity; Pits; Condensate Tanks; Dehydrators; Flaring; Fugitive Emissions; Venting; and Fracking, as identified above.

22. Due to Defendants' Natural Gas Activities, actions, and/or inactions, Plaintiffs began experiencing and/or were diagnosed with serious health effects including but not limited to the following: unreasonable fear; apprehension; offense; discomfort; annoyance; sickness; injury to physical health; impairment of physical health; exacerbation of physical health and/or preexisting health conditions; harm from assault on Plaintiffs' senses; nausea; loss of peace of mind; emotional harm/distress; inconvenience; deprivation of enjoyment of property; headaches; migraines; body aches; rashes throughout the body; permanent scarring; open sores in the nose, ears, and throughout body; chronic nose bleeding; ringing in the ears; dizziness; nausea; drowsiness; rapid or irregular heartbeat; tremors; confusion; irritation of the stomach; coughing; choking; fever; tachypnea; grunting; wheezing; lethargy; ataxia; abdominal pain; arrhythmia; anisocoria; depression; and asthma and/or asthma-like symptoms.

23. Due to Defendants' Natural Gas Activities, actions, and/or inactions, Plaintiffs began experiencing the death of house pet(s), chickens, calf/calves, and the physical dwarfing of a newborn calf.

24. Due to Defendants' Natural Gas Activities, actions, and/or inactions, Plaintiffs have been forced to seek medical attention for their physical injuries. On or about April 2010, Plaintiffs went to an environmental health specialist whom administered various tests and discovered the presence of natural gas chemicals, compounds, and/or metals in the bodies of Plaintiffs, which natural gas chemicals, compounds, and/or metals include but are not limited to the following: ethylbenzen and m,p-Xylene to name a few.

25. Due to Defendants' Natural Gas Activities, actions, and/or inactions and upon medical instruction from Plaintiffs' environmental health specialist, Plaintiffs have been forced to evacuate their home at various times.

26. Due to Defendants' Natural Gas Activities, actions, and/or inactions, Plaintiffs have suffered significant damages, as detailed more fully below.

27. Defendants' Natural Gas Activities, actions, and/or inactions were effectuated by Defendants' employees, agents, service providers, officers, directors, assigns, and/or individuals under the control or direction of Defendants. As such, Defendants, each of them, are responsible/liable for the following claims and causes of action detailed below and herein, which responsibility/liability includes but is not limited to: Aiding & Abetting; Assisting & Participating; Concert of Action; *Respondeat Superior*; *Res Ipsa Loquitor*; Nondelegable Duty; Partnership; and Joint Enterprise theories of liability.

28. Due to Defendants' Natural Gas Activities, actions, and/or inactions, Plaintiffs bring the following claims and causes of action against Defendants – to wit:

**IX. COUNT 1: NEGLIGENCE – ALL DEFENDANTS**

29. Plaintiffs re-allege all of the allegations in the previous paragraphs, as though set forth fully herein.

30. In addition or in the alternative, Defendants are liable to Plaintiffs for Negligence.

31. Defendants owed the following legal duties to Plaintiffs when conducting their Natural Gas Activities, actions, and/or inactions—to wit:

- a. Duty to operate under the Reasonably Prudent Operator Standard;
- b. Duty to prevent injury to others when it reasonably appears or should appear that in the exercise of their lawful rights others may be injured by a dangerous condition that was created by the individual;
- c. Duty to exercise reasonable care to avoid a foreseeable risk of injury to others;
- d. Duty to take affirmative action to control or avoid increasing the danger from a condition that has been at least partially created by the individual's conduct;
- e. Duty to use ordinary care in protecting others from peril when the peril is under the individual's control;
- f. Duty to promptly repair any leaks in tanks, pits, pipelines, and engines;
- g. Duty to use reasonable care at all times in all of Defendants' operations on the leased premises to prevent injury or damage to livestock, buildings, or other property of the Lessor;
- h. Duty to be responsible for all acts occurring as part of its operations on the leased premises whether they are reasonably foreseen or unforeseen;
- i. Duty to ensure that Defendants' operations and equipment do not cause or contribute to a nuisance or contamination, including, but not limited to, noise levels, emissions into the air, or discharges into soil or water;
- j. Duty to not depreciate the lessor's and neighboring properties interest;
- k. Duty to operate lease with reasonable care;
- l. Duty to use successful modern methods of production and development;
- m. Duty to neighbors to minimize the impact of Defendants' Natural Gas Activities on surface estate neighbors;

