IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROGER BIRDBEAR, NELSON BIRDBEAR, THOMAS P. BIRDBEAR, JAMIE LAWRENCE, and RAE ANN WILLIAMS, Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	Case No. 16-75L JUDGE KAPLAN

THIRD AMENDED COMPLAINT
(RCFC(15)(a)(2))

Introduction

On December 8, 2009, the Secretary of Interior (the "Secretary"), then Kenneth Salazar, in settling the class action now known as *Cobell v. Jewell*, 1:96-CV-01285 (TFH), pending in the United States District Court for the District of Columbia, explained that while progress had been made in improving the management of individual Indian trust assets, "our work is not over." He therefore, entered Secretarial Order 3292 establishing the Secretarial Commission on Indian Trust Administration and Reform (the "Commission") to address the Department of Interior's "future responsibility for management and administration of trust assets maintained for individual Indian trust beneficiaries." The Commission's resulting December 10, 2013 Final Report recommended "sweeping reforms" of the trust system and identified a continuing need for substantial improvement in Interior's trust administration services. This action confirms, as the Secretary suggested and as the Commission identified, that truly much work remains to reform the federal government's management of the individual Indian Trust.

The Plaintiffs are enrolled tribal members and holders of Individual Indian Money ("IIM") accounts. They are the beneficial owners of more than 2,200 acres of allotted land, held in trust by the United States, within and surrounding the exterior boundaries of the Three Affiliated Tribes of the Fort Berthold Reservation (the "Reservation") within the exterior boundaries of the State of North Dakota. They are also the beneficiaries of Individual Indian Money ("IIM") accounts, held by the federal government as trustee, in which the proceeds of income from those lands are to be deposited and invested in income producing government securities. Mineral rights in more than 1,550 acres of the Plaintiffs' allotted lands are leased for oil and gas mining purposes, the lessor being selected and approved by the Secretary in his or her capacity as trustee.

The majority of Plaintiffs' lands are located above multiple formations including the Bakken Formation, which consists of three separate formations rich in oil and natural gas and constitutes one of the largest contiguous deposits of oil and natural gas in the country. The Bakken Formation is known for its light sweet crude oil, which commands a much higher price because of its lower sulfur content. While historically the Reservation has faced significant economic challenges and resulting poverty, the application of new technologies by which the oil reserves in the Bakken Formation could be accessed economically has caused a substantial increase in Bakken production and has brought much needed revenue to the Reservation. But the mismanagement of the Bakken production by the federal government has threatened the ability of individual allottees, such as the Plaintiffs, to realize the full benefit of their resources.

The United States, as trustee, maintains an "elaborate statutory and regulatory framework" over the leasing and management of oil and gas resources on the Plaintiffs' allotted

lands through which the Secretary exercises comprehensive management and control.[1] As a consequence, the United States has owed and continues to owe the Plaintiffs fiduciary obligations in the management of their trust lands. However, as the United States Government Accountability Office recently found, the Department of Interior, and more specifically the Bureau of Land Management ("BLM"), has consistently failed to collect revenue from oil and gas produced on federally managed lands and has failed to provide required oversight and management of oil and gas operations.

The present Complaint exemplifies the government's mismanagement of individual Indian oil and gas resources. As set forth herein, and as to be shown through discovery and at trial, the United States has consistently breached its duties to Plaintiffs in the management of their land and resources. Plaintiffs' leases have not been properly advertised and bid competitively so the royalties they receive are markedly less than those received by non-Indian federal and tribal lessors on the Bakken Formation and elsewhere; the United States takes no action to rectify drainage of oil and gas from their lands, resulting in losses of tens of millions of dollars; the United States deducts expenses from royalties without explanation or documentation; the United States takes no action to address environmental contamination on Plaintiffs' properties; and the United States continues to fail to comply with its own fiduciary and regulatory obligations. Moreover, just in the one year period prior to the filing of the original Complaint in this action, it was determined that Plaintiffs were not fully paid by the United States the income derived from their land, with Plaintiff Roger Birdbear, having been underpaid by over 20%. Plaintiffs have sought information from the United States, as trustee, regarding the

[1] *Shoshone Indian Tribe of the Wind River Reservation, Wyo. v. United States*, 56 Fed. Cl. 639, 646 (2003).

management of their leases, but the information is either refused, ignored, or not provided in a reasonable or timely manner. Accordingly, this action was filed.

PARTIES

The Plaintiffs

1. Roger Birdbear is an enrolled tribal member, the beneficial owner of an undivided interest in over 1,200 acres of allotted land held in trust by the United States, within the exterior boundaries of the Reservation, and the beneficiary of an IIM account held in trust by the United States.

2. Nelson Birdbear is an enrolled tribal member, the beneficial owner of an undivided interest in over 1,200 acres of allotted land held in trust by the United States, within the exterior boundaries of the Reservation, and the beneficiary of an IIM account held in trust by the United States.

3. Thomas P. Birdbear is an enrolled tribal member, the beneficial owner of an undivided interest in over 800 acres of allotted land held in trust by the United States, within the exterior boundaries of the Reservation, and the beneficiary of an IIM account held in trust by the United States.

4. Jamie Lawrence is an enrolled tribal member, the beneficial owner of an undivided interest in over 800 acres of allotted land held in trust by the United States, within the exterior boundaries of the Reservation, and the beneficiary of an IIM account held in trust by the United States.

5. Rae Ann Williams is a tribal member, the beneficial owner of an undivided interest in over 800 acres of allotted land held in trust by the United States, within the exterior boundaries of the Reservation, and the beneficiary of an IIM account held in trust by the United States.

6. Roger Birdbear, Thomas Birdbear, Jamie Lawrence, and Rae Ann Williams are all children and heirs of Roy Birdbear and Rosalie Hopkins Birdbear, who passed away in 2011 and 1990 respectively. As discussed in more detail below, these Plaintiffs are informed and believe that although some of Roy and Rosalie Birdbear's allotted interests passed to them, other interests were not properly recorded by Interior as having been inherited by these Plaintiffs upon the deaths of their parents.

7. The Plaintiffs all opted out of the settlement in *Cobell v. Jewell.*

The Defendant

8. The Defendant is the United States of America. In its capacity as trustee it holds the Plaintiffs' lands and related resources in trust "for the sole use and benefit of the Indian to whom such allotment has been made" and his or her heirs. 25 U.S.C. § 348.

