

IN THE DISTRICT COURT OF PAWNEE COUNTY, OKLAHOMA

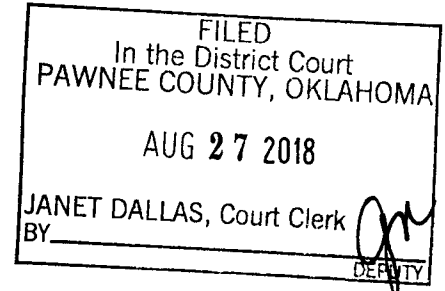
**JAMES ADAMS, on behalf of
himself and other Oklahoma citizens
similarly situated,**

Plaintiff

vs.

**EAGLE ROAD OIL, LLC,
CUMMINGS OIL COMPANY,
TERRITORY RESOURCES, LLC,
ENERVEST OPERATING, LLC,
PETRO WARRIOR, LLC,
PETROQUEST ENERGY, LLC, and
TRINITY OPERATING (USG) LLC,**

Defendants.



Case No. CJ-2016-78

THIRD AMENDED CLASS ACTION PETITION

COMES NOW Plaintiff James Adams on behalf of himself and the Class of similarly situated Oklahoma citizens (defined below), and for their Third Amended Class Action Petition against Defendants state:

NATURE OF ACTION

1. This pleading is based, to some degree, upon the personal knowledge of the Plaintiff, but is primarily based upon undersigned counsel's investigation, which includes research of public documents, and interviews and testimony taken of geophysicists who worked

in Oklahoma and have detailed knowledge of Oklahoma's seismicity and causes thereof. Further, undersigned counsel has also retained an expert geophysicist that has conducted his own scientific research, which also supports the allegations made in this pleading.

2. By disposing of fracking wastewater deep into the earth, Defendants introduced contaminants into the natural environment that caused an adverse change to it in the form of unnatural seismic activity. In other words, due to Defendants' pollution of the environment they caused the man-made earthquakes at issue in this case.

3. This is an action to recover Plaintiff's and the Class members' damages proximately caused by Defendants' pollution of the environment within and around Pawnee, Oklahoma through the disposal of fracking wastewater with injection wells, which are the pollutants.

4. Plaintiff and the Class seek damages from the Defendants, in the form of the following:

- a. Physical damages to real and personal property;
- b. market value losses to their real property;
- c. emotional distress; and,
- d. punitive damages.

PARTIES

5. Plaintiff James Adams is a citizen of Oklahoma. He is also a citizen and resident of Pawnee, Pawnee County, Oklahoma.

6. Defendant Eagle Road Oil, LLC ("Eagle Road") is a citizen of Oklahoma. It owns conducts oil and gas operations in this County, and more specifically, owns and operates

certain wastewater disposal wells at issue in this case. Its principal place of business is at 321 South Boston, Suite 300, Tulsa, Oklahoma 74103.

7. Defendant Cummings Oil Company (“Cummings”) is a citizen of Oklahoma. It conducts oil and gas operations in this County, and more specifically, owns and operates certain wastewater disposal wells at issue in this action. Cummings has its principal place of business at 5400 N. Grand Blvd., Suite 100, Oklahoma City, Oklahoma 73112.

8. Defendant Territory Resources, LLC (“Territory”) is a citizen of Oklahoma. It conducts oil and gas operations in this County, and more specifically, owned and operated certain wastewater disposal wells at issue in this action. Territory has its principal place of business at 1511 S. Sangre Rd., Stillwater, Oklahoma 74074.

9. Defendant Enervest Operating, LLC (“Enervest”) is a citizen of Delaware and Texas. It conducts oil and gas operations in the County, and more specifically, it owned and operated certain wastewater disposal wells at issue in this action. Enervest has its principal place of business at 1001 Fannin St., Suite 800, Houston, Texas 77002.

10. Defendant Petro Warrior, LLC (“Petro Warrior”) is a citizen of Oklahoma. It conducts oil and gas operations in the County, and more specifically, owned and operated the certain wastewater disposal wells at issue in this action. Petro Warrior has its principal place of business at 922 W. Parkway, Stillwater, OK 74075.

11. Defendant Petroquest Energy, LLC (“Petroquest”) is a citizen of Louisiana. It conducts oil and gas operations in the County, and more specifically, owned and operated certain wastewater disposal wells at issue in this action. Petroquest has its principal place of business at 400 E. Kaliste Saloom Road, Suite 6000, Lafayette, Louisiana 70508.