- n. Duty to use ordinary care in maintaining the premises in a safe condition by inspecting the property for any dangerous conditions and by making safe any latent defect or giving warning of any defect;
- o. Duty to use reasonable care in maintaining the portion of the leased premises that the lessor is in possession or control of;
- p. Duty to install and use VRUs at clustered well sites;
- q. Duty to install and use Vapor Combustors/Flares at clustered pad sites and single well sites;
- r. Duty to use green completions during flowback;
- s. Duty to not test a well by open flaring;
- t. Duty to use infrared cameras to perform frequent and routine leak detection and leak remediation at well sites;
- u. Duty to use modern equipment and machinery – including electric rig as opposed to diesel rigs;
- v. Duty to conduct frequent and routine emissions monitoring;
- w. Duty to perform a community impact study before conducting natural gas activities;
- x. Duty to create a traffic control plan when operating near residences;
- y. Duty to not conduct hydraulic fracturing at night;
- z. Duty to hire/train/manage/supervise intelligent, respectful, and skilled employees/contractors;
- aa. Duty to monitor the use of Vapor Combustors/Flares for efficiency;
- bb. Duty to follow statutory law – Texas Administrative Code, TITLE 30 – ENVIRONMENTAL QUALITY, Texas Commission on Environmental Quality (TCEQ) – Chapter 101. § 101.4 NUISANCE, Tex. Health & Safety Code Ch. 382 - §§ 382.003(12), 382.0518, 382.085(a), (b); Tex. Water Code § 7.051-53, Tex. Penal Code Ann. § 22.01 – ASSAULT, Tex. Civ. Prac. & Rem. Code (“CPRC”) § 75.002 (h), Tex. Penal Code Ann. § 28.04 – RECKLESS DAMAGE OR DESTRUCTION OF PROPERTY, et seq.; and
- cc. Duty to keep the leased property in a safe condition.

32. The above-list is by no means exclusive, and Plaintiffs do not waive/limit their ability to submit additional evidence on the issue of duty at the time of trial.

33. Defendants knew or should have known that Defendants' Natural Gas Activities, actions, and/or inactions were negligent.

34. Defendant breached the duty to Plaintiffs through Defendants' Natural Gas Activities, actions, and/or inactions, in the following non-exclusive ways:

- a. When Defendants failed to act as a reasonably prudent operator;
- b. When Defendants caused releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions, which releases, spills, emissions, and discharges migrated to Plaintiffs' Property through the air;
- c. When Defendants made physical contact with Plaintiffs' person through Defendants' releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes created by Defendants;
- d. When Defendants caused Plaintiffs' emotional distress through Defendants' releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes created by Defendants;
- e. When Defendants failed to properly supervise personnel utilizing Defendants' equipment, machinery, and/or processes, which failure to supervise resulted in releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions;
- f. When Defendants failed to properly hire, train, supervise, or manage the employees and contractors participating in or conducting Defendants' Natural Gas Activities, actions, and/or inactions;
- g. When Defendants failed to maintain Defendants' equipment, machinery, and/or processes, including but not limited to Defendants' Vehicles and Engines; Construction and Trucking Activity; Pits; Condensate Tanks; Dehydrators; Flaring; Fugitive Emissions; Venting; and Fracking, which failure to maintain resulted in releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions;