9. The United States has delegated its responsibility as trustee over Plaintiffs' land and resources to the Secretary. The Secretary at the time this action was filed, Sally Jewell, identified her role as, among other things, serving "as steward for approximately 20 percent of the nation's lands; oversee[ing] the responsible development of conventional and renewable energy supplies on public lands and . . . uphold[ing] trust responsibilities to the 566 federally recognized American Indian tribes and Alaska Natives." [2]

10. The Secretary has, in turn, delegated trust responsibilities with respect to Plaintiffs' land and resources to the Assistant Secretary - Indian Affairs, who oversees the Bureau of Indian Affairs ("BIA") within the Department of the Interior ("DOI"). The Assistant Secretary's official duties include, *inter alia*, assisting and supporting "the Secretary of the Interior in fulfilling the United States' trust responsibility to the Federally recognized American Indian tribes and villages and individual Indian trust beneficiaries, as well as in

[2] http://www.doi.gov/whoweare/secretaryjewell.cfm

maintaining the Federal—Tribal government-to-government relationship."[3] The mission of the BIA, under the leadership of its Director at the time this action was filed, Michael Black, was, and is to, among other things, "protect and improve the trust assets of American Indians."[4] In carrying out that mission, it is responsible for the "administration and management of 55 million surface acres and 57 million acres of subsurface minerals estates held in trust by the United States for American Indian[s], Indian tribes and Alaska Natives."[5]

11. Additional trust responsibilities are delegated to, among others, the Director of the BLM within the DOI. BLM states that its role is to, in part, "approve[] and supervise[] mineral operations" on Indian lands and to ensure that "developers and operators comply with use authorization requirements and regulations."[6]

12. Trust duties are further delegated to, among others, the Director of the Office of Natural Resources and Revenue ("ONRR") within the DOI. ONRR identifies its mission as the "collect[ion], disburse[ment] and verif[ication] [of] Federal and Indian energy and other natural resource revenues on behalf of all Americans." It further acknowledges its role is, in part, "to serve as trustee of royalty assets from Indian properties," to serve as "an advocate for the interests of Indian mineral owners," and, in conjunction with the BIA, "to provide[] revenue management services for mineral leases on American Indian lands" in which it contends "money collected is returned – 100 percent – to respective Indian tribes and individual Indian land owners."[7]

[3] http://www.indianaffairs.gov/WhoWeAre/AS-IA/index.htm
[4] http://www.bia.gov/WhoWeAre/
[5] *Id.*
[6] http://www.blm.gov/wo/st/en/prog/energy.html
[7] http://www.onrr.gov/About/default.htm

13. In addition, trust responsibilities are also delegated to the Special Trustee of the Office of Special Trustee for American Indians ("OST") within the DOI. The OST is charged with upholding the federal government's trust responsibilities toward individual Indians and providing "superior management of trust assets." Its duties include, among other things, "protect[ing] and preserv[ing] Indian trust assets from loss, damage, unlawful alienation, waste and depletion," "[a]ssur[ing] that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets," "[e]nforc[ing] the terms of all leases or other agreements that provide for the use of trust assets," and "[s]elect[ing] and oversee[ing] persons who manage Indian trust assets,"[8] among others.

JURISDICTION

14. This Court has jurisdiction over these claims under the Tucker Act, 28 U.S.C. § 1491, as a "claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department or upon any express or implied contract with the United States." Pursuant to 28 U.S.C. § 1491, the United States has also waived its sovereign immunity.

FACTS

The Plaintiffs' Trust Land

15. There is a dispute in this case about the extent of Plaintiffs' property ownership on the Fort Berthold Reservation and the specific tracts of land that are at issue for the claims asserted in this case. As discussed below, Plaintiffs have made good faith efforts to resolve this

[8] https://www.doi.gov/ost/about_us/Trust

dispute, but discovery will be needed to determine the full extent of Plaintiffs' property ownership on Fort Berthold.

16. Many of the breaches of trust duties alleged herein are, at least in part, a result of the United States' ongoing failure to record and maintain the records of Plaintiffs' trust interests in a reasonably diligent manner, as discussed in multiple filings in the *Cobell* litigation and as acknowledged by Secretarial Order 3292 and the Commission's Final Report.

17. Plaintiffs are informed and believe that they, individually or together, hold beneficial title to more than 2,200 acres of allotted land in and around the Reservation. Of this total acreage, more than 1,550 acres are leased for oil and gas mining purposes. Plaintiffs are further informed and believe that over 50 leases govern the Plaintiffs' leased allotted land.

18. Prior to filing suit, Plaintiffs requested their property records on multiple occasions, and repeatedly requested that Interior provide them documentation of their ownership interests in property on Fort Berthold, but their requests were ignored or they received incomplete responses.

19. Given Interior's repeated failures to provide them with information about their property records, and because of well-documented problems with the government's trust records that were revealed in the *Cobell* litigation, Plaintiffs are informed and believe that the government's records relating to their property ownership are incomplete, inaccurate, and stored in a disorganized manner.

20. By way of example, Plaintiffs are informed and believe that the parents of Plaintiffs Roger and Thomas Birdbear, Jamie Lawrence, and Rae Ann Williams, owned several tracts of land on Fort Berthold that were not properly passed to these Plaintiffs when they died.

21. In another instance, another member of Plaintiffs' family, Iris Birdbear, was informed by officials at Interior that she could bury her recently deceased husband on a particular tract of land, and was assured that she owned that tract. Interior later informed her that it had directed her to bury her husband on the wrong tract of land, which she did not in-fact own.

22. Plaintiffs are also aware of at least one instance where Interior's records were so disorganized that Interior approved leases to two different oil companies for the same tract of land on Fort Berthold. These are only some examples of the systemic problems with Interior's record keeping and management of allotted lands on Fort Berthold.

23. Despite these long-running problems with the Government's record keeping and Plaintiffs' repeated pre-suit efforts to obtain their property records from Interior, after Plaintiffs' First Amended Complaint ("FAC") was filed in this action, the United States moved to dismiss Plaintiffs' claims, in part, because the FAC did not specify all of the tracts of land for which Plaintiffs were asserting claims. The United States argued that Plaintiffs did not have standing to recover on claims related to properties in which they did not hold an interest. Plaintiffs responded that they were without sufficient information to identify all of the tracts of land, mineral rights, and surface rights held in trust for their benefit, and that as the trustee for their properties, the United States was responsible for maintaining the property ownership records.

