Judicial Arbiter Group, Inc.
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In Re the Arbitration of:

Kenneth & Vanda Vaughters and David & Sandra Conner, as Co-Trustees of the Sandra K. Conner Trust and as Co-Trustees of the David C. Conner Trust, on behalf of themselves and the defined Class,
Claimants

v.

Ovintiv USA Inc. f/k/a Encana Oil and Gas (USA), Inc., and Crestone Peak Resources Holdings, LLC,
Respondents.

Arbiter – Anne B. Frick

JAG No.: 2018-0067

CLAIMANTS' FOURTH AMENDED CLASS ARBITRATION DEMAND

Consistent with the September 15, 2021 Scheduling Order, which provides that "[t]he parties agree that the addition of parties may be accomplished by the filing of amended pleadings," Claimants Kenneth Vaughters & Vanda Vaughters, and David & Sandra Conner, as Co-Trustees of the Sandra K. Conner Trust, and David & Sandra Conner, as Co-Trustees of the David C. Conner Trust (collectively, the "Claimants"), on behalf of themselves and the defined Class, hereby file their Fourth Amended Class Arbitration Demand, and in doing so allege:

IDENTIFICATION OF CLAIMANTS AND RESPONDENTS

1. Claimants Kenneth R. and Vanda D. Vaughters ("the Vaughters") are husband and wife and are citizens of Colorado residing at 5566 Fir Avenue, Erie, Colorado 80516. The Vaughters are the lessors under a January 26, 1981 lease agreement between them and the Vessels

Company, as lessee ("the Vaughters Lease"). As of 2008, the lessee's interests under the Vaughters Lease were held by Respondent Ovintiv USA, Inc. f/k/a Encana Oil and Gas (USA), Inc. ("Encana"). As further described herein, the Vaughters are members of the certified settlement Class in a class action royalty underpayment lawsuit which was filed against Encana in the Denver District Court in 2005, and which was settled on a class-wide basis in April 2008.

2. Claimants David & Sandra Conner, as Co-Trustees of the Sandra K. Conner Trust (the "Sandra K. Conner Trust") are husband and wife and are citizens of Arkansas residing at 5503 S Bellview Rd. Rogers, AR 72758. The Sandra K. Conner Trust is a successor lessor under the June 11, 1970 oil and gas lease entered into between Mel and Ruth Anderson, et al, as lessors and Walter A. Ohmart, Jr. as the lessee (the "Anderson Lease").

3. Claimants David & Sandra Conner, as Co-Trustees of the David C. Conner Trust (the "David C. Conner Trust") are husband and wife and are citizens of Arkansas residing at 5503 S Bellview Rd. Rogers, AR 72758. The David C. Conner Trust is also a successor lessor under the Anderson Lease.

4. As further described herein, the Sandra K. Conner Trust and David C. Conner Trust are members of the certified settlement Class in the class action royalty underpayment lawsuit which was filed against Encana in the Denver District Court in 2005, and which was settled on a class-wide basis in April 2008.

5. Respondent Encana is a Delaware corporation that has its principal place of business at 370 17th Street, Suite 1700, Denver, Colorado 80202.

6. Respondent Crestone Peak Resources Holdings, LLC ("Crestone") is a Delaware Limited Liability Company which has its principal place of business located at 1801 California Street, Suite 2500, Denver, Colorado 80202. Crestone acquired all of Encana's DJ Basin assets,

which included the Vaughters Lease, the Anderson Lease and the other Royalty Agreements at issue. Pursuant to the Purchase and Sale Agreement entered into between Encana and Crestone, the effective date of the acquisition was April 1, 2015, however, Encana continued to manage its DJ Basin assets and pay royalties to the Claimants and the other Class members until the acquisition was completed sometime in the summer of 2016.

FACTUAL ALLEGATIONS

7. In April 2008, Encana entered into a class settlement agreement to resolve a class action royalty underpayment lawsuit. (Exhibit 1, Encana Class Settlement Agreement). As part of the Encana Class Settlement Agreement, Encana and the members of the Settlement Class agreed to a future royalty calculation methodology, set forth in Paragraph 10 of the Encana Class Settlement Agreement, which applies to all production of natural gas occurring from the subject Royalty Agreements on and after January 1, 2009, and continuing for the respective lives of the subject Royalty Agreements.