- h. When Defendants failed to maintain the premises in a safe condition by inspecting the property for dangerous conditions or latent defects and by making safe or giving warning of any dangerous conditions and/or latent defects;
- i. When Defendants' Natural Gas Activities, actions, and/or inactions were conducted in contravention of the standard of care that a reasonably prudent operator would conduct itself under the same or similar circumstances;
- j. When Defendants caused releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions, which releases, spills, emissions, and discharges, taken in the aggregate and given the proximity and numerosity of Defendants' well sites and Natural Gas Activities, caused and/or combined to cause Plaintiffs' damages, which Defendants knew or should have known would result due to Defendants' Natural Gas Activities, actions, and/or inactions;
- k. When Defendants failed to install and/or utilize available environmental control technology that would remediate Defendants' releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions, which releases, spills, emissions, and discharges, taken in the aggregate and given the proximity and numerosity of Defendants' well sites and Natural Gas Activities, caused and/or combined to cause Plaintiffs' damages, which Defendants knew or should have known would result due to Defendants' Natural Gas Activities, actions, and/or inactions and which Defendants knew or should have known would have been remediated by available environmental control technology;
- l. When Defendants' Natural Gas Activities, actions, and/or inactions, operating both on and off of Defendants' work sites, caused both sudden and continual releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes, at various times; and/or
- m. When Defendants' dangerous Natural Gas Activities and instrumentalities, within Defendants' sole management and exclusive control, caused releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions, which releases, spills, emissions, and discharges are often "cleaned-up," hidden, remediated, replaced, and/or destroyed by Defendants; which caused and/or combined to cause Plaintiffs' damages that would not have happened in the ordinary course of events; which Plaintiffs' damages would not have occurred without Defendants' negligence; and which Plaintiffs did not contribute to Defendants' negligence or occurrences.

35. The above-list is by no means exclusive, and Plaintiffs do not waive/limit their ability to submit additional evidence on the issue of breach at the time of trial.

36. *Res ipsa loquitur* also applies because (i) the character of Plaintiffs' injuries are such that they would not have occurred without negligence, and (ii) the instrumentality that caused Plaintiffs' injuries was under the sole management and control of Defendants.

37. Defendants' conduct directly and/or proximately caused injury to Plaintiffs, which resulted in the damages detailed below.

38. Pursuant to the Continuing Tort Doctrine, Plaintiffs' claims do not accrue until Defendants' recurring tortuous conduct ceases. Moreover, the "Discovery Rule" defers accrual of the foregoing causes of action until "discovery" occurs.

39. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

**X. COUNT 2: GROSS NEGLIGENCE - ALL DEFENDANTS**

40. Plaintiffs re-allege all of the allegations in the previous paragraphs, as though set forth fully herein.

41. In addition or in the alternative, Defendants are liable to Plaintiffs for Gross Negligence.

42. Defendants owed the aforementioned legal duties to Plaintiffs when conducting their Natural Gas Activities, actions, and/or inactions.

43. Defendants breached the duty to Plaintiffs through Defendants' Natural Gas Activities, actions, and/or inactions.

44. Defendants consciously and/or deliberately engaged in recklessness, oppression, fraud, willfulness, wantonness and/or malice through Defendants' Natural Gas Activities, actions, and/or inactions when they caused releases, spills, emissions, and discharges of

hazardous gases, chemicals, and industrial/hazardous wastes created by Defendants on a continuous and consistent basis, and Defendants should be held liable in punitive and exemplary damages to Plaintiffs.

45. Defendants' conduct directly and/or proximately caused injury to Plaintiffs, which resulted in the damages detailed below.

46. Pursuant to the Continuing Tort Doctrine, Plaintiffs' claims do not accrue until Defendants' recurring tortuous conduct ceases. Moreover, the "Discovery Rule" defers accrual of the foregoing causes of action until "discovery" occurs.

47. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

**XI. COUNT 3: NEGLIGENCE PER SE - ALL DEFENDANTS**

48. Plaintiffs re-allege all of the allegations in the previous paragraphs, as though set forth fully herein.

49. In addition or in the alternative, Defendants are liable to Plaintiffs for Negligence *Per Se*.

50. By the acts or omissions discussed herein, Defendants' negligence violated statutes designed to protect a class of persons to which Plaintiffs belong against the type of injury suffered by Plaintiffs and which statutes are of the type that impose tort liability.