24. Notwithstanding the likely problems with the United States' trust records, in response to the Motion to Dismiss, the parties agreed to stay this action pending the government's production of Plaintiffs' property records. On August 25, 2016, the Court entered an Order granting the Parties' joint motion to stay [Dkt. 33] ("Stay Order").

25. The Stay Order suspended all deadlines in this case for seventy-five (75) days, though November 7, 2016, to allow the Government to produce records documenting Plaintiffs' property ownership interests in land on Fort Berthold. [Dkt. 33; *see also* Dkt. 32 (Joint Motion for Stay).] After these property records were produced, Plaintiffs were to file a Second Amended Complaint stating with greater specificity the properties, and mineral and surface interests, at issue in this case. (*Id*.)

26. Plaintiffs' Second Amended Complaint was filed on December 15, 2016.

27. Plaintiffs have been able to determine that their allotted interests on Fort Berthold include at least the following:

a. One or more Plaintiffs hold undivided interests in both the mineral and surface rights for the following tracts on Fort Berthold: 50A, 51A, 473, 557A-A, 559A, 559A-A, 747, 911, 912, 1062A, 1337, 1502-A, and 1744.

b. One or more Plaintiffs hold interests in the mineral rights for the following additional tracts on Fort Berthold: 51A-B, 70AC, 121, 191A, 238A-B, 556A, 556A-A, 710A, 711A-B, 767A, 767A-A, 768A, 769A, 770A, 771A, 774A, 776, 859, 865A-A, 866A, 917, 997A-B, 1056A, 1059A, 1060A, 1061A, 1093, 1338, 1347, 1539, 1540, 1541, 1542, 1543, 1773-B, 1963, 1969, 2081, 2161, 2162, 2163, 2255, and 3111-A.

c. Additionally, one or more Plaintiffs hold interests in the surface rights for the following tracts on Fort Berthold: 70A-C, 121, 238A-B, 556A, 556A-A, 768A, 769A, 770A, 774A, 820A-B, 859, 865A-A, 866A, 997A-B, 997AC, 1056A, 1059A, 1060A, 1061A, 1093, 1195, 1347, 1539, 1540, 1541, 1542, 1963, 2081, 2084, 2161, 2162, 2163, and 2255.

28. The Plaintiffs' allotted lands are primarily located on the Bakken Formation, which is considered the most significant oil and natural gas resource identified in the past 40 years. Oil in place for the Bakken Formation is estimated at not less than 167 billion barrels within the exterior boundaries of the State of North Dakota, alone. In 2013, the U.S. Geological Survey reported that oil resources in the Bakken Formation and the underlying Three Forks Formation contain approximately 7.4 billion barrels of recoverable oil using older

technology, "doubling an estimate for the region made five years ago," and excluding "those oil shale reserves that have already been tapped or listed by industry." Some estimates are higher.

29. The Bakken and Three Forks Formations are also estimated to hold a mean of not less than 6.7 trillion cubic feet of associated/dissolved natural gas and 0.53 billion barrels of technically recoverable natural gas liquids (NGLs).

30. By reason of improved technology by which oil and gas resources in the Bakken Formation can be accessed economically, oil and gas production within the exterior boundaries of the State of North Dakota have increased markedly. On August 8, 2014, the U.S. Department of Energy released a Quadrennial Energy Review report on U.S. oil production, specifically focusing on, "formations in North Dakota (Bakken) and Texas (Eagle Ford and Permian Basin)." The report stated: "[I]n May 2014, oil production in the state of North Dakota exceeded one million barrels per day (MMBbl/d), almost 12% of U.S. crude oil production."

31. Crude oil from the Bakken is primarily light sweet crude, as compared to heavier crudes produced from conventional domestic reservoirs, Canadian synthetic crudes, and crude oil imported from other countries. Bakken crude has low density and is relatively volatile, with typically 38°–42° American Petroleum Institute (API) gravity and 0.13 % sulfur. This high-value crude with a high gasoline yield commands a higher price.

The United States' Statutory and Regulatory Framework Governing Plaintiffs' Trust Land

32. The United States, in its capacity as trustee, by statute and regulation, has broad, comprehensive and pervasive management over the leasing and administration of oil and gas leases on allotted lands in Indian Country including those of Plaintiffs. The management by

the federal government is intended to "ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impacts resulting from such development," 25 C.F.R. § 212.1, and "promote(s) the orderly and efficient exploration, development and production of oil and gas." 43 C.F.R. § 3160.0-4.

33. The United States' comprehensive management of Plaintiffs' lands is exemplified by the following:

a. Any application for a lease of Plaintiffs' land must be submitted to the BIA official at the Fort Berthold Agency in New Town, N.D. having jurisdiction over the minerals on Plaintiffs' lands. 25 C.F.R. § 212.20(a).

b. The Fort Berthold Leasing Act provides that "[i]t shall not be a requirement for the approval or execution of a lease or agreement under this subsection that the lease or agreement be offered for sale through a public auction or advertised sale." Pub. L. 105-188 § (a)(4). However, when the Secretary puts leases for Plaintiffs' tracts out for public bid, Interior is required in doing so to conduct the public auctions in a manner so that Plaintiffs receive "optimum competition" for bonus consideration. 25 C.F.R. § 212.20(b).

c. The Secretary determines if any application or bid is in "the best interests of [Plaintiffs]." 25 C.F.R. § 212.20(b)(6) ; *see also* Pub. L. 105-188 § (a)(2)(A)(ii).

d. The Secretary determines the amount of any bond in connection with any lease of Plaintiffs' land and requires that such bond be accompanied by a certificate of deposit or letter of credit payable to the United States or Treasury securities with an authorization for the United States to sell such securities. 25 C.F.R. §§ 211.24, 212.24.

e. The Secretary determines the acreage limitations and duration of Plaintiffs' leases. 25 C.F.R. §§ 211.25, 211.27, 212.25, and 212.27.

f. The Secretary must approve each of Plaintiffs' leases prior to mineral operations on Plaintiffs' lands and must provide written permission prior to commencement of mineral operations, 25 C.F.R. §§ 211.48, 212.48, after considering the Lessee's Application for a Permit to Drill. 43 C.F.R. § 3162.3(h).