12. Defendant Trinity Operating (USG) LLC (“Trinity”) is a citizen of Delaware and Florida. It conducts oil and gas operations in the County, and more specifically, owned and operated certain wastewater disposal wells at issue in this action. Trinity has its principal place of business at 700 Universe Boulevard, Attn. Corp. Gov., Juno Beach, Florida 33408.

13. Eagle Road, Cummings, Territory, Enervest, Petro Warrior, Petroquest, and Trinity are sometimes collectively referred to in this petition as “Defendants.”

JURISDICTION AND VENUE

14. Jurisdiction in this Court is proper.

15. This Court also has personal jurisdiction over Defendants as they do substantial business in the State of Oklahoma and conducted the wastewater disposal operations that polluted the environment and caused the seismicity at issue and resulting torts and damages upon Plaintiff and the Class.

16. Venue is proper in this Court as a substantial part of the events giving rise to these claims occurred here, and Plaintiff is a citizen and resident of Pawnee County.

17. The local-controversy exception of the Class Action Fairness Act of 2005 applies, and therefore, this Court has jurisdiction and any federal court must decline jurisdiction pursuant to 28 U.S.C. § 1332 (d)(4), because each of its elements are satisfied:

- a. The Class is entirely made up of citizens of Oklahoma. Thus, more than 2/3rds of the Class in the aggregate are citizens of the State in which the action was originally filed.
- b. Defendants Eagle Road, Cummings, Territory, and Petro Warrior are citizens of Oklahoma, and substantial relief is sought from each of these four Oklahoma

citizens in the form of damages due to their wastewater disposal operations, amounting to more than 5.4 billion gallons of wastewater into the Arbuckle Formation, over the past 12 years. Thus, at least one defendant is a defendant whom significant relief is sought by the Class, whose alleged conduct forms a significant basis for the claims asserted by the Class, and is a citizen of Oklahoma.

- c. This was the first-filed class action case alleging that Defendants' wastewater disposal operations proximately caused the magnitude 5.8 earthquake near Pawnee, Oklahoma on September 3, 2016, and the subsequent seismicity through November 30, 2016. As such, the final element of 28 U.S.C. § 1332(d)(4) is also met.

FACTUAL ALLEGATIONS

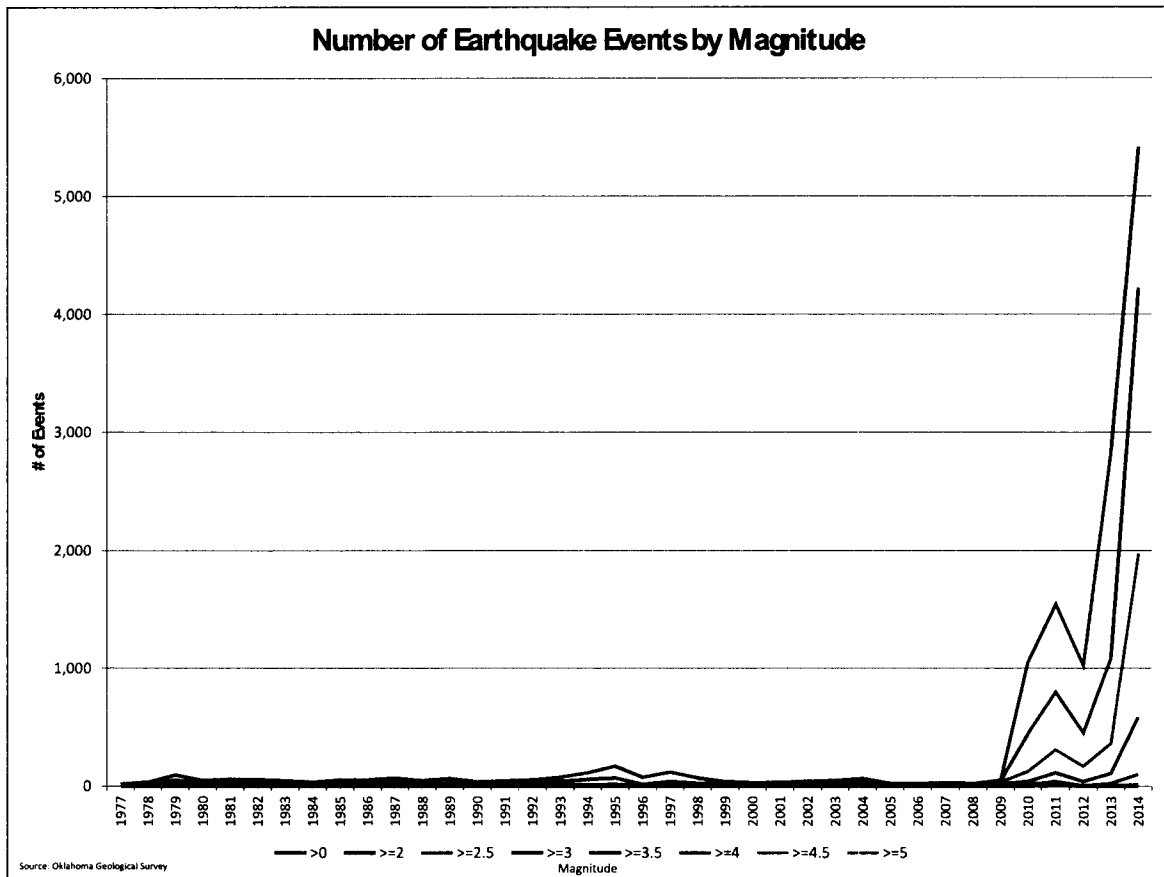
18. In recent years, thousands of earthquakes have occurred in Oklahoma.
19. In fact, Oklahoma is the most seismically active state in the continental United States.
20. Scientists have tied these earthquakes to the disposal of wastewater from fracking operations, which the oil and gas industry uses to release trapped oil and gas.
21. Over the years, the oil and gas industry has issued public statements to hide the seismic problems it is creating, and in fact continued a mantra that their operations did not cause earthquakes.