51. Specifically, Defendants' negligence, with or without legal permitting and without legal excuse, violated the following statutes – to wit:

- a. **Violation of Texas Administrative Code, TITLE 30 – ENVIRONMENTAL QUALITY, Texas Commission on Environmental Quality (TCEQ) – Chapter 101. §101.4 NUISANCE – ARUBA ONLY:** "... No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." *See also* Tex. Health &

Safety Code Ch. 382 – §§ 382.003(12), 382.0518, 382.085(a), (b); *see also* Tex. Water Code § 7.051-53.

- b. **Violation of Tex. Penal Code Ann. § 22.01 – ASSAULT – ARUBA ONLY:** “A person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse and intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive.”
- c. **Violation of Tex. Civ. Prac. & Rem. Code (“CPRC”) § 75.002(h) – ALL DEFENDANTS:** “An owner, lessee, or occupant of real property in this state is liable for trespass as a result of migration or transport of any air contaminant, as defined in section 382.003(2) of the Texas Health and Safety Code [“Air contaminant” means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural], other than odor, only upon a showing of actual and substantial damages by a plaintiff in a civil suit.”
- d. **Violation of Tex. Penal Code Ann. § 28.04 - RECKLESS DAMAGE OR DESTRUCTION OF PROPERTY – ALL DEFENDANTS:** “A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.”

52. Defendants’ violations of these statutes are without a legal excuse.

53. Defendants’ actions directly and proximately caused injury to Plaintiffs, which resulted in the damages detailed below.

54. Pursuant to the Continuing Tort Doctrine, Plaintiffs’ claims do not accrue until Defendants’ recurring tortuous conduct ceases. Moreover, the “Discovery Rule” defers accrual of the foregoing causes of action until “discovery” occurs.

55. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court

**XII. COUNT 4: PRIVATE NUISANCE - INTENTIONAL, NEGLIGENCE, and PER QUOD - ALL DEFENDANTS**

56. Plaintiffs re-allege all of the allegations in the previous paragraphs, as though set forth fully herein.

57. In addition or in the alternative, Defendants are liable to Plaintiffs for Private Nuisance – Intentional, Negligence, and/or *Per Quod*.

58. Plaintiffs are owners of Plaintiffs' Property.

59. Defendants intentionally, negligently, and/or unreasonably interfered with and invaded Plaintiffs' Property when Defendants caused releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, which releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes migrated to Plaintiffs' Property through the air; when Defendants caused offensive noises through Defendants' Natural Gas Activities; when Defendants caused offensive odors and smells through Defendants' Natural Gas Activities; when Defendants caused offensive sights and light pollution through Defendants' Natural Gas Activities and Defendants' equipment, machinery, and/or processes; when Defendants caused offensive and abnormal traffic through Defendants' Natural Gas Activities; and when Defendants caused offensive disturbances in the natural environment to cause wildlife to flee through Defendants' Natural Gas Activities, and which interferences and invasions were abnormal (hereinafter sometimes referred to as "Private Nuisance Activity").

60. Plaintiffs' Private Nuisance Claim – Intentional Private Nuisance Against Defendants: Defendants' interferences and invasions were intentional in that the Defendants knew that Defendants' Private Nuisance Activity, interferences, and invasions would result or were substantially certain to result from Defendants' Natural Gas Activities, actions, and/or inactions.

61. Plaintiffs' Private Nuisance Claim – Negligence Private Nuisance Against Defendants: Defendants' Private Nuisance Activity, interferences, and invasions were negligent in that Defendants owed Plaintiffs the legal duty of not releasing, spilling, emitting, or discharging hazardous gases, chemicals, and industrial/hazardous wastes onto the Plaintiffs' Property and not engaging in Defendants' Private Nuisance Activity.

62. Plaintiffs' Private Nuisance Claim – *Per Quod* Private Nuisance Against Defendants: In absence of any found negligence or intentional private nuisance, the Defendants' Private Nuisance Activity, interferences, and invasions are liable because Defendants' Natural Gas Activities, actions, and/or inactions and Defendants' Private Nuisance Activity were abnormal and out of place in their surroundings.