g. The Secretary determines the amount and manner of payment under Plaintiffs' leases. 25 C.F.R. § 212.40; 43 C.F.R. § 3162.7-4.

h. The Secretary must approve all venting and flaring of natural gas from Plaintiffs' land, 30 C.F.R. § 221, and is required to ensure that waste of oil and gas does not occur. 30 U.S.C. § 225.

i. The Secretary must approve the suspension of the operations under Plaintiffs' leases, 25 C.F.R. §§ 211.44, 212.44, or the surrendering of Plaintiffs' leases, 25 C.F.R. §§ 211.45, 212.45, and is given authority to cancel Plaintiffs' leases.

j. Plaintiffs' leases designate an "oil and gas supervisor," who is an officer of the Secretary and is to "supervise oil and gas operations" on Plaintiffs' lands. Those responsibilities include, but are not limited to:

(i) Determining the need for offset wells to protect the leased land from drainage.

(ii) Determining the value of all oil, gas or natural gasoline and all other hydrocarbon substances produced from the leased land for purposes of calculating the royalty payment.

(iii) Receiving monthly statements from the lessor for the purpose of calculating the royalty.

(iv) Receiving the well log from the lessor.

(v) Entering orders and imposing other requirements on the lessee in order to prevent waste and preserve the property.

k. The United States is to designate an "Authorized Representative" or "Authorized Officer" with respect to Plaintiffs' leases, who is to, among other things:

(i) "[A]pprove, inspect and regulate" the leased operations. 43 C.F.R. § 3161.2.

(ii) "[R]equire compliance with lease terms" and with applicable regulations. *Id.*

(iii) "[R]equire that all operations be conducted in a manner which protects other natural resources and the environmental quality, protects life and property and results in the maximum ultimate recovery of oil and gas with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources." *Id.*

(iv) Require that the lessee drill and produce such wells as necessary so that the lease may be "timely and properly developed and produced" in accordance with "good economic operating practices." 43 C.F.R. § 3162.2(c).

(v) Approve or prescribe a well spacing program. 43 C.F.R. § 3162.3-1(a).

(vi) Approve any plan for well abandonment. 43 C.F.R. § 3162.3-4.

(vii) Require that the lessor or well operator conduct tests, run logs and make surveys to determine the "quality of oil, gas, other minerals, or the presence or quality of water; to determine the amount and/or direction of deviation of any well from the vertical; and to determine the relevant characteristics of the oil and gas reservoirs penetrated." 43 C.F.R. § 3162.4-2.

(viii) Prepare an environmental record of review or environmental assessment prior to authorizing drilling. 43 C.F.R. § 3162.5-1(a).

(ix) Authorize the disposal of water produced during drilling operations. 43 C.F.R. § 3162.5-1(a).

(x) Approve methods to control pollutants as a result of spills or leakages of oil, gas, produced water, toxic liquids, or waste materials. 43 C.F.R. § 3162.5-1(c).

(xi) Require the lessee or operator to implement a contingency plan to protect life, property, and the environment. 43 C.F.R. § 3162.5-1(d).

(xii) Approve any drilling that deviates significantly from the vertical. 43 C.F.R. § 3162.5-2(b).

(xiii) Approve or prescribe practices or procedures to protect freshwater and other usable minerals from contamination. 43 C.F.R. § 3162.5-2(d).

(xiv) Prescribe safety and health requirements for the lessee or operator. 43 C.F.R. § 3162.5-3.

(xv) Determine the means by which oil and gas production on Plaintiffs' land is measured. 43 C.F.R. § 3162.7-2 and 3.

(xvi) Determine non-compliance and assess penalties. 43 C.F.R. § 3163.

l. The United States is responsible for the collection of all lease payments and the enforcement thereof.

m. In addition, the Department has implemented various policies and procedures with respect to the management of Plaintiffs' land, including those set forth in the BIA Fluid Mineral Estate Procedural Handbook, the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures and the BLM Best Practices and Procedures and Diligence Manuals for Oil and Gas Production.

34. By reason of its comprehensive statutory and regulatory management of oil and gas leasing and production on Indian allotted land, the United States, as trustee, has a fiduciary obligation in its administration and management of the leasing operations and production of oil and gas on Plaintiffs' lands, including an obligation to act at all times in Plaintiffs' best interests and to comply with and enforce its own statutes and regulations. These statutes, regulations and corresponding fiduciary obligations mandate compensation by the federal government for damages sustained.

35. The United States, and its officers charged with carrying out its legal obligations and trust duties, has breached its fiduciary obligations and other duties, and mismanaged, and continues to mismanage, the Plaintiffs' leased allotted lands and the resources located thereon in at least the following respects, among others:

a. The United States has failed to ensure that the lessors of the Plaintiffs' land that was leased for oil and gas mining purposes met their legal and contractual obligations.

b. The United States has approved leases for Plaintiffs' land that are in direct violation of federal statutes and regulations.

c. The United States has failed to subject Plaintiffs' oil and gas producing allotted lands to a competitive auction as required by 25 C.F.R. § 212.20, accepting lease applications in violation of statutory and regulatory requirements, resulting in royalty and per acre bonus rates which were unreasonable and less than fair market value.

d. The United States approved leases that were "not in the best interest" of the Plaintiffs and failed to develop their mineral interests "in a manner that maximizes their best economic interests," in violation of 25 C.F.R. § 212.1, 25 C.F.R. § 212.20(b)(6) and Pub. L. 105-188 § (a)(2)(A)(ii).

e. The United States has failed to advertise Plaintiffs' land for lease in such a manner that they receive "optimum competition" for bonus consideration as required by 25 C.F.R. § 212.20(b).

f. The United States has, upon information and belief, failed to designate or maintain an oil and gas supervisor to supervise the oil and gas operations on Plaintiffs' lands.

g. The United States has failed to inspect and regulate Plaintiffs' leased operations as required by 43 C.F.R. § 3161.2.

h. The United States has failed to require that any lessees, or operators located on the leased property, comply with lease terms and applicable regulations as required by 43 C.F.R. § 3161.2.