22. In truth, Oklahoma's earthquakes over the past nine or so years have been caused by the oil and gas industry's disposal of fracking related waste. Some have termed these earthquakes as "induced," "man-made," "human-made," or "frackquakes."

23. The waste fluids generated from fracking are mostly disposed of by injecting the wastewater fluids back into the earth (sometimes under pressure) in what are usually called wastewater disposal wells or injection wells. This process of pollution causes earthquakes, and indeed, have caused the earthquakes shaking Oklahoma since at least 2011, if not back to 2009.

24. In fact, the number of earthquakes in Oklahoma has increased more than 300 fold, from a maximum of 167 before 2009 to 5,838 in 2015.

25. As the number of earthquakes has increased, so has their severity. For example, the number of magnitude 3.5 earthquakes has increased fifty fold from 4 in 2009 to 220 in 2015. See below:



26. These waste-induced earthquakes have toppled historic towers, caused parts of houses to fall and injure people, cracked basements, and shattered nerves, as people fear there could be worse to come.

27. On March 28, 2016, and revised on June 17, 2016, the United States Geological Survey (“USGS”) published a study quantifying these risks. It found that the earthquake risks in Oklahoma have risen rapidly as a result of deep disposal of production wastes. Oklahoma earthquake risks are now the highest in the nation. Maps included in the report show a broad

swathe of the State of Oklahoma has a 5 to 12% likelihood of a highly damaging earthquake in the next year. Petersen, M.D., Mueller, C.S., Moschetti, M.P., Hoover, S.M., Llenos, A.L., Ellsworth, W.L., Michael, A.J., Rubinstein, J.L., McGarr, A.F., and Rukstales, K.S., 2016, 2016 One-year seismic hazard forecast for the Central and Eastern United States from induced and natural earthquakes: U.S. Geological Survey Open-File Report 2016-1035, 52 p., <http://dx.doi.org/10.3133/ofr20161035>.

28. On September 3, 2016, these scientists' prediction that a more damaging earthquake to Oklahoma was coming proved to be true.

29. On that day, a magnitude-5.8 earthquake shattered Pawnee, Oklahoma. The earthquake's epicenter was about 15 km northwest of the town of Pawnee.

30. This was the largest earthquake that had ever hit Oklahoma.

31. A magnitude-5.8 earthquake is a big one. Oklahoma Geological Survey's Director Jeremy Boak said, "Any time you have a big earthquake like that, you worry about the aftershocks," Boak said. "How big they'll be, how many there will be."

32. All segments of Oklahoma's government, from the Governor to the Director of OGS, agree that Pawnee's 5.8m earthquake was induced by Defendants' wastewater disposal operations and from the injection wells they operate nearby.

33. The 5.8m earthquake near Pawnee on September 3, 2016, was not a naturally occurring earthquake, or an act of God. Instead, the Defendants' pollution of the environment caused it, and the other earthquakes that followed.