8. The Vaughters Lease and the Anderson Lease are two of the Royalty Agreements which are subject to the Encana Class Settlement Agreement, and the Claimants are members of the Settlement Class who are subject to Paragraph 10 of the Encana Class Settlement Agreement.

9. In the Encana Class Settlement Agreement, at Paragraph 10(i), the settling parties agreed that such "Agreement, including but not limited to the provisions of Paragraph 10, shall run with the land and shall be binding upon and inure to the benefit of Encana and the Class Members and their respective agents, offices, directors, joint venturers, partners, members, heirs, personal representatives, successors and assigns, with respect to both the current interests owned by Encana and Class members and any additional interest that either Encana or Class members acquire under the Royalty Agreements."

10. In Paragraph 10(l) of the Encana Class Settlement Agreement, the parties agreed that in the event of a dispute over Encana's payment of royalties under the future royalty calculation method set forth in Paragraph 10, such dispute will be resolved through arbitration with the Judicial Arbiter Group.

11. Effective May 1, 2009, and effective June 11, 2009, Respondent Encana entered into joint operating agreement(s) ("the JOAs"), whereby Encana contributed to the JOAs various oil and gas leases and/or oil and gas interests in a described area of land in Weld County, Colorado.

12. Starting in January 1, 2009, on Encana's behalf, Kerr-McGee Oil and Gas Onshore, LP ("Kerr-McGee"), as the operator of the wells, began paying the royalties to the Claimants and the other Class members based on the natural gas it produced from the DJ Basin.

13. Consistent with the Arbitrator's finding in the Order dated October 9, 2018, Encana remained contractually obligated for the full amount of royalty payments owed to the Claimants and the other members of the Encana Settlement Class under Paragraph 10 of the Encana Class Settlement Agreement based on Kerr-McGee's production of natural gas pursuant to the rights conferred to Encana under Royalty Agreements at issue until Encana sold its DJ Basin assets to Crestone.

14. Consistent with the Arbitrator's finding in the Order dated October 9, 2018, after Crestone's acquisition of Encana's DJ Basin assets, Crestone became contractually obligated for the full amount of the royalties owed to the Claimants and the members of the defined Encana Settlement Class under Paragraph 10 of the Encana Class Settlement Agreement based on Kerr-McGee's production of natural gas from areas covered by the Royalty Agreements at issue.

15. Since January 1, 2009, however, the Respondents Encana and Crestone have neither calculated nor paid royalties to the Claimants pursuant to the royalty calculation

methodology set forth in Paragraph 10 of the Encana Class Settlement Agreement. Instead, royalties have been paid (and continue to be paid) to the Claimants based upon a different methodology, which has primarily been the royalty payment methodology set forth in a separate class settlement agreement between Kerr-McGee Oil and Gas Onshore, LP and some of its royalty owners, commonly referred to as the *Boulter v. Kerr-McGee* class settlement agreement, to which the Vaughters Lease and the Anderson Lease are not subject.

16. As a direct result of the Respondents' failure to calculate and pay royalties to the Claimants pursuant to the royalty calculation methodology set forth in Paragraph 10 of the Encana Class Settlement Agreement, the Respondents have substantially underpaid the Claimants royalties since January 1, 2009, and the Respondents have therefore breached their contractual obligations to the Claimants.

CLASS ACTION ALLEGATIONS

17. In addition to the Claimants, there are numerous other members of the Encana Settlement Class, and their successors and assigns, whose leases are subject to the Encana Class Settlement Agreement, whose leases have been transferred and assigned by Encana to Crestone, and who have been damaged in the same manner as the Claimants, in that, since January 1, 2009, Kerr-McGee has produced natural gas from lands subject to such persons' leases, and Encana and Crestone have failed to pay them royalties based upon the methodology set forth in Paragraph 10 of the Encana Class Settlement Agreement.

18. With respect to the above-referenced members of the Encana Settlement Class, and their successors and assigns, since January 1, 2009, in paying royalties on Encana and Crestone's behalf, Kerr-McGee has consistently failed to comply with Paragraph 10 of the Encana Class Settlement Agreement, and since January 1, 2009, has not correctly paid royalties to those

members of the Encana Settlement Class, and their successors and assigns, to whom the Respondents owe the royalty payment obligations.