i. The United States has not promoted "the orderly and efficient exploration, development and production of oil and gas" on Plaintiffs' leased properties as required by 43 C.F.R. § 3160.0-4.

j. The United States has not taken any action to protect Plaintiffs' leased land from drainage, including requiring offset wells as required by 25 C.F.R. § 211.47 and 25 C.F.R. § 212.47, resulting in the losses of tens of millions of dollars in revenue.

k. The United States has not properly valued the oil and gas produced from Plaintiffs' leased land, resulting in losses of substantial revenue.

l. The United States has not "ensure[d] the prompt and proper collection and disbursement of oil and gas revenues owed to … Indian lessors," including Plaintiffs, as required by 30 U.S.C. § 1701(b)(3) and the regulations promulgated thereunder, and has not collected all income due Plaintiffs for the leases of their land, or, if it has, has not paid that income to Plaintiffs.

m. The United States has not taken necessary action to prevent waste on Plaintiffs' land and preserve the leased property.

n. The United States has not required that leased operations be conducted in such a manner that it results in the "maximum recovery of oil and gas" as required by 43 C.F.R. § 3161.2.

o. The United States has not required that the lessees or the operators located on the leased properties drill and produce such wells as are necessary so that the leases may be "timely and properly developed and produced" in accordance with good economic operating practices in accordance with 43 C.F.R. § 3162.2(c).

p. The United States has failed to ensure that environmental regulations and standards were met on the Plaintiffs' leased lands, resulting in significant contamination on the Plaintiffs' lands which remains unaddressed in violation of various regulations including 43 C.F.R. § 3161.2, 43 C.F.R. § 3162.5-1(c), and 43 C.F.R. § 3163.1.

q. The United States has failed to terminate leases or otherwise penalize lessees for violation of lease terms and applicable regulations.

COUNT I

Breach of Legal Obligation and Trust Duty to Subject Leases for Plaintiffs' Lands to Competitive Advertising and Bidding and Failure to Pay Reasonable Royalties

36. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

37. The United States is under a fiduciary and statutory duty to subject leases for oil and gas development on Plaintiffs' land to a competitive bidding process. This duty includes the advertising of leases for the development of those resources on Plaintiffs' land in such a manner that they receive "optimum competition" for bonus consideration. In addition, it has a duty to reject any bid or proposed lease which is not in the "best interest" of Plaintiffs.

38. The United States has breached these fiduciary and statutory duties. It has not submitted all leases to a competitive bidding process as required by statute and regulation, despite demand by Plaintiffs. It has not advertised the opportunity to lease Plaintiffs' land in accordance with its own regulations and in a manner that is designed to achieve "optimum competition" for bonus consideration or in a manner that "maximizes their best economic interests." It has accepted leases for Plaintiffs' lands that were either not approved in writing by a majority of the lessors or not in their best interests.

39. By reason of the breach of duty by the United States, the royalty and per acre bonus rates for the leases on Plaintiffs' properties have been and continue to be neither competitive nor in their best economic interests. Plaintiffs have learned that, upon information and belief, the royalty rates on non-Indian oil and gas leases entered into on the Bakken have been 20% or more higher than those on Plaintiffs' property. Non-Indian and Indian oil and gas

leases entered into on the Bakken provided for per acre bonus rates as much as $16,000, with the majority of leases providing $10,000 per acre bonus rates. In fact, 42,000 acres of Reservation trust land was leased for a $10,000 per acre bonus. However, the Defendant did nothing to ensure Plaintiffs received competitive bonus rates and approved leases of Plaintiffs' trust land that provided bonuses in the range of $300 to $1400 per acre.

40. By reason of the United States' failure to lease Plaintiffs' land in compliance with its own regulations and in accordance with a competitive bidding process, those leases are void. The United States has been and remains under a continuing duty to remove the lessees from Plaintiffs' property as trespassers so that the Plaintiffs' land and resources may be leased for a competitive amount.

41. Plaintiffs are entitled to damages for Defendant's breach representing the difference between the reasonable value of the royalty rate and per acre bonus and what they have, in fact, received plus interest as allowed by law.

COUNT II

Breach of Legal Obligation and Trust Duty to Properly Value Oil and Gas Production in Determining Royalties

42. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

43. The leases approved by the United States with respect to the oil and gas resources on Plaintiffs' land require that the Secretary value the oil, gas, and natural gas produced and saved from Plaintiffs' land for purposes of calculating royalties. Moreover, the regulations impose a duty on the part of the United States to properly calculate the value of oil, gas and natural gas produced and saved in calculating the royalty payments due Plaintiffs.

44. The United States has breached its duty to Plaintiffs by failing to properly calculate the value of those resources produced and saved from Plaintiffs' land.

45. By reason of Defendant's breach, Plaintiffs' are entitled to such damages as may be proven at trial plus interest as allowed by law.

COUNT III

Breach of Legal Obligation and Trust Duty to Maintain Proper Production, Manage and Prevent Drainage

46. All allegations set forth in the preceding paragraphs of this Complaint are incorporated by reference as if fully set forth herein.

47. The United States is under a duty, under the terms of the leases on Plaintiffs' lands, pursuant to its own regulations, and as trustee, to take action to ensure that avoidable drainage, defined generally as "the migration of hydrocarbons, inert gases (other than helium), or associated resources caused by production from other wells," 43 C.F.R. § 3160.0-5, does not occur on Plaintiffs' property. Those duties include properly inspecting and regulating the leased premises in accordance with 43 C.F.R. § 3161.2, requiring compliance with lease terms, requiring operations be conducted to ensure maximum ultimate recovery and prevent waste, requiring offset wells, and prescribing a proper well spacing program. 43 C.F.R. § 3162.3-1.

48. The United States has breached its fiduciary and other legal obligations, and mismanaged the Plaintiffs' allotted lands, by failing to properly manage, administer and supervise the lessees of Plaintiffs' leased lands, or the operators located thereon, in order to prevent the avoidable loss of oil and gas through drainage. Plaintiffs have requested documentation of the well spacing program affecting their property and none has been provided. Plaintiffs have learned that for six of the leased tracts alone, at least 598,000 barrels or $62.8 million worth of drainage has occurred, and continues to occur, with the United States

taking no action to prevent it. The Plaintiffs have reason to believe that similar drainage has occurred on the other tracts.