34. In the area around Pawnee, there were at least 41 shocks involving magnitude-2.5+ earthquakes before the end of September, 2016.

35. These quakes ranged in magnitude from 2.5m to 3.6, and have all been identified by USGS and shown in the following table:

TIME	MAG	PLACE
2016-09-26T09:09:05.500Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-23T08:28:17.800Z	3	12km NW of Pawnee, Oklahoma
2016-09-18T21:30:52.300Z	2.7	5km N of Pawnee, Oklahoma
2016-09-16T23:02:23.400Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-16T22:28:50.700Z	2.7	10km NW of Pawnee, Oklahoma
2016-09-12T21:39:14.500Z	3	14km NW of Pawnee, Oklahoma
2016-09-12T09:57:28.900Z	2.6	8km NNW of Pawnee, Oklahoma
2016-09-12T05:54:12.700Z	3	8km NNW of Pawnee, Oklahoma
2016-09-11T04:57:16.300Z	2.9	12km NW of Pawnee, Oklahoma
2016-09-10T17:26:45.800Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-09T20:28:01.100Z	2.6	10km NW of Pawnee, Oklahoma
2016-09-08T01:54:16.100Z	2.5	11km NW of Pawnee, Oklahoma
2016-09-07T11:17:39.300Z	2.6	11km NW of Pawnee, Oklahoma
2016-09-07T03:11:55.100Z	2.7	13km NW of Pawnee, Oklahoma
2016-09-04T18:08:11.600Z	2.7	10km NNW of Pawnee, Oklahoma
2016-09-04T16:37:08.100Z	2.8	11km NW of Pawnee, Oklahoma
2016-09-04T12:56:04.900Z	3	11km NW of Pawnee, Oklahoma
2016-09-04T12:16:46.800Z	2.9	12km NW of Pawnee, Oklahoma
2016-09-04T08:48:26.500Z	2.5	13km NW of Pawnee, Oklahoma
2016-09-04T05:44:34.400Z	2.5	9km NNW of Pawnee, Oklahoma
2016-09-04T03:15:56.400Z	3.1	11km NW of Pawnee, Oklahoma
2016-09-03T23:56:36.600Z	3	9km NNW of Pawnee, Oklahoma
2016-09-03T23:17:26.500Z	2.6	7km N of Pawnee, Oklahoma
2016-09-03T18:07:04.400Z	2.5	8km NNW of Pawnee, Oklahoma
2016-09-03T15:31:40.900Z	3.4	11km NW of Pawnee, Oklahoma
2016-09-03T15:25:00.500Z	2.9	9km NNW of Pawnee, Oklahoma
2016-09-03T14:56:32.000Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T14:47:04.200Z	3.3	9km NNW of Pawnee, Oklahoma
2016-09-03T14:35:30.800Z	2.6	13km NW of Pawnee, Oklahoma
2016-09-03T14:07:16.900Z	2.5	9km NW of Pawnee, Oklahoma
2016-09-03T14:05:49.200Z	2.6	9km NW of Pawnee, Oklahoma
2016-09-03T13:49:37.500Z	2.5	9km NW of Pawnee, Oklahoma
2016-09-03T13:06:06.700Z	2.6	13km NW of Pawnee, Oklahoma
2016-09-03T12:58:37.800Z	3.6	13km NW of Pawnee, Oklahoma
2016-09-03T12:57:36.200Z	2.6	12km NW of Pawnee, Oklahoma
2016-09-03T12:39:48.800Z	2.7	11km NW of Pawnee, Oklahoma
2016-09-03T12:36:18.000Z	2.5	11km NW of Pawnee, Oklahoma
2016-09-03T12:32:02.300Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T12:21:25.200Z	2.7	10km NNW of Pawnee, Oklahoma
2016-09-03T12:18:54.000Z	2.6	9km NNW of Pawnee, Oklahoma
2016-09-03T12:16:22.200Z	3.3	3 9km NNW of Pawnee, Oklahoma

36. Defendants' pollution of the environment around Pawnee, through their disposal of fracking wastewater with injection wells, caused the 5.8m earthquake on September 3rd and all of the other seismicity shown in the table above.

37. Moreover, the quakes around Pawnee continued into October and November, 2016. In fact, there were eleven more earthquakes, and another substantial earthquake of 4.5m shook the areas around Pawnee on November 2, 2016.