63. Defendants' Natural Gas Activities, actions, and/or inactions and Defendants' Private Nuisance Activity – “the frequency, duration, degree, and extent of [which]” substantially interfered with Plaintiffs' private use and enjoyment of Plaintiffs' Property by, among other things, causing unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, deprivation of enjoyment of property; injury to Plaintiffs' animals and livestock; damage to the natural resources of the environment in and around the Plaintiffs' property; loss of use and enjoyment of Plaintiffs' property; diminution of Plaintiffs' property value; constructive eviction of Plaintiffs from Plaintiffs' property; and loss of Plaintiff's quality of life.

64. Defendants' Natural Gas Activities, actions, and/or inactions and Defendants' Private Nuisance Activity substantially interfered with Plaintiffs' private use and enjoyment of Plaintiffs' Property.

65. Defendants' conduct directly and/or proximately caused injury to Plaintiffs, which resulted in the damages detailed below.

66. Pursuant to the Continuing Tort Doctrine, Plaintiffs' claims do not accrue until Defendants' recurring tortuous conduct ceases. Moreover, the "Discovery Rule" defers accrual of the foregoing causes of action until "discovery" occurs.

67. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

**XIII. COUNT 5: TRESPASS TO REAL PROPERTY – ALL DEFENDANTS**

68. Plaintiffs re-allege all of the allegations in the previous paragraphs, as though set forth fully herein.

69. In addition or in the alternative, Defendants are liable to Plaintiffs for Trespass to Real Property.

70. Plaintiffs are owners of Plaintiffs' Property.

71. Defendants physically, intentionally, and voluntarily entered Plaintiffs' Property when Defendants caused releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions, which releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes continuously migrated onto Plaintiffs' Property through the air.

72. Defendants' Natural Gas Activities, actions, and/or inactions and Defendants' Trespass Activity – "the frequency, duration, degree, and extent of [which]" substantially

interfered with Plaintiffs' private use and enjoyment of Plaintiffs' Property by, among other things, causing unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, deprivation of enjoyment of property; injury to Plaintiffs' animals and livestock; damage to the natural resources of the environment in and around the Plaintiffs' property; loss of use and enjoyment of Plaintiffs' property; diminution of Plaintiffs' property value; constructive eviction of Plaintiffs from Plaintiffs' property; and loss of Plaintiff's quality of life.

73. Defendants' conduct directly and/or proximately caused injury to Plaintiffs, which resulted in the damages detailed below.

74. Pursuant to the Continuing Tort Doctrine, Plaintiffs' claims do not accrue until Defendants' recurring tortuous conduct ceases. Moreover, the "Discovery Rule" defers accrual of the foregoing causes of action until "discovery" occurs.

75. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

#### **XIV. DAMAGES**

76. Plaintiffs disclaim any "personal injury damages" that would invoke *Merrell Dow Pharms. v. Havner*, 953 S.W.2d 706, 714-15, 720 (Tex. 1997); *Merck & Co., Inc. v. Garza*, 347 S.W.3d 256 (Tex. 2011); *Borg-Warner v. Flores*, 232 S.W.3d 765, 770 (Tex. 2007); and *Georgia Pacific Corp. v. Bostic*, 320 S.W.3d 588, 596 (Tex. App-Dallas, pet. granted). Specifically, Plaintiffs disclaim any and all claims seeking recovery for a diagnosed "disease" that also occurs genetically and for which a large percentage of the causes are unknown.



See *Havner* 953 S.W.2d at 714. That is, Plaintiffs no longer seek recovery in damages for Defendants' actions having caused the particular "disease(s)" (e.g. "Toxic Encephalopathy").

77. Defendants' Natural Gas Activities, actions, and/or inactions, as detailed above, directly and/or proximately caused personal injury and property damage to Plaintiffs', which include the following:

- a. Physical pain in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- b. Emotional harm and mental anguish in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- c. Disfigurement in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- d. Physical impairment in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- e. Medical expenses in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health,

exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.