49. In fact, discovery in this case has uncovered evidence that BLM employees conducting drainage analysis of Plaintiffs tracts knew that drainage was occurring, or was likely to occur from Plaintiffs tracts, but failed to inform Plaintiffs of this fact.

50. In internal correspondence, BLM employees discuss the potential for drainage from Plaintiffs tracts, but state that they will "never hear the end of this," or words to that effect, if they inform Plaintiffs of the full extent of their findings regarding drainage and potential drainage.

51. Defendant's failure to inform Plaintiffs of all of the information regarding the drainage analysis constitutes breach of fiduciary duty and constructive fraud.

52. BLM also failed to have guidance in place to its employees regarding how to conduct drainage analysis for nearly a decade and a half. BLM issued an internal guidance memorandum controlling how to conduct drainage analysis in 1999. The memorandum was intended to bridge the gap until a definitive drainage manual could be published, which the 1999 memorandum anticipated being complete within one year. Accordingly, the memorandum expired by its own terms in 2000. However, BLM did not complete or publish its drainage manual for another fifteen years, in 2015.

53. As a result, BLM's employees were left with no controlling guidance regarding how to conduct drainage analysis, leading to a wide variety of unapproved, unreliable, and inaccurate practices.

54. For example, the BLM employees conducting the drainage analysis used default "cut off" distances to assume drainage could not occur. This practice was not sanctioned by

any existing guidance from BLM, including the 1999 internal memo (which was the most recent official guidance regarding implementation of the regulations that had been published, notwithstanding that it had expired in 2000). The use of these default rules caused BLM to underestimate the extent of drainage occurring from Plaintiffs' tracts.

55. Moreover, Defendant's practice of placing a tighter choke on the production of oil on Plaintiffs' lands has exacerbated its failure to take any action to control drainage from Plaintiffs' property. Allowing greater drainage has resulted in substantially lower production than other wells.

56. In addition, Defendant has delayed in implementation of requirements, orders and technological advances such that production on Plaintiffs' lands has been impaired.

57. By reason of these breaches, Plaintiffs have lost substantial revenue and are entitled to such damages plus interest as may be proven at trial.

COUNT IV

Breach of Legal Obligations and Trust Duties by Failing to Pay Amounts Due Under Leases

58. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

59. The United States is a under a fiduciary duty as trustee and a legal duty, both under the terms of the leases on Plaintiffs' lands and pursuant to its own regulations, to collect all amounts due under the leases and to pay to the Plaintiffs revenue collected.

60. The United States has breached its fiduciary and other legal duties. Upon information and belief the United States, as trustee, has not collected all amounts to which Plaintiffs are entitled under their leases. In addition, upon information and belief it has not paid to Plaintiffs all amounts which have been collected and to which they are entitled. An

analysis of payment records received from Defendant for a one year period alone identified that Plaintiffs were receiving less from Defendant than operators reported were being produced from Plaintiffs' land. Plaintiffs have reason to believe that they were similarly underpaid for prior years.

61. In addition, amounts are deducted from Plaintiffs' account statements which are not appropriate and Plaintiffs are provided no legitimate explanation therefor.

62. By reason of the foregoing, Plaintiffs are entitled to damages plus interest in such amounts as may be proven at trial.

COUNT V

Breach of Legal Obligations and Trust Duties by Failing to Ensure that Environmental Regulations and Standards Were Met on the Plaintiffs' Leased Lands.

63. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

64. Since the Plaintiffs' leases were approved by the United States, multiple environmental spills on the Plaintiffs' leased lands have occurred due to the negligence of lessees. The United States has done nothing in response to them.

65. The Secretary is bound to approve only leases that assure that the owner's resources will be developed "in a manner . . . that minimizes any adverse environmental impacts or cultural impacts resulting from such development."

66. The United States has breached its legal obligations and trust duties, and mismanaged the Plaintiffs' trust land and assets, by failing to ensure that environmental regulations and standards were met on the Plaintiffs' leased lands. According to its regulations, Defendant must "require that all operations be conducted in a manner which protects . . . environmental quality," 43 C.F.R. § 3161.2, and, pursuant to its lease agreements

entered into for the benefit of Plaintiffs, has authority to enter orders and impose other requirements on the lessee in order to prevent waste and preserve the property. Therefore, BIA or BLM serve as the lead agency to ensure clean-up activities are properly conducted in a timely, efficient and safe manner.

67. Despite the foregoing obligations on the part of the United States, no action has been taken by the United States to rectify the environmental damage to Plaintiffs' property caused by the actions of lessees.

68. By reason of the foregoing, Plaintiffs are entitled to such damages plus interest as may be proven at trial.

COUNT VI

Breach of Legal Obligations and Trust Duties by Allowing the Lessees to Illegally Deduct Transportation Costs

69. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

70. The United States breached its legal obligations and trust duties, and mismanaged the Plaintiffs' trust lands and assets, by allowing the lessees on the Plaintiffs' oil and gas leases to illegally deduct transportation costs.

71. The Defendant has allowed and facilitated, and continues to allow and facilitate, the illegal deduction of transportation costs, for the benefit of the lessees, from the Plaintiffs' royalties. Upon information and belief, the transportation costs were deducted without the lessees having submitted an "Oil Transportation Allowance Report." The transportation deduction rules specify that "before any deduction can be taken," the lessee must submit an "Oil Transportation Allowance Report," also called a "Form MMS-4110." 30 C.F.R. § 1206.57.

72. ONRR audits royalty payments and is responsible for determining when companies "improperly determine[] a transportation allowance." 30 C.F.R. § 1206.56.

73. Upon information and belief, the Defendant has breached this duty, improperly deducting transportation charges.

74. As such, the Plaintiffs are entitled to damages plus interest for all transportation costs that were illegally deducted from their royalties.

COUNT VII

Breach of Legal Obligations and Trust Duties by Exceeding Acreage Limitations and by Approving Communitization and Unitization Agreements Without Plaintiffs' Consent

75. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

76. Leases for oil and gas are not to exceed 640 acres. 25 C.F.R. § 211.25.

77. Further, pursuant to the Fort Berthold Leasing Act, the Secretary may only "approve any mineral lease or agreement that affects individually owned Indian land, if – (i) the owners of a majority of the undivided interest in the Indian land that is the subject of the mineral lease or agreement … consent to the lease or agreement …." Pub. L. 105-188 § (a)(2)(A). Communitization and unitization agreements affecting property on Fort Berthold are subject to this statute.