38. The following table shows the earthquakes near Pawnee in October and November, 2016, including the 4.5m earthquake:

T I M E	M A G	P L A C E
2016-11-14T14:41:50.710Z	3.4	15km W of Cleveland, Oklahoma
2016-11-05T15:40:31.330Z	2.9	2km E of Pawnee, Oklahoma
2016-11-05T09:39:43.990Z	3.7	13km ESE of Pawnee, Oklahoma
2016-11-02T15:10:43.700Z	3.1	12km ESE of Pawnee, Oklahoma
2016-11-02T08:57:02.590Z	2.8	12km ESE of Pawnee, Oklahoma
2016-11-02T04:26:54.200Z	4.5	14km ESE of Pawnee, Oklahoma
2016-10-29T06:06:02.580Z	3.3	9km NW of Pawnee, Oklahoma
2016-10-21T16:50:22.000Z	2.6	12km NW of Pawnee, Oklahoma
2016-10-19T12:04:51.630Z	2.7	11km NW of Pawnee, Oklahoma
2016-10-09T12:23:05.100Z	3.7	11km NW of Pawnee, Oklahoma
2016-10-01T10:58:31.300Z	2.9	8km NNW of Pawnee, Oklahoma

39. All of these earthquakes were also caused by Defendants' pollution of the environment around Pawnee, through their disposal of fracking wastewater with injection wells into the Arbuckle Formation.

40. Eagle Road and Enervest operated five disposal wells in the area that polluted the Arbuckle with fracking waste. The five disposal wells, known as the Carter, George, Norman, Ripley SWD, and Will, wells, dumped a cumulative volume of more than 700 million gallons of wastewater over the past 12 years into the Arbuckle, and such pollution was a proximate cause of the magnitude-5.8 earthquake near Pawnee on September 3, 2016, and the other seismicity at issue in this pleading.

41. Territory operated seven disposal wells in the area that polluted the Arbuckle with fracking waste. The disposal wells, known as Endicott "D", Hegco Brett, Nemaha, Oldham, Prucha, Triangle, and TrueBlood, dumped a cumulative volume of more than 3.7 billion gallons of wastewater over the past 12 years into the Arbuckle, and such pollution was a proximate cause of the magnitude-5.8 earthquake near Pawnee on September 3, 2016, and the other seismicity at issue in this pleading.

42. Petro Warrior operated two disposal wells in the area that polluted the Arbuckle with fracking waste. The disposal wells, known as Scroggins (well number 1 SWD) and Wildhorse SWDW, dumped a cumulative volume of more than 505 million gallons of wastewater over the past 12 years into the Arbuckle, and such pollution was a proximate cause of the magnitude-5.8 earthquake near Pawnee on September 3, 2016, and the other seismicity at issue in this pleading.

43. Cummings operated two disposal wells in the area that polluted the Arbuckle with fracking waste. The disposal wells, known as Pawco and Rogers, dumped a cumulative volume of more than 505 million gallons of wastewater over the past 12 years into the Arbuckle, and such pollution was a proximate cause of the magnitude-5.8 earthquake near Pawnee on September 3, 2016, and the other seismicity at issue in this pleading.

44. Petroquest and Trinity operated four disposal wells in the area that polluted the Arbuckle with fracking waste. The disposal wells, known as Leforce, Scroggins (well number 1 SWD), Stricker, and Trigg (Donahoe #1), dumped a cumulative volume of more than 297 million gallons of wastewater over the past 12 years into the Arbuckle, and such pollution was a proximate cause of the magnitude-5.8 earthquake near Pawnee on September 3, 2016, and the other seismicity at issue in this pleading.

CLASS ALLEGATIONS

45. Plaintiff realleges each of the preceding paragraphs, and by this reference incorporates each such paragraph as though set forth here in full.

46. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to 12 O.S. § 2023.

47. The Class that Plaintiff seeks to represent (the “Class”) is defined as follows:

- a) Citizens of Oklahoma;
- b) owning or having an ownership interest in a residential or business property within the borders of Oklahoma (hereafter, the “Class Area”);
- c) during the dates of seismic activity between September 3, 2016 to November 30, 2016 (the “Class Period”);
- d) which suffered earthquake damages to such properties from the earthquakes with epicenters within a radius of 30 miles of Pawnee, Oklahoma during the Class Period;
- e) excluded from the Class are all Class member properties on exclusive federal and/or tribal or Indian land, or lands subject to federal oversight in any way; and,

f) excluded from the Class are:

- i. defendants and their officers and directors, employees, and/or agents;
- ii. any person or entity having an active lawsuit alleging similar induced seismicity claims and damages from the same earthquakes at issue in this action;
- iii. the judge presiding over this action and his/her immediate family members; and,
- iv. any person or entity that timely “opts out” of the Class in accordance with the orders of the Court.