19. Instead, in paying royalties on behalf of Encana, originally, and then Crestone, Kerr-McGee has paid (and continues to pay) royalties to the Claimants and the other affected members of the Encana Settlement Class based upon the royalty calculation methodology set forth in the *Boulter v. Kerr-McGee* class settlement agreement.

20. As a direct result of the failure to pay royalties pursuant to Paragraph 10 of the Encana Class Settlement Agreement, the royalties owed to the Claimants and the other affected members of the Encana Settlement Class, including their successors and assigns, have been consistently and substantially underpaid.

21. Claimants make their Demand for Class Arbitration against Respondents, on behalf of themselves and a Class defined as all persons who are, or have been members of the certified Settlement Class in the *Miller v. Encana* class litigation, or the successors and assigns to such Settlement Class members and who have been a lessor under a Lease Agreement or a royalty payee under an Overriding Royalty Agreement (collectively "Royalty Agreements") which were subject to the Encana Class Settlement Agreement, whereby Kerr-McGee operated wells and produced natural gas from lands subject to such Royalty Agreements, to whom Kerr-McGee has paid royalties on the Respondents' behalf at any time since January 1, 2009, under such Royalty Agreements in a manner which is not in compliance with the future royalty calculation methodology set forth in Paragraph 10 of the Encana Class Settlement Agreement.

22. Pursuant to the Colorado Court of Appeals decision in *Encana Oil and Gas (USA), Inc. v. Miller*, 405 P.3d 488, 497-99 (Colo. App. 2017), the claims asserted by the Claimants and

the defined Class members against the Respondents are to be arbitrated in a class-wide arbitration proceeding.

FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT

23. The allegations contained in Paragraphs 1 through 22 of this Fourth Amended Demand for Class Arbitration are restated and incorporated by reference herein.

24. The royalties paid to the Claimants and the members of the defined Class should have been paid in accordance with the royalty payment method set forth in Paragraph 10 of the Encana Class Settlement Agreement.

25. Kerr-McGee, on Encana's and Crestone's behalf, however, calculated and paid royalties pursuant to the royalty calculation methodology as set forth in the *Boulter v. Kerr-McGee* class settlement agreement instead of the royalty calculation methodology set forth in Paragraph 10 of the Encana Class Settlement Agreement.

26. As a direct result of failing to pay the Claimants and the members of the defined Class royalties based upon Paragraph 10 of the Encana Class Settlement Agreement, Respondents have breached their royalty payment obligations owed to the Claimants and the members of the defined Class under Paragraph 10 of the Encana Class Settlement Agreement, and the royalties owed to such persons have been consistently underpaid.

27. For all royalties underpaid and in breach of the Royalty Agreements the Respondents are liable for the improper calculation of the royalties and the royalty underpayments.

28. The Claimants and the members of the defined Class have been damaged by the Respondents' breach of their royalty payment obligations under Paragraph 10 of the Encana Class Settlement Agreement, and an arbitration award should be entered in favor of the Claimants and the members of the defined Class in the full amount of royalty underpayments which they have

sustained, plus prejudgment interest, at the statutory interest rate of eight percent per annum, compounded annually, pursuant to C.R.S. § 5-12-102(1)(b), from the date of each royalty underpayment through the date of the arbitration award.

SECOND CLAIM FOR RELIEF – DECLARATORY JUDGMENT

29. The allegations contained in Paragraphs 1 through 28, inclusive, are restated and incorporated by reference herein.

30. A controversy exists between the Respondents, the Claimants and the members of the defined Class regarding the correct method for the calculation and payment of royalties to the Claimants and the defined Class after the date of the Arbitrations Award in this Class Arbitration. (hereinafter referred to as "future royalties").

31. The Claimants, on behalf of themselves and the defined Class, request that the Arbitrator enter a declaratory judgment declaring that Respondent Crestone is required to pay future royalties to the Claimants and the members of the defined Class pursuant to the royalty payment method set forth in Paragraph 10 of the Encana Class Settlement Agreement.

PRAYER FOR RELIEF

WHEREFORE, Claimants pray for the following relief:

A. An arbitration award as requested in Paragraphs 28 and 31 of this Fourth Amended Class Arbitration Demand.

Dated: February 11, 2022

Respectfully submitted:

/s/ *Stacy A. Burrows*

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CERTIFICATE OF SERVICE

I, Stacy Burrows, certify that on February 11, 2022, I served a copy of the foregoing via File & ServeXpress:

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