78. Despite these statutory and regulatory limitations, the Secretary has approved communitization and unitization agreements affecting Plaintiffs' properties, without obtaining consent from owners representing a majority interest. Under these agreements, up to 1,280 acres are treated as a single lease.

79. In doing so, the Defendant has breached its legal duty and its fiduciary duty to Plaintiffs by failing to follow controlling statutes and its own regulations, and by failing to act in Plaintiffs' best interests.

80. By reason of this breach, Plaintiffs have been damaged in such amounts plus interest as may be proven at trial.

COUNT VIII

Breach of Legal Obligations and Trust Duties by Delays in the Drilling of Oil and Gas Wells on Plaintiffs' Leased Land

81. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

82. Pursuant to 43 C.F.R. §§ 3160.0-4, 3161.2, and 3162.2-2, the federal government acknowledges that the purpose of the oil and gas regulations is to "promote the orderly and efficient exploration, development and production of oil and gas;" that the United States, as the authorized officer is responsible for requiring that all operations "are conducted in a manner which … results in the maximum recovery of oil and gas with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources[;]" and that the United States is responsible for protecting Plaintiffs' oil and gas resources against drainage.

83. 43 C.F.R. § 3162.2-1(b) (previously § 3162.2(c)) also requires that Plaintiffs' resources be "properly and timely developed and produced in accordance with good economic practices."

84. The oil and gas leases for Plaintiffs' properties also require the lessees "[t]o drill and produce all wells necessary to offset or protect the leased land from drainage or in lieu thereof to compensate the lessor in full each month for the estimated loss of royalty through drainage …" and give the Secretary the power to "require the drilling and production of such

wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property ….”

85. The leases further require the government to appoint an oil and gas supervisor to take action to prevent waste on Plaintiffs’ property, and 43 C.F.R. § 3161.2 obligates the government to “require compliance with lease terms.”

86. Yet, despite these comprehensive regulations and lease requirements, once Plaintiffs’ allotted land was under lease, Defendant took no action to require that drilling and completion for oil and gas actually occur on Plaintiffs’ land in a proper and timely manner. In addition, upon information and belief, Defendants allowed operators to deviate from the existing drilling schedules so that other allotments were drilled in advance of Plaintiffs.

87. By way of example, over six years expired before drilling and completion activity commenced on Allotment 710A. Plaintiffs were repeatedly told that this would commence but received no explanation for the delay. However, drilling of neighboring allotments proceeded in advance of that of Plaintiffs, resulting in increased drainage from Plaintiffs’ land.

88. By reason of Defendant’s breach of its duty to require reasonable and timely drilling and completion on Plaintiffs’ land, Plaintiffs have been damaged in such amounts as may be proven at trial plus interest as allowed by law.

COUNT IX

Breach of Legal Obligations and Trust Duties by Failing to Lease the Plaintiffs’ Unleased Allotted Land, for Oil and Gas Mining Purposes

89. The United States breached its legal obligations and trust duties and mismanaged the Plaintiffs’ trust lands and assets by failing to lease all of the Plaintiffs’ unleased allotted land for oil and gas mining purposes.

90. Upon information and belief, Plaintiffs own approximately 500 acres of unleased allotted land. Plaintiffs have requested that Defendant lease this land for oil and gas mining purposes, but Defendant has failed and refused to do so, in breach of its fiduciary obligations as trustee.

91. By reason of the breach of fiduciary and other legal duties of the United States, the Plaintiffs have been damaged in such amounts plus interest as may be proven at trial.

COUNT X

Breach of Legal Obligations and Trust Duties by Failing to Lease the Plaintiffs Unleased Allotment Land for Grazing Purposes

92. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

93. Defendant's control over the leasing of Plaintiffs' allotments is also not limited to oil and gas leasing. Leasing for any purpose, including grazing or other agricultural use, is also subject to comprehensive control by Defendant, and Defendant owes corresponding fiduciary duties to Plaintiffs with regard to the leasing of Plaintiffs' allotments for such use.

94. The statutes and regulations giving rise to Defendants' fiduciary duties in this regard include: 25 U.S.C. § 177 – requiring federal approval for leasing of Indian lands; 25 U.S.C. § 3715 – giving the Secretary authority to lease Indian lands for agricultural purposes; and 25 C.F.R. § 162.021 – requiring BIA to "promptly respond to requests for leases" and to "work to ensure that the use of the land is consistent with the Indian landowners' wishes …."

95. The United States breached its legal obligations and trust duties and mismanaged the Plaintiffs' trust lands and assets by failing to lease the Plaintiffs' unleased allotted land for grazing purposes, despite Plaintiffs' request that it do so.

96. The Plaintiffs own approximately 200 acres of unleased allotted lands with value in regards to grazing.

97. The Plaintiffs have consistently granted the BIA the authority to permit the leasing of their unleased grazing allotments.

98. The United States has therefore been obligated to permit and lease the Plaintiffs' grazing lands in a manner that maximizes their best economic interests.

99. The United States has failed to take any action to lease their significant grazing allotted land interests at any point.

100. By reason of this breach of duty, Plaintiffs are entitled to have and recover of Defendant such damages plus interest as may be proven at trial.

COUNT XI

Breach of Trust Duties and Taking of Property Interests Without Just Compensation

101. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

102. In addition to the above described breaches of its trust duties, Plaintiffs are informed and believe that they held surface and/or mineral interests in several tracts of land that were flooded by United States in order to create man-made lakes or other reservoirs on Fort Berthold.

103. Plaintiffs had a legally recognized property interest in the flooded tracts and the future revenue to be generated from the development and leasing of those tracts for agricultural and other purposes.

104. The United States' flooding of these tracts constitutes a complete taking of Plaintiffs' property interests and constitutes mismanagement in violation of its trust duties to Plaintiffs.

105. Plaintiffs have never received just compensation for the taking of their property interests in the flooded tracts, in violation of the rights under the Fifth Amendment to the Constitution of the United States.

106. By reason of these takings and breaches of fiduciary by the United States, the Plaintiffs have been damaged in such amounts plus interest as may be proven at trial.