- f. Loss of earning capacity in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- g. Loss of consortium in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- h. Loss of services in the past, present, and future – for Plaintiffs' "symptoms typical of *discomfort* rather than *disease*," which include but are not limited to: unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property.
- i. Unreasonable fear, apprehension, offense, discomfort, annoyance, sickness, injury to physical health, impairment of physical health, exacerbation of physical health and/or preexisting health conditions, harm from assault on Plaintiffs' senses, nausea, loss of peace of mind, emotional harm/distress, inconvenience, and deprivation of enjoyment of property in the past, present, and future.
- j. Property damage to real and personal property.
- k. Loss of market value damages, which is the difference in the value of Plaintiffs' Property immediately before and immediately after damage.
- l. Loss of actual or intrinsic value damages, which is the value of Plaintiffs' Property to the Plaintiffs in the condition in which it was when it was damaged.
- m. Loss of replacement value damages, which is the cost of replacing or reproducing the property.

- n. Loss of sentimental value damages, which is the reasonable special value of the property to Plaintiff.
- o. Repair damages, which is the value of the reasonable cost of repairs.
- p. Loss of use and enjoyment damages.
- q. Loss of use of Plaintiffs' land.
- r. Expenses incurred, as a result of the incidents related to the testing of Plaintiffs' contaminated air and water, and buying replacement and/or remedial devices to address same.
- s. Unliquidated damages within the jurisdictional limits of this court.
- t. Attorney's fees. *See, inter alia*, Tex. Civ. Prac. & Rem. Code §102.002(b), and other statutory authority providing same.
- u. Exemplary damages under Texas Civil Practice & Remedies Code §§ 41.001, 41.003(a), *et seq.*
- v. Pre-judgment and post-judgment interest. Texas Finance Code §304.001, *et seq.*, and any other applicable law.
- w. Lifetime Medical Monitoring Damages: Plaintiffs were wrongfully and significantly exposed to Defendants' releases, spills, emissions, and discharges of hazardous gases, chemicals, and industrial/hazardous wastes through Defendants' Natural Gas Activities, actions, and/or inactions in and around Plaintiffs' Property. As a result, Plaintiffs were significantly exposed to Defendants' hazardous gases, chemicals, and industrial/hazardous wastes ("chemicals"), which significant exposure to Defendants' chemicals caused Plaintiffs to suffer verifiable and medically cognizable symptoms and diseases. Additionally, Plaintiffs' exposure significantly increased Plaintiffs' risk of developing additional medically cognizable and serious diseases. Plaintiffs' potential medically cognizable and serious diseases could be detected by existing medical examinations. The medical examinations that exist are different from those typically recommended in the absence of the exposures suffered by Plaintiffs. Early detection of both current symptoms and potential symptoms will help to ameliorate the severity of the disease(s) caused by Defendants' chemicals from Defendants' Natural Gas Activities, actions, and/or inactions. Plaintiffs' increased risk makes early and periodic diagnostic medical examinations reasonably necessary according to contemporary scientific principles.
- x. Abatement, Injunctive, and/or Equitable relief/damages.

- y. Remediation: Plaintiffs seek remediation or the cost of restoring Plaintiffs' Property and its ground water to its pre-drilling conditions.
  - z. Nominal damages for each trespass by each Defendant, in addition to Plaintiffs' actual damages and other damages enumerated above.
78. Pursuant to Texas Rules of Civil Procedure 47, Plaintiffs allege a maximum amount of damages in the amount of sixty-six million dollars (\$66,000,000.00).

**XV. EQUITABLE RELIEF**

79. Plaintiffs seek a permanent injunction against Defendants, precluding current and future drilling and fracking activities near Plaintiffs' land.

**XVI. REQUESTS FOR DISCLOSURE**

80. Under Texas Rule of Civil Procedure 194, Plaintiffs requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**XVII. JURY DEMAND**

81. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

**XVIII. PRAYER**

82. WHEREFORE, PREMISES CONSIDERED, Plaintiffs ask that the Court issue citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants for the following: Actual damages; Prejudgment and Post-judgment interest; Court costs; Exemplary damages; and all other relief to which Plaintiffs are entitled at law and in equity.

Respectfully submitted,  
**GILDE LAW FIRM**



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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served to all counsel of record *via facsimile* on this 17<sup>th</sup> day of September 2013.

A handwritten signature in black ink, appearing to read "Bradford J. Gilde". The signature is written in a cursive style with a large initial 'B' and 'G'.

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BRADFORD J. GILDE