

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

APR 22 2011

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

JAMES W. McDOERMACK, CLERK  
DEPUTY CLERK

**JACOB SHEATSLEY, on behalf of  
himself and all others similarly  
situated**

**PLAINTIFF**

**v.**

**Case No.**

*4:11CV00353-JLH*

This case assigned to District Judge *Palmer*

and to Magistrate Judge *Kearney*

**CHESAPEAKE OPERATING, INC. and  
CLARITA OPERATING, LLC**

**DEFENDANTS**

**NOTICE OF REMOVAL**

To the honorable judges of the United States District Court for the Eastern District of Arkansas in the Western Division, Defendants Clarita Operating, LLC ("Clarita Operating") and Chesapeake Operating, Inc. ("Chesapeake Operating") (collectively the "Removing Parties" or "Defendants"), hereby remove this action from the Circuit Court of Perry County, Arkansas, 16th Division, to this Court pursuant to 28 U.S.C. §§ 1332(a) and 1446, on the following grounds:

**The Complaint**

1. On March 23, 2011, a class action complaint was filed, commencing an action in the Circuit Court of Perry County, Arkansas, styled *Jacob Sheatsley, on behalf of himself and all others similarly situated vs. Chesapeake Operating, Inc. and Clarita Operating, LLC*, Case No. CV-2011-28. Pursuant to 28 U.S.C. § 1446(a), a copy of the Class Action Complaint is attached hereto as Exhibit 1 ("Complaint").

2. The first date upon which Defendant Clarita Operating received a copy of the Complaint was March 25, 2011, when Clarita Operating was served

with the Complaint and a summons from the State Court. A copy of the summons is attached hereto as Exhibit 2.

3. The first date upon which Defendant Chesapeake Operating received a copy of the Complaint was March 31, 2011, when Chesapeake Operating was served with the Complaint and a summons from the State Court. A copy of the summons is attached hereto as Exhibit 3. At this time, Chesapeake Operating has not filed an answer.

4. The Complaint alleges five claims against Clarita Operating and Chesapeake Operating: public nuisance; private nuisance; absolute liability; negligence; and trespass.

5. Plaintiff brings this action as a purported class action, seeking to represent himself and the following class:

All residents of the Counties Conway, Van Buren, Faulkner, Cleburne, Perry, and White Counties within the period of time which Defendants have operated the Chesapeake Well and the Clarit[[a Well. Excluded from the Class are Defendants' directors, officers, employees and agents, as well as the judicial officer presiding over this case and his immediate family members.

Complaint, ¶ 24. Plaintiff does not allege a class size, except alleging that 2010 census records "show that Faulkner County alone has a total population of over 100,000 people and the United States census showed that there were 31,882 households and 22,444 families residing in Faulkner County." Complaint, ¶ 25.

6. The Complaint's prayer for relief seeks damages jointly and severally against the Defendants "in an amount exceeding the minimum amount required for federal court in diversity of citizenship cases," punitive

1

damages, litigation costs, attorney fees, prejudgment interest, “appropriate injunctive relief restraining Defendants from engaging in further conduct” and to “remediate the damages it has already caused . . . .”

### **Jurisdiction**

7. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a):

The district courts shall have original jurisdiction of all civil actions in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between –

(A) citizens of different States;

. . . .

28 U.S.C. § 1332(a)(1). Pursuant to Plaintiff’s allegations these requirements are satisfied because, as discussed further below, the matter in controversy in this civil action exceeds the sum or value of \$75,000 (considering all damages and equitable relief sought, exclusive of interest and costs), and there is diversity within the meaning of 28 U.S.C. § 1332(a)(1).

### **Parties and Diversity**

8. This action involves diversity of citizenship in that, at the time of commencement of this action in Arkansas and at the time of removal:

a. Plaintiff Jacob Sheatsley was and still is a citizen of Perry County, State of Arkansas (see Complaint at ¶ 12);

b. Chesapeake Operating was and still is a citizen of the State of Oklahoma, as an Oklahoma corporation with its principal place of business in Oklahoma;

c. Clarita Operating was and still is a citizen of the States of Oklahoma and Texas and a citizen of Canada, as an Arkansas limited liability company (LLC). As an LLC, Clarita Operating's citizenship is determined by that of its members, not its state of organization. *See One Point Solutions, LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007). At the time of commencement of this action and time of removal, its members were and still are:

i. True Energy Services, LLC, an Oklahoma LLC whose members at time of commencement of this action and time of removal were and still are:

1. Kevin Cantrell, a citizen of Oklahoma;
2. Michael Feezel, a citizen of Oklahoma;
3. Michael Thompson, a citizen of Oklahoma; and
4. Robert Feezel, a citizen of Oklahoma;

ii. Liddell Clarita Operating, LLC, an Oklahoma LLC whose sole member at time of commencement of this action and time of removal was and still is:

1. Mike Liddell, a citizen of Oklahoma;

iii. Michael Cross, a citizen of Oklahoma;

iv. Tomahawk Services, LLC, an Oklahoma LLC whose sole member at time of commencement of this action and time of removal was and still is:

1. Reese Travis, a citizen of Oklahoma;

v. Scipio Investment I, LLC, an Oklahoma LLC whose sole member at time of commencement of this action and time of removal was and still is:

1. Cale Coulter, a citizen of Oklahoma;

vi. Bob Hartsock, a citizen of Oklahoma;

vii. Judi Hartsock, a citizen of Oklahoma;

viii. Jake Hartsock, a citizen of Oklahoma;

ix. Kourtney Hartsock, a citizen of Oklahoma;

x. Brian Hartsock, a citizen of Oklahoma;

xi. Sarah Hartsock, a citizen of Oklahoma;

xii. Blake Hartsock, a citizen of Oklahoma;

xiii. Marci Hartsock, a citizen of Oklahoma;

xiv. Mark Weems, a citizen of Oklahoma who was and is d/b/a Live Oak Energy, LLC which was at the time of commencement of this action and time of removal a cancelled LLC whose sole member was Mark Weems;

xv. Petra Solidus, LLC, a Texas LLC whose sole member at the time of commencement of this action and time of removal was and is:

1. Larry Keller, a citizen of Texas;

xvi. Chicota Energy, LLC, a Texas LLC whose sole member at the time of commencement of this action and time of removal was and is:

1. John Chadwick, a citizen of Texas
- xvii. KMR Energy Corporation, a Canada corporation whose principal place of business was and is British Columbia, and has no business in the United States;
- xviii. David House, a citizen of Oklahoma;
- xix. Victor W. Pryor, Jr., a citizen of Oklahoma; and
- xx. Pogue Family Revocable Trust, an Oklahoma trust whose:
  1. Trustees at time of commencement of this action and time of removal are Randal and Shirley Pogue and are citizens of Oklahoma;
  2. Grantor at time of commencement of this action and time of removal are Randal and Shirley Pogue and are citizens of Oklahoma;
  3. Beneficiaries at time of commencement of this action and time of removal were:
    - a. Todd Kemp Pogue, a citizen of Iowa;
    - b. Rene Bailey, a citizen of Texas;
    - c. Dawna Sherrel, a citizen of Oklahoma;
    - d. Rina Elmburg, a citizen of Oklahoma;
    - e. Harold Kent Pogue, a citizen of Oklahoma;
    - and
    - f. Bodie Marion, a citizen of Oklahoma.

9. Jacob Sheatsley does not share the same state citizenship as the defendants, Chesapeake Operating and Clarita Operating. Therefore, the diversity requirements of 28 U.S.C. § 1332(a)(1) are met. .

**The Amount in Controversy**

10. In his Complaint, Plaintiff seeks an unspecified amount for general and special compensatory damages, stating only “an amount exceeding the minimum amount required for federal court in diversity of citizenship cases.” Complaint, ¶¶ 24, Prayer for Relief.

11. For every resident of six Arkansas counties, which Plaintiff alleges include more than 100,000 in just one county, the Complaint seeks compensation for earthquake-related damage to the property of every resident, as well as “annoyance, discomfort, and inconvenience,” lost peace of mind, business interruptions, and similar injuries.

12. Plaintiff further seeks punitive damages.

13. Plaintiff further seeks injunctive relief that stops Defendants from operating their injection wells and compels them to “remediate the damages it has already caused in favor of Plaintiff and the Class.” Complaint, Prayer for Relief.

14. The Plaintiff controls the amount in controversy. *Erwin v. Allied Van Lines, Inc.* 239 F.Supp 144 (W.D. Ark. 1965) citing 1 Moore’s Federal Practice, 2d Ed., p. 827, Sec. 0.91(a). In addition, in this class action, the Court may exercise subject matter jurisdiction over this matter as long as one named plaintiff satisfies the amount in controversy requirement. *See, e.g.,*

*Toller v. Sagamore Ins. Co.*, 558 F. Supp. 2d 924 (E.D. Ark. 2008) (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) and discussing supplemental jurisdiction pursuant to 28 U.S.C. § 1367). In this case, the Plaintiff has alleged damage to personal and real property and economic loss from business interruption. See Complaint, Count VI Negligence ¶¶ 51(a) and (d). Additionally Plaintiff seeks punitive damages (See Complaint, ¶¶ 54) and injunctive relief to include “affirmative steps to remediate the damages it has already caused”. (See Complaint, Prayer for Relief (iv). In this case, Plaintiff specifically seeks “an amount exceeding the minimum amount required for federal court in diversity of citizenship cases.” Complaint, ¶¶ 24, Prayer for Relief. That prayer, in excess of the federal diversity amount of \$75,000, should determine the amount in controversy for removal.

15. The amount in controversy between Defendants and Plaintiff, exclusive of interest and costs, exceeds \$75,000. See Complaint, Prayer for Relief.

16. Because the Defendants are not citizens or residents of the State of Arkansas, either when this action was commenced or at the time of removal, removal to this Court is proper pursuant to 28 U.S.C. § 1441(a).

#### **Venue and Division Assignment**

17. Because the Complaint was filed and is currently pending in the Circuit Court of Perry County, Arkansas, this District is the proper venue for this action upon removal pursuant to 28 U.S.C. §§ 1441(a) and 1446(a). The



Western Division is the proper division assignment for this action upon removal.

**Removal Procedure**

18. This Notice is timely filed pursuant to 28 U.S.C. §§ 1446(b).

19. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders are attached hereto. Copies of the Complaint, Summonses, Civil Cover Sheet, and Answer of Clarita Operating are attached hereto as Exhibits 1, 2, 3, 4, and 5, respectively. No other pleadings have yet been filed in the Circuit Court.

20. Defendants will serve written notice of the removal of this action upon all adverse parties promptly and will file such notice with the Clerk for the Circuit Court of Perry County, as required by 28 U.S.C. § 1446(d).

**Non-Waiver of Defenses**

21. Defendants expressly reserve all of their defenses and deny any liability to the Plaintiff, any resident, or any member of the potential class. Removing this action is not a concession that Plaintiff or the potential class has standing to assert any of the claims alleged, has adequately pled any claim, has prayed for any proper damages, or that a class action is a proper mechanism to litigate these claims.

WHEREFORE, Defendant Clarita Operating, LLC and Defendant Chesapeake Operating Inc. pray that this action be removed from the Circuit Court of Perry County, Arkansas, to the United States District Court for the

Eastern District of Arkansas, Western Division, and for all other just and proper relief to which it may be entitled.

Respectfully submitted,

Attorneys for Separate Defendant  
Clarita Operating, LLC

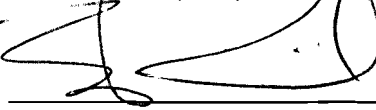
PERKINS & TROTTER, P.L.L.C.

P. O. Box 251618

Little Rock, AR 72225-1618

Phone: (501) 603-9000

Facsimile: (501) 603-0556



JOHN F. PEISERICH, #2002009

And

Darrell W. Downs, #2010283

TAYLOR, BURRAGE, FOSTER, MALLETT,

DOWNS, RAMSEY & RUSSELL, P.C.

P.O. Box 309

Claremore, OK 74018

AND

Attorneys for Separate Defendant  
Chesapeake Operating, Inc.

MITCHELL, WILLIAMS, SELIG, GATES &  
WOODYARD, P.L.L.C.

425 W. Capitol Ave., Suite 1800

Little Rock, AR 72201

Phone: (501) 688-8800

Facsimile: (501) 688-8807



Lyn P. Pruitt, #84121

Jeffrey L. Spillyards, #2004159

**CERTIFICATE OF SERVICE**

I, John F. Peiserich, do hereby certify that a true and correct copy of the foregoing Notice of Removal was sent by first-class U.S. Mail, postage prepaid, on this 22<sup>th</sup> day of April 2011, to the following:

**EMERSON POYNTER, LLP**

Scott E. Poynter  
Christopher D. Jennings  
William T. Crowder  
500 President Clinton Ave.  
Suite 305  
Little Rock, AR 72201

And  
John G. Emerson  
830 Apollo Lane  
Houston, TX 77058

A handwritten signature in black ink, appearing to read 'JL R...'. The signature is written in a cursive, stylized font.

---

JOHN F. PEISERICH

IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS  
16 DIVISION

JACOB SHEATSLEY, on behalf of himself and  
all others similarly situated

PLAINTIFF

vs.

CV 2011-28

CHESAPEAKE OPERATING, INC., and  
CLARITA OPERATING, LLC

DEFENDANTS

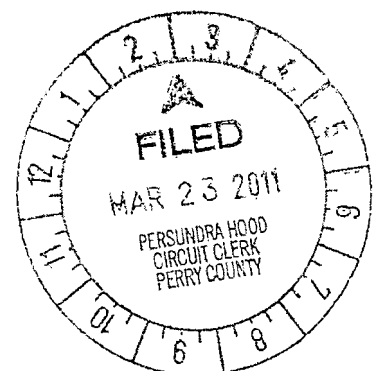
CLASS ACTION COMPLAINT

Comes Now the Plaintiff, Jacob Sheatsley ("Mr. Sheatsley" or Plaintiff"), individually and on behalf of similarly situated persons, and for his complaint against Chesapeake Operating, Inc. and Clarita Operating, LLC (sometimes collectively referred to as "Defendants") and states:

**NATURE OF THE ACTION**

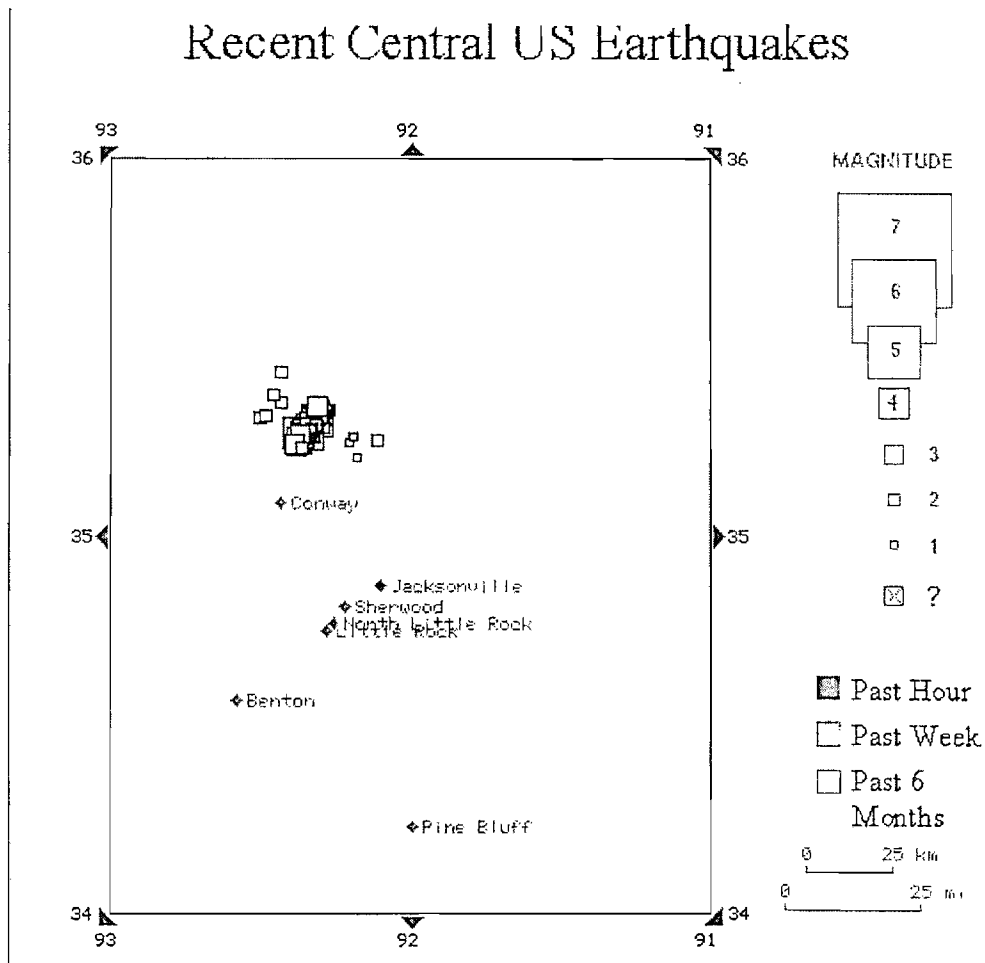
1. This is a class action complaint brought on behalf of the Plaintiff and other similarly situated residents of central Arkansas that have experienced the recent earthquakes in Arkansas, and which are related to and caused by the oil and gas drilling operations conducted by Defendants.

2. Recently, Central Arkansas has seen an unprecedented increase in seismic activity, occurring in the vicinity of Defendants' injection wells, near Greenbrier and Guy, Arkansas. Indeed, according to the Arkansas Geological Survey ("AGS"), there have been 599 "events" in Guy, Arkansas, alone since September 10, 2010.



DEFENDANT'S  
EXHIBIT

1



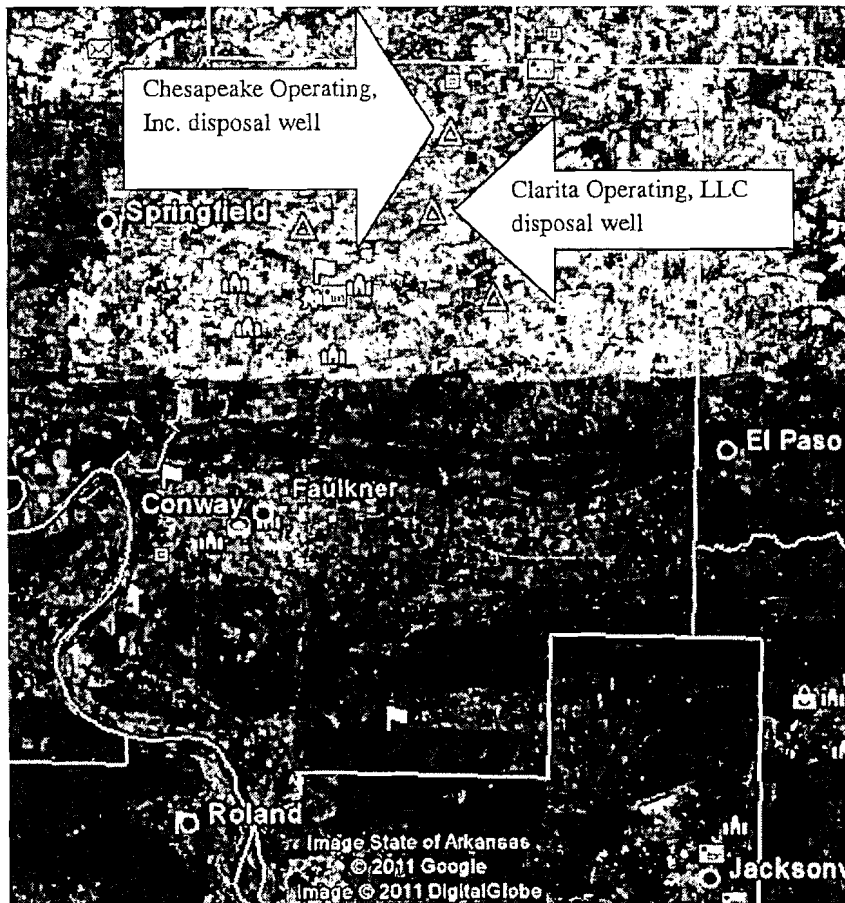
3. On Sunday, February 28, 2011, Arkansas had the largest earthquake in 35 years. Centered just north of Greenbrier, residents reported “waking up last night to the sound of my house shaking” and some residents have reported seeing gradual damage to their homes and cracks in their driveways and walls.

4. The February 28, 2011 earthquake occurred just after 11:00 pm CST, centered near Greenbrier and Guy, Arkansas, and measured at 4.7 in magnitude. On that same day, the United States Geological Survey (“USGS”) recorded as many as 29 earthquakes around Greenbrier and Guy, Arkansas, and ranged in magnitude from 1.7 to 4.7 in magnitude.

5. A major source of the natural gas in Arkansas comes from places in Faulkner County, and its surrounding counties as well, from what is called the Fayetteville Shale.

6. The process of extracting natural gas from the Fayetteville Shale involves hydraulic fracturing or “fracking.” This process requires drillers to inject pressurized water, sand and other chemicals to create fractures deep into the ground.

7. The fracking process results in water that has to be disposed of, primarily because it is contaminated with salt and other materials. Although some of this water is recycled and reused, some water is shipped by trucks to injection wells, where it is injected back into the earth. Defendants operate two wastewater disposal injection wells in Faulkner County, Arkansas to accomplish this end.



8. Recently, in connection with the increased seismic activity in the Central Arkansas area, the Staff of the Arkansas Oil and Gas Commission has requested a Commission Order requiring Defendants to “immediately cease all injection operations in its SRE 8-12, 1-17 SWD Well in Sec. 17-T8N-R12W, and Clarita Operating, LLC to immediately cease all injection operations in its Walyne L. Edgemon No. 1 SWD Well in Sec. 6-T7N-R12W, both in Faulkner County, through the last day of the regularly scheduled AOGC Hearing in March.” The order was entered on March 4, 2011.

9. This seismic activity is directly linked and contributed to by Defendants’ operations and injection wells, and substantially and unreasonably interferes with the Plaintiff and the Class’ use and enjoyment of their property and causes reasonable fear of the safety of the Class.

10. Defendants’ activities are also ultrahazardous and subject them to strict liability for all damages caused.

11. Furthermore, Defendants’ actions have caused the price and deductibles for earthquake insurance in the Central Arkansas area to skyrocket.

#### **PARTIES**

12. Plaintiff Jacob Sheatsley, is an Arkansas Citizen and resident of Perry County, Arkansas.

13. Defendant Chesapeake Operating, Inc., is an Oklahoma Corporation doing business in the State of Arkansas and its registered agent is The Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, AR 72201. Defendant Chesapeake Operating, Inc., operates the injection well located in SRE 8-12 1-17 SWD Well in Sec. 17-T8N-R12W in Faulkner County, Arkansas (the “Chesapeake Well”).

14. Defendant Clartia Operating, LLC, is an Arkansas Limited Liability Corporation and its registered agent is Perkins & Trotter, PLLC, John Peiserich, 101 Morgan Keegan Drive, Suite A, Little Rock, AR 72202. Defendant Clarita Operating, LLC, operates the injection well known as the Wayne L. Edgemon No. 1 SWD Well in Sec. 6-T7N-R12W in Faulkner County, Arkansas (the "Clartia Well").

#### JURISDICTION AND VENUE

15. Jurisdiction in this Circuit Court is proper, under Ark. Const. Amend. 80, § 6(A). This Court has personal jurisdiction over Defendants as they do substantial business in the State of Arkansas and operate the Chesapeake and Clarita Wells in this Court and judicial district.

16. Venue is proper in this Court as Perry County is the county in which a substantial part of the events or omissions giving rise to this claim occurred.

#### FACTUAL BACKGROUND

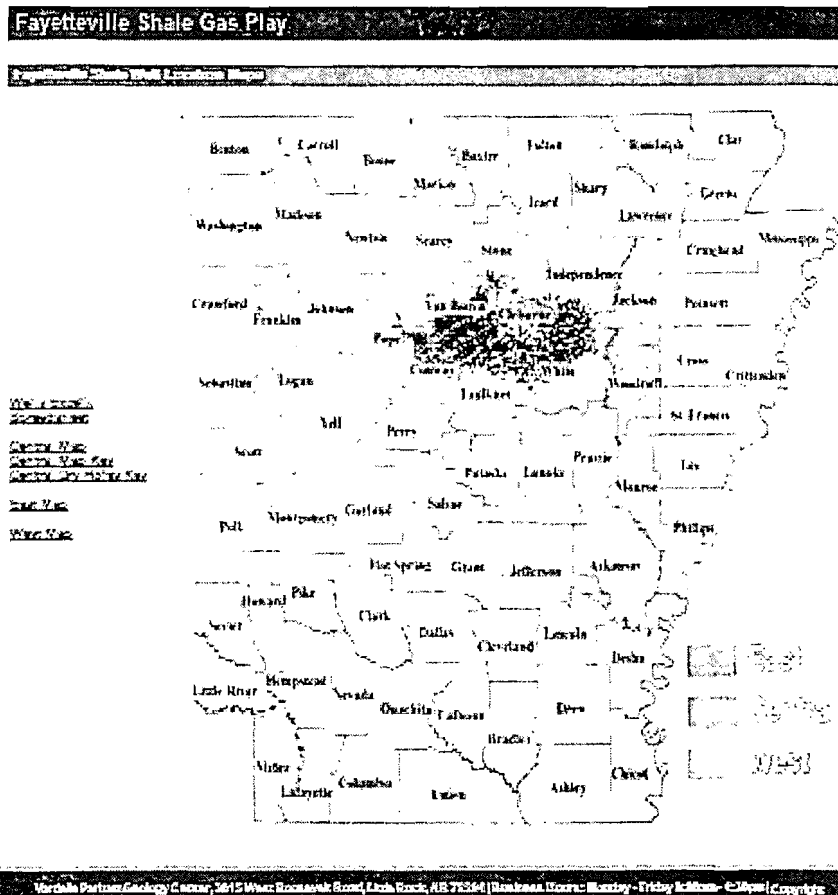
17. The Fayetteville Shale is "an unconventional gas reservoir located on the Arkansas side of the Arkhoma Basis, ranging in thickness from 50 to 325 feet and ranging in depth from 1,500 to 6,500 feet . . . it is aerially extensive and may be present across numerous counties in central and eastern Arkansas, including the counties of Cleburne, Conway, Faulkner, Independence, Johnson, St. Francis, Prairie, Van Buren, White and Woodruff." *Projecting the Economic Impact of the Fayetteville Shale Play for 2005-2008*, Sponsored by SEECO, Inc., University of Arkansas Center for Business and Economic Research (May 2006), *available online at <http://cber.uark.edu/FayettevilleShaleEconomicImpactStudy.pdf>*.

18. Beginning around 2004, because of primarily higher natural gas prices and more economically efficient oilfield service and drilling techniques, companies began to invest



“capital in leasing land and mineral rights, drilling, completion and production activities . . . and the potential for installation of major gas gathering and transportation systems.” *Id.*

19. Although the Fayetteville shale extends across the state of Arkansas, the majority of the drilling and production activities are centered in Conway, Van Buren, Faulkner, Cleburne and White Counties, Arkansas:



[http://www.geology.ar.gov/home/fayetteville\\_play.htm](http://www.geology.ar.gov/home/fayetteville_play.htm).

20. According to records available from the Arkansas Oil and Gas Commission, Chesapeake Operating, Inc., operates numerous natural gas production wells in Conway, Van Buren, Faulkner, Cleburne and White County.

21. Upon information and belief, the Chesapeake Well was completed in mid-2008 and began operations in early 2009.

22. Upon information and belief, the Clartia Well was completed in July 2008 and began operations in early 2009.

### **CLASS ALLEGATIONS**

23. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs, as if fully set forth herein, word-for-word.

24. Certification of this case is appropriate under Rule 23 of the Arkansas Rules of Civil Procedure for the following Class:

All residents of the Counties Conway, Van Buren, Faulkner, Cleburne, Perry and White Counties within the period of time which Defendants have operated the Chesapeake Well and the Claritia Well. Excluded from the Class are Defendants' directors, officers, employees and agents, as well as the judicial officer presiding over this case and his immediate family members.

#### **A. NUMEROSITY**

25. Records from the United States 2010 Census show that Faulkner county alone has a total population of over 100,000 people and the United States 2000 census showed that there were 31,882 households and 22,444 families residing in Faulkner County.

26. The members of the class are so numerous and scattered throughout the counties that joinder of all members is impracticable.

#### **B. TYPICALITY**

27. The Plaintiff's claims described herein are typical between the members of the Class and Defendants.

28. The Defendants' drilling operations have caused earthquakes, which have been a private and public nuisance, pose a significant danger, and have caused damages to Plaintiff and the Class in a similar manner.

**C. COMMONALITY**

29. 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 the following:

- (a) whether the Defendants' drilling operations caused earthquakes in central Arkansas;
- (b) whether Defendants' drilling operations amount to a nuisance;
- (c) whether Defendants' drilling operations are an ultrahazardous activity;
- (d) whether Defendants' drilling operations were negligently performed;
- (e) whether Defendants' intentionally caused a trespass;
- (f) whether Plaintiff and the Class members have suffered damages proximately caused by Defendants' operations.

30. These issues are common among all putative class members, are superior and predominate over any issues affecting individual members of the putative class.

**D. SUPERIORITY**

31. The predicate issues relate to the Defendants' drilling operations, their actions and activities, and whether such activities pose a nuisance, are an ultrahazardous activity, were negligently performed, or caused trespasses. As such, the focus of this action will be on the common and uniform conduct of the Defendants in conducting their drilling operations.

32. In the absence of class-action relief, the putative class members would be forced to prosecute hundreds of thousands of similar claims in different jurisdictions and venues around

the state of Arkansas. Such an event would cause tremendous amounts of waste, but the prosecution of these claims as a class action will promote judicial economy.

**E. ADEQUACY**

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

34. Plaintiff will fairly and adequately protect the interests of the Class sought to be certified in this case.

35. Counsel for Plaintiff and the Class are experienced in class-action and complex consumer litigation and are qualified to adequately represent the Class.

**CAUSES OF ACTION**

**COUNT I**

**PUBLIC NUISANCE**

36. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs as if fully set forth herein, word-for-word.

37. The Defendants' conduct herein constitutes a substantial and unreasonable interference with the rights common to the general public.

38. This unreasonable interference is imposed on the community at large and on a considerable diverse number of persons and entities. It arises from Defendants' drilling operations (a) without adequate precautions to prevent earthquakes; and/or (b) with the knowledge that there was a substantial risk of seismic problems in the State of Arkansas.

39. Plaintiffs and the Class have suffered harm as a result of Defendants' creation of a public nuisance.

40. Plaintiffs and the Class are also entitled to injunctive relief.

**COUNT II**

**PRIVATE NUISANCE**

41. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs as if fully set forth herein, word-for-word.

42. The Defendants' conduct herein constitutes a private nuisance.

43. Plaintiff and the Class have property rights and are privileged in respect to the use and enjoyment of their homes and land. Defendants' actions and operations as described above have unlawfully and unreasonably interfered with those rights and privileges.

44. Plaintiffs and the Class have suffered harm as a result of Defendants' creation of a public nuisance.

45. Plaintiffs and the Class are also entitled to injunctive relief.

**COUNT III**

**ABSOLUTE LIABILITY**

46. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs as if fully set forth herein, word-for-word.

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

48. As a direct and proximate result of Defendants' ultrahazardous activities, the Plaintiff and the Class have sustained damage, which are the direct and proximate result of Defendants' ultrahazardous or abnormally dangerous activities, to which Defendants are strictly liable.

**COUNT IV**

**NEGLIGENCE**

49. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs, as if fully set forth herein, word-for-word.

50. 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.

51. As a direct and proximate result of these facts, omissions, and fault of the Defendants, the Plaintiff and the Class have suffered damages and injuries reasonably foreseeable to the Defendants, including:

- a. Damages to the Plaintiff's personal and real property;
- b. Annoyance, discomfort and inconvenience occasioned by the nuisance created by the defendants on their property;
- c. The loss of peace of mind; and
- d. Economic loss from business interruption.

**COUNT V**

**TRESPASS**

52. Plaintiff hereby re-alleges and incorporates the foregoing Paragraphs, as if fully set forth herein, word-for-word.

53. The Defendants, without the Plaintiff's consent and without legal right, intentionally engaged in activities that resulted in concussions or vibrations to enter Plaintiff's property. Such unauthorized invasion of the Plaintiff's property interests by concussions or

vibrations by Defendants constitutes a trespass. *See Smith v. Lockheed Propulsion Co.*, 247 Cal. App. 2d 774 (1967)(actionable trespass may be committed indirectly through concussions or vibrations activated by defendant's conduct).

#### **PUNITIVE DAMAGES**

54. The Defendants' actions, in knowingly causing seismic activity as a result of its Injection Wells operations, constitutes wanton or reckless disregard for public safety and is subject to a claim for punitive damages, for which Plaintiff seek in an amount sufficient to punish the Defendants and to deter them and others similarly situated from such conduct in the future.

#### **REQUEST FOR JURY TRIAL**

55. Plaintiff respectfully demands a trial by jury.

#### **PRAYER FOR RELIEF**

Plaintiff respectfully requests the following relief:

- i. Certifying the Class as requested herein;
- ii. A joint and several judgment against Defendants for all general and special compensatory damages caused by the conduct of the Defendants in an amount exceeding the minimum amount required for federal court in diversity of citizenship cases;
- iii. Costs of litigating this case;
- iv. Appropriate injunctive relief restraining Defendants from engaging in further conduct that is substantially likely to lead to further seismic activity and to take affirmative steps to remediate the damages it has already caused in favor of Plaintiff and the Class;
- v. Punitive damages;
- vi. Attorney's fees;
- vii. Prejudgment interest;

viii. All other relief to which Plaintiff is entitled or that the Court deems just and proper.

DATED: March 23<sup>rd</sup>, 2011

Respectfully Submitted,

EMERSON POYNTER, LLP



Scott E. Poynter (#90077)  
Christopher D. Jennings (#06306)  
William T. Crowder (#03138)  
EMERSON POYNTER, LLP  
500 President Clinton Ave., Ste. 305  
Little Rock, AR 72201  
Tel: (501) 907-2555  
Fax: (501) 907-2556

John G. Emerson (#08012)  
EMERSON POYNTER, LLP  
830 Apollo Lane  
Houston, TX 77058  
Tel: (281) 488-8854  
Fax: (281) 488-8867  
Attorneys for Plaintiffs



IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS  
SUMMONS

Plaintiff:

Court Division 16

JACOB SHEATSLEY, an Arkansas  
Resident on behalf of herself and all others similarly situated  
vs.

Defendant:

Case Number: CV2011-28

CHESAPEAKE OPERATING, INC., and  
CLARITA OPERATING, LLC

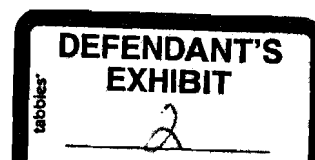
Plaintiff's attorney:

Will T. Crowder  
EMERSON POYNTER, LLP  
500 President Clinton Ave., Suite 305  
Little Rock, AR 72201  
501-907-2555

THE STATE OF ARKANSAS TO DEFENDANT: Clarita Operating, LLC  
c/o Perkins & Trotter, PLLC  
John Peiserich  
101 Morgan Keegan Drive., Ste A.  
Little Rock, AR 72202

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.
2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:
  - A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.
  - B. It must be filed in the court clerk's office within 20 days from the day you were served with this summons.
3. If you desire to be represented by an attorney you should immediately contact your attorney so that an answer can be filed for you within the time allowed.



4. Additional notices:

Witness my hand and the seal of the court this March 23, 2011.  
(date)

Address of Clerk's Office:

Persundra Hood, Clerk

[SEAL]

Clerk  
by: Renee Rainey, D.C.

NOTICE AND ACKNOWLEDGEMENT  
FOR SERVICE BY MAIL

NOTICE

To: Clarita Operating, LLC, c/o Perkins & Trotter, PLLC, John Peiserich, 101 Morgan Keegan Drive., Ste A., Little Rock, AR 72202.

The enclosed summons and complaint are served pursuant to Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 30 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 30 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within the time specified in the summons. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

Signature \_\_\_\_\_

Date of Signature \_\_\_\_\_

ACKNOWLEDGMENT OF RECEIPT  
OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint  
in the above-captioned matter at (insert address).

\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_  
Relationship to Entity/ \_\_\_\_\_  
Authority to Receive Service \_\_\_\_\_  
of Process \_\_\_\_\_  
Date of Signature \_\_\_\_\_

IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS  
SUMMONS

Plaintiff:

JACOB SHEATSLEY, an Arkansas  
Resident on behalf of herself and all others similarly situated  
vs.

Court Division 16

Defendant:

CHESAPEAKE OPERATING, INC., and  
CLARITA OPERATING, LLC

Case Number: CV 2011-28

Plaintiff's attorney:

Will T. Crowder  
EMERSON POYNTER, LLP  
500 President Clinton Ave., Suite 305  
Little Rock, AR 72201  
501-907-2555

THE STATE OF ARKANSAS TO DEFENDANT: Chesapeake Operating, Inc.  
c/o The Corporation Company  
124 West Capitol Avenue, Ste. 1900  
Little Rock, AR 72201

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.
2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:
  - A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.
  - B. It must be filed in the court clerk's office within 30 days from the day you were served with this summons.
3. If you desire to be represented by an attorney you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

DEFENDANT'S  
EXHIBIT

3

4. Additional notices:

Witness my hand and the seal of the court this March 23, 2011  
(date)

Address of Clerk's Office:

Persundra Hood, Clerk  
by: Renee Rainey, D.C.  
Clerk

\_\_\_\_\_  
[SEAL]

NOTICE AND ACKNOWLEDGEMENT  
FOR SERVICE BY MAIL

NOTICE

To: Chesapeake Operating, Inc., c/o The Corporation Company, 124 West Capitol Ave., Ste 1900, Little Rock, AR 72201.

The enclosed summons and complaint are served pursuant to Rule 4(d)(8)(B) of the Arkansas Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 30 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 30 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within the time specified in the summons. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on (insert date).

\_\_\_\_\_  
\_\_\_\_\_  
Signature \_\_\_\_\_

\_\_\_\_\_  
Date of Signature \_\_\_\_\_

ACKNOWLEDGMENT OF RECEIPT  
OF SUMMONS AND COMPLAINT

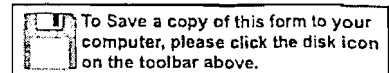
I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (insert address).

\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_  
Relationship to Entity/ \_\_\_\_\_  
Authority to Receive Service \_\_\_\_\_  
of Process \_\_\_\_\_  
Date of Signature \_\_\_\_\_

Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed.

**COVER SHEET  
STATE OF ARKANSAS  
CIRCUIT COURT: CIVIL**



The civil reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions are located on the back of the form.

**FILING INFORMATION**  
 County: Perry District: \_\_\_\_\_ Docket Number: CV 2011-28  
 Judge: Brantley Division: 16 Filing Date: 3-23-11  
 Plaintiff: Jacob Sheatsley Defendant: Chesapeake Operating, Inc., et al  
 Attorney Providing Information: Will T. Crowder 500 President Clinton Ave., Suite 305  
☒ Plaintiff ☐ Defendant ☐ Intervenor Address  
 Litigant, if Pro Se: \_\_\_\_\_ Little Rock, AR 72201  
 Related Case(s) Judge: \_\_\_\_\_ Address  
 Case Number(s) \_\_\_\_\_

**Type of Case:**

**Torts**

- ☐ (NM) Negligence: Motor Vehicle  
☐ (NO) Negligence: Other  
☐ (BF) Bad Faith  
☐ (FR) Fraud  
☐ (MP) Malpractice  
☐ (PL) Product Liability  
☒ (OD) Other Nuisance, Trespass

**Contracts**

- ☐ (IS) Insurance  
☐ (DO) Debt: Open Account  
☐ (PN) Debt: Promissory Note  
☐ (EM) Employment  
☐ (OC) Other \_\_\_\_\_

**Equity**

- ☐ (FC) Foreclosure  
☐ (QT) Quiet Title  
☐ (IJ) Injunction  
☐ (PT) Partition  
☐ (OT) Other \_\_\_\_\_

**Miscellaneous**

- ☐ (CD) Condemnation  
☐ (RE) Replevin  
☐ (DJ) Declaratory Judgment  
☐ (UD) Unlawful Detainer  
☐ (IN) Incorporation  
☐ (EL) Election  
☐ (FJ) Foreign Judgment  
☐ (WT) Writs  
☐ (AA) Administrative Appeal  
☐ (CF) Property Forfeiture  
☐ (RD) Remove Disabilities  
☐ (NC) Name Change  
☐ (OM) Other \_\_\_\_\_

Jury Trial Requested: ☒ Yes ☐ No

Manner of Filing:

- ☒ Original ☐ Re-open ☐ Transfer  
☐ Return from Federal/Bankruptcy Court

**DISPOSITION INFORMATION**

Disposition Date: \_\_\_\_\_ ☐ Bench Trial ☐ Non-Trial ☐ Jury Trial

**Judgment Type:**

- ☐ (DJ) Default Judgment  
☐ (SJ) Summary Judgment  
☐ (CJ) Consent Judgment  
☐ (TJ) Trial Judgment  
☐ (OJ) Other Judgment  
☐ (PG) Petition Granted  
☐ (PD) Petition Denied  
☐ (DF) Decree of Foreclosure

**Dismissal Type:**

- ☐ (DW) Dismissed with Prejudice  
☐ (DN) Dismissed without Prejudice

**Other:**

- ☐ (TR) Transferred to Another Jurisdiction  
☐ (RB) Removed to Bankruptcy Court  
☐ (RF) Removed to Federal Court  
☐ (AR) Arbitration

**Judgment For:**

☐ Plaintiff ☐ Defendant ☐ Both

Judgment Amount: \$ \_\_\_\_\_

Clerk's Signature

AOC 23 10-01  
 625 Marshall Street  
 Little Rock, AR 72201

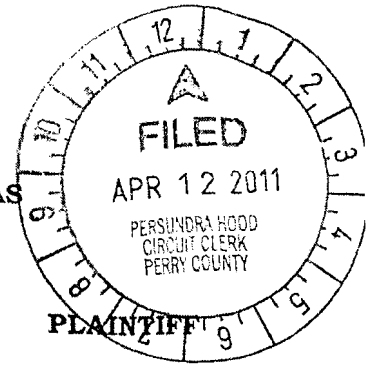
Date

Send 1 paper or electronic copy to AOC upon filing.  
 Send 1 paper or electronic copy to AOC upon disposition.  
 Keep original in court file.

Effective 1-1-2002

**DEFENDANT'S  
EXHIBIT**

4



**IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS  
16TH DIVISION**

**JACOB SHEATSLEY, on behalf of himself  
and all others similarly situated**

**v.**

**Case No. CV-2011-28**

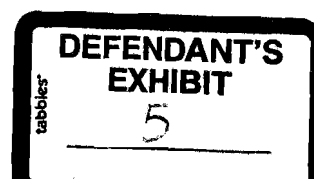
**CHESAPEAKE OPERATING, INC. and  
CLARITA OPERATING, LLC**

**DEFENDANTS**

**ANSWER OF CLARITA OPERATING, LLC TO CLASS ACTION COMPLAINT**

Defendant Clarita Operating, LLC ("Clarita Operating" or "Defendant"), by and through its undersigned counsel, Perkins & Trotter, PLLC, states its Answer to the Class Action Complaint ("Complaint") as follows:

1. Defendant denies the allegations in paragraph 1.
2. Defendant affirmatively states that the Arkansas Geological Survey speaks for itself, and otherwise denies the allegations in paragraph 2.
3. Defendant lacks sufficient knowledge or information to either admit or deny the allegations in paragraph 3 and therefore denies them.
4. Defendant affirmatively states that the United States Geological Survey speaks for itself, and that Defendant otherwise lacks sufficient knowledge or information to either admit or deny the allegations in paragraph 4 and, therefore, denies them.
5. Defendant admits that natural gas is produced from a geological formation commonly referred to as the Fayetteville Shale, including from some lands in Faulkner County, Arkansas, and some lands in nearby counties, but otherwise lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 5 and therefore denies them.





6. Defendant admits that the hydraulic fracturing process is used in the development of natural gas wells in the Fayetteville Shale, but otherwise denies the allegations in paragraph 6.

7. Defendant admits that it owns an injection well located in Faulkner County, but otherwise denies the allegations in paragraph 7.

8. The actions of the Arkansas Oil & Gas Commission speak for themselves, Defendant otherwise denies the allegations in paragraph 8.

9. Defendant denies the allegations in paragraph 9.

10. Defendant denies the allegations in paragraph 