COUNT XII

Breach of Trust Duties and Legal Obligations by Failing to Enforce Natural Gas Venting and Flaring Regulations

107. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

108. Pursuant to the Mineral Leasing Act, 30 U.S.C. § 225, Interior is required to ensure that oil and gas operators responsible for wells on trust land at Fort Berthold "use all reasonable precautions to prevent waste of oil or gas."

109. In addition to being required by federal statute, the obligation to avoid waste of oil and gas is an explicit requirement of the leases on Plaintiffs' Properties, and Interior is required as trustee to enforce these lease obligations.

110. During all time applicable to this action, and continuing through January 17, 2017 (after this action was filed), natural gas venting and flaring (two methods by which operators dispose of excess natural gas) were governed by the then existing version of 30 C.F.R. § 221.

111. As of January 17, 2017, these regulations were re-codified at 30 C.F.R. § 250.1160-250.1164. However, the substantive provisions requiring Defendant to ensure that Plaintiffs' mineral interests are protected from waste were not affected by the amendment.

112. Pursuant to 30 C.F.R. § 221, Interior issued notices to operators titled NTL-4A, setting forth the requirements operators must comply with in order to vent or flare natural gas without paying royalties on the gas lost through this process.

113. NTL-4A provides as follows:

> Gas Production (both gas well gas and oil well gas) subject to royalty shall include that which is produced and sold on a lease basis or for the benefit of a lease under the terms of an approved communitization or unitization agreement. No royalty obligation shall accrue on any produced gas which (1) is used on the same lease, same communitized tract, or same unitized participating area for beneficial purposes, (2) is vented or flared with the Supervisor's prior authorization or approval during drilling, completing, or producing operations, (3) is vented or flared pursuant to the rules, regulations, or orders of the appropriate State regulatory agency when said rules, regulations, or orders have been ratified or accepted by the Supervisor, or (4) the Supervisor determines to have been otherwise unavoidably lost.
>
> Where produced gas (both gas well gas and oil well gas) is (1) vented or flared during drilling, completing, or producing operations without the prior authorization, approval, ratification, or acceptance of the Supervisor or (2) otherwise avoidably lost, as determined by the Supervisor, the compensation due the United States or the Indian lessor will be computed on the basis of the full value of the gas so wasted, or the allocated portion thereof, attributable to the lease.

114. NTL-4A accurately summarizes the requirements of the regulations regarding when operators may vent or flare natural gas without paying royalties.

115. Despite these regulatory requirements, witnesses in this case, including the head of the BLM's North Dakota Field Office (which is responsible for approving applications to vent or flare natural gas at Fort Berthold), have testified that beginning at least by the start of 2010 BLM was instructed not to enforce the venting and flaring regulations. Instead, the North Dakota Field Office was instructed to continue accepting applications but not to issue any decisions thereon, and to not require payment of royalties for any vented or flared natural gas.

116. As a result, witnesses have testified that there are "thousands of boxes" of unapproved venting and flaring applications stored in a room in BLM's North Dakota Field Office.

117. Plaintiffs are informed and believe that this situation still persists even after the regulations were amended.

118. Despite Interior's failure to issue any approvals, the oil and gas companies have continued to vent and flare natural gas from Plaintiffs' mineral interests. These companies have not paid royalties for any of the gas so vented or flared.

119. As Interior's officials have acknowledged, excessive venting and flaring of natural gas is a significant problem on trust land. "[B]etween 2009 and 2014, 375 billion cubic feet of natural gas was lost through venting and flaring. This is enough gas to supply more than five million households for a year. Venting, flaring, and leaks of natural gas not only waste a valuable public resource and cause adverse environmental impacts, they also deprive States, Tribes and Federal taxpayers of potential royalty revenues – as much as $23 million annually in royalty revenue for the Federal Government and the States that share it, according to a 2010 Government Accountability Office (GAO) report." Statement of Amanda Leiter, Deputy Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, to the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands, Forests, & Mining (available at https://www.doi.gov/ocl/gas-reduction-rule).

120. Defendant's failure to enforce the Mineral Leasing Act and the venting and flaring regulations, both before and after the regulations were amended, constitutes a breach of its fiduciary duties as Plaintiffs' trustee.

121. Plaintiffs have been damaged by Defendant's breach of its fiduciary duties because significant amounts of natural gas have been vented and/or flared from their mineral interests without approval, and for which no royalties were paid.

122. By reason of this breach of duty, Plaintiffs are entitled to have and recover of Defendant such damages plus interest as may be proven at trial.

COUNT XIII

Accounting in Aid of Judgment

123. All allegations set forth in the preceding paragraphs of this Complaint are hereby incorporated by reference as if fully set forth herein.

124. As set forth above, Defendant has breached its statutory and fiduciary obligations to Plaintiffs by, among other things failing to pay to Plaintiffs amounts to which they are owed, deducting sums from payments owed to Plaintiffs without documentation or explanation, allowing the use of Plaintiffs' resources without reasonable and adequate compensation, and permitting the loss and diminution of trust assets.

125. Plaintiffs are entitled to an accounting in aid of this Court's jurisdiction to render a money judgment on their claims.

Prayer for Relief

Wherefore the Plaintiffs respectfully pray the Court as follows:

1. That they have and recover of the Defendant damages in such amounts plus interest as may be proven at trial.

2. That this Court order an accounting in aid of its jurisdiction to render a money judgment on Plaintiffs' claims.

3. That the costs of this action, including reasonable attorneys' fees, be taxed against Defendant;

4. For such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 6th day of August 2018.

/s/ William E. Dorris
William E. Dorris
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6104
Facsimile: (404) 541-3183
Email: bdorris@kilpatricktownsend.com

Attorney for Plaintiffs

Of Counsel:

Charles W. Galbraith (DC Bar No. 1028083)
Kilpatrick Townsend & Stockton LLP
607 14th Street, NW, Suite. 900
Washington, DC 20005-2018
Telephone: (202) 508-5850
Facsimile: (202) 204-5601
cgalbraith@kilpatricktownsend.com

Dustin T. Greene (NC Bar No. 38193)
Kilpatrick Townsend & Stockton LLP
1001 W. 4th Street
Winston-Salem, NC 27101
Telephone: (336) 607-7300
Facsimile: (336) 607-7500
dgreene@kilpatricktownsend.com

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered CM/ECF users.

/s/ William E. Dorris
William E. Dorris