48. Plaintiff reserves the right to amend the definition of the Class if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

49. This action is brought and properly may be maintained as a class action pursuant to 12 O.S. § 2023, and satisfies the requirements of its provisions.

Numerosity

50. Media outlets have reported hundreds of homes and businesses were damaged just by the 5.8m earthquake striking the area on September 3, 2016, but potential Class members include any person having an ownership interest in a home or business located within the borders of Oklahoma. Thus, hundreds of thousands of Oklahomans are members of the Class.

51. As such, the Class is sufficiently numerous and has members scattered across the State of Oklahoma so as to make joinder of all members of the Class in a single action impracticable, and therefore, the resolution of their claims through the procedure of a class action will be to the benefit of the parties and the Court.

Commonality

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52. Plaintiff's claims raise issues of fact or law which are common to the members of the putative Class. These common questions include, but are not limited to:

- a. Whether Defendants owed a duty to the Class to use ordinary care and not to operate or maintain their wastewater disposal wells in such a way to cause or contribute to seismic activity.
- b. Whether Defendants' wastewater disposal operations proximately caused the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016 through November 30, 2016.
- c. Whether Defendants' wastewater disposal operations proximately caused the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016 through November 30, 2016, and constituted a private nuisance.
- d. Whether the Class have property rights and are privileged regarding the use and enjoyment of their homes and businesses, and land, and whether Defendants' wastewater disposal operations proximately caused the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016 through November 30, 2016, and interfered with those rights and privileges.
- e. Whether Defendants' wastewater disposal operations proximately caused the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016 through November 30, 2016, and constituted ultrahazardous activities warranting strict liability.
- f. Whether Defendants' wastewater disposal operations proximately caused the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016

through November 30, 2016, and constituted a trespass on Class members' properties.

- g. Whether Defendants' actions in causing the earthquakes near Pawnee, Oklahoma occurring on or about September 3, 2016 through November 30, 2016, were performed knowingly, gross negligently, or in wanton or reckless disregard for public or private safety warranting the imposition of punitive damages.
- h. What is the proper amount of punitive damages based upon the societal harm caused by Defendants' actions, and in order to deter Defendants and others from engaging in similar conduct in the future.

Typicality

53. Plaintiff's claims are typical of the claims of the other members of the Class he seeks to represent because at bottom, all of the claims center upon whether Defendants' wastewater injection operations have caused the seismicity within the Class Area during the Class Period.

Adequacy

54. Plaintiff is interested in the outcome of this litigation and understands the importance of adequately representing the Class.

55. Plaintiff will fairly and adequately protect the interests of the Class sought to be certified.

56. Plaintiff is an adequate representative of the Class because he has no interests that are adverse to the interests of the members of the Class. Plaintiff is committed to the vigorous prosecution of this action and, to that end, Plaintiff has retained counsel competent and

experienced in handling class-action and complex tort litigation, which are also qualified to adequately represent the Class.

Predominance

57. Questions of law or fact common to the members of the Class predominate over questions affecting only individual members. *See Gentry v. Cotton Electric Cooperative, Inc.*, 2011 OK CIV APP 24, and *Cooper v. New Dominion*, Lincoln County District Court, CJ-2015-24, Journal Entry of July 13, 2018 (Judge Walkley by Supreme Court appointment).

Superiority

58. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. The predicate issues relate to Defendants' wastewater injection operations, actions and activities, and whether these activities pose a nuisance, are an ultra-hazardous activity, were negligently performed, or caused trespasses. The focus of this action will be on the common and uniform conduct of Defendants in conducting their wastewater injection operations during the Class Period.

59. Absent class action relief, the putative Class Members would be forced to prosecute hundreds of similar claims in different district court venues. Such an event would cause tremendous amounts of waste of judicial resources, but the prosecution of these claims as a class action will promote judicial economy.

60. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the Defendants; and

- b. adjudications with respect to individual members of the Class, which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

61. Plaintiff is not aware of any difficulty which will be encountered in the management of this litigation which should preclude its maintenance as a class action. In fact, class certification is the superior method of adjudicating these claims. *See Gentry v. Cotton Electric Cooperative, Inc.*, 2011 OK CIV APP 24, and *Cooper v. New Dominion, Lincoln County District Court*, CJ-2015-24, Journal Entry of July 13, 2018 (Judge Walkley by Supreme Court appointment).

CAUSES OF ACTION

COUNT I

ABSOLUTE LIABILITY

62. Plaintiff and the Class hereby re-allege and incorporate the foregoing Paragraphs as if fully set forth herein, word-for-word.

63. Defendants' actions described above are ultrahazardous activities that necessarily involve a risk of serious harm to a person that cannot be eliminated by the exercise of the utmost care and is not a matter of common usage.

64. Defendants conducted wastewater disposal operations in locations near Pawnee. These operations contributed to the 5.8m earthquake near Pawnee on September 3, 2016, as well as the other seismicity identified in this petition.

65. Since 2015, it has been admitted by Oklahoma's government that all of Oklahoma's seismicity since 2009 is due to wastewater injection operations into Oklahoma's

Arbuckle Formation, which resides very deep below Oklahoma's surface. Indeed, in early-August 2015, more than a year before the 5.8m Labor Day weekend quake near Pawnee, Governor Mary Fallin, the Oklahoma Secretary of Energy and Environment Michael Teague, and the Governor's Coordinating Counsel on Seismic Activity acknowledged a "direct correlation" between Oklahoma's seismicity and wastewater disposal.

66. Eagle Road's, Cummings', Territory's, Enervest's, Petro Warrior's, Petroquest's and Trinity's millions of gallons of wastewater disposal operations into the Arbuckle under Pawnee created a high degree of risk of some harm to persons, commercial buildings, homes, and/or the chattels of others in the areas within and surrounding Pawnee.

- a. It is known that earthquakes can cause substantial injuries to people, and in fact prior to the 5.8m earthquake near Pawnee, Sandra Ladra of Prague, Oklahoma, sued two oil and gas companies for substantial personal injuries to her knees when rocks on her fireplace fell during a 5.7m wastewater disposal induced earthquake near Prague hit in November of 2011. With respect to Oklahoma's largest earthquake, the 5.8m quake at issue here and near Pawnee, Anna Mercer sustained substantial injuries during it and is permanently disabled.
- b. Moreover, after the Governor, the Secretary of Energy and Environment, and the Seismicity Council acknowledged the "direct correlation" between Oklahoma's seismicity and fracking wastewater disposal, several schools in Oklahoma began to educate their students on earthquake preparedness, and also implemented safety drills – further support that wastewater induced seismicity involves a substantial risk of harm.

- c. Oklahoma's seismicity, all of which since 2009 has been determined to be induced by wastewater injection, has caused millions of dollars in damages to properties around the state. High profile cases involve over \$2 million in damages to St. Gregory's iconic building Benedictine Hall, and the Lions Club's building in Cushing. The Prague induced quakes of November 2011 toppled one of St. Gregory's Benedictine Hall's four towers. And the Cushing induced earthquakes of November 2016 resulted in the total destruction of the Lions Club's century-old building in Cushing.
- d. In Pawnee, for example, Defendants' induced earthquakes have totaled the home of Johnny and Janice Bryant, and have caused more than \$400,000.00 in damages to government buildings of the Pawnee Nation.
- e. Thus, there is an obvious high degree of risk of some damage to persons, homes, and other properties due to wastewater disposal operations that create earthquakes, and the likelihood that harm will result from induced seismicity is great.

67. There is an inability to eliminate the risks detailed above with the exercise of reasonable care as to the Defendants' actions of disposing of millions of gallons of wastewater in the Arbuckle and near a fault line – an induced earthquake is inevitable and is a known consequence to those that dispose of these wastes in this manner, scientifically. Even Defendants' compliance with government licensing and/or regulations does not eliminate the risk of causing seismicity and resulting harm to persons and property, and moreover, is no bar to the application of absolute liability principles under Oklahoma law.

68. Wastewater disposal operations, especially into Oklahoma's Arbuckle and near faults, are not a matter of common usage, and indeed, are analogous to activities routinely considered as ultrahazardous such as blasting, demolition operations, the use, transport, or storing of hazardous chemicals, and the controlled burning of fields. All of these activities involve inherent risks, and are certainly not "normal to the average man."

69. It is inappropriate to dispose of millions of gallons of fracking wastewater into Oklahoma's Arbuckle Formation, especially in areas where there are fault lines nearby. Such activity unavoidably involves unreasonable risk.

70. While fracking wastewater disposal is a necessary part of oil and gas exploration and is of a value to the community, such is outweighed by its dangerous attributes – especially when such operations involve such huge volumes of wastewater, disposed of deep into the Arbuckle Formation, and near fault lines, and that result in devastating seismicity.

71. Indeed, two geophysicists have opined that wastewater disposal into Oklahoma's Arbuckle Formation is an ultrahazardous activity. The first geophysicist to render such an opinion was the State of Oklahoma's seismologist during the years of all of this induced seismicity, Dr. Austin Holland. In the fall of 2017, Dr. Holland opined, under oath in deposition testimony in another induced seismicity class action case related to the Prague earthquakes of November 2011, that wastewater disposal into the Arbuckle Formation was an ultrahazardous act. Likewise, Dr. Wayne Pennington, also a geophysicist, has the same opinion that disposal of fracking waste into the Arbuckle constitutes an ultrahazardous activity. His opinion has been offered in his deposition taken by Eagle Road and Cummings Oil in May of 2018.

72. As a direct and proximate result of Defendants' ultrahazardous activities, Plaintiff and the Class members have suffered damages, to which Defendants are strictly liable.

73. As a direct and proximate result of Defendants' ultrahazardous activities, Plaintiff and Class members have suffered damages to their homes in the form of physical damages and market losses, and also damages to their personal property.

74. As a direct and proximate result of Defendants' ultrahazardous activities, Plaintiff and Class members have suffered and continue to suffer emotional harm.

COUNT II

NEGLIGENCE

75. Plaintiff and the Class hereby re-allege and incorporate the foregoing Paragraphs, as if fully set forth herein, word-for-word.

76. The Defendants owed a duty to Plaintiff and the Class to use ordinary care and not to operate or maintain their injection wells in such a way as to cause or contribute to seismic activity. Defendants, experienced in these operations, were well aware of the connection between injection wells and seismic activity, and acted in disregard of these facts.

77. As a direct and proximate result of these facts, omissions, and fault of the Defendants, the Plaintiff and the Class have suffered injuries reasonably foreseeable to the Defendants in the form of property damages to their homes (in the form of physical damages and market losses), damages to their personal property, and emotional harm that is continuing.

COUNT III

PRIVATE NUISANCE

78. Plaintiff and the Class re-allege and incorporate the foregoing Paragraphs, as if fully set forth herein, word-for-word.

79. Defendants' conduct constitutes a private nuisance.

80. Plaintiff and the Class have property rights and are privileged regarding the use and enjoyment of their home, land and businesses. Defendants' actions and operations as described above have unlawfully and unreasonably interfered with those rights and privileges.

81. Plaintiff and the Class have suffered harm and damages because of Defendants' creation of a nuisance, including:

- a. Damages to their personal and real property;
- b. interference with their use and enjoyment of property;
- c. annoyance, discomfort and inconvenience on their property caused by Defendants' nuisance;
- d. loss of peace of mind and emotional distress; and
- e. diminution of property value.

COUNT IV

TRESPASS

65. Plaintiff and the Class re-allege and incorporate the foregoing Paragraphs, as if set forth herein, word-for-word.

66. Plaintiff and the Class are and have been lawfully entitled to possession of their property.

67. Defendants, without the permission or consent of Plaintiff and the Class and without legal right, intentionally engaged in activities that resulted in concussions or vibrations entering Plaintiff's and the Class members' property. Such unauthorized invasion of Plaintiff's and the Class members' property constitutes a trespass.

68. Because of Defendants' trespass, Plaintiffs and the Class have suffered damages, including:

- a. Damages to personal and real property;
- b. interference with their use and enjoyment of property;
- c. annoyance, discomfort and inconvenience on their property caused by Defendants' trespass;
- d. loss of peace of mind and emotional distress; and
- e. diminution of real estate property value.

PUNITIVE DAMAGES

69. The Defendants' actions, in knowingly causing seismic activity as a result of their injection well operations, constitute wanton or reckless disregard for public or private safety, and are thus subject to a claim for punitive damages, for which Plaintiff and the Class seek in an amount sufficient to punish the Defendants and to deter them from such conduct in the future.

DEMAND FOR JURY TRIAL

70. Plaintiff and the Class respectfully demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class respectfully request the following relief:

- i. A judgment against Defendants awarding real and personal property damages (for physical damage and market loss), and emotional harm caused by and continuing by the conduct of the Defendants in an amount to be proven at trial;
- ii. punitive damages;

- iii. pre-judgment and post-judgment interest; and,
- iv. all other relief to which Plaintiff and the Class are entitled or that the Court deems just and proper.

DATED: August 27, 2018

Respectfully Submitted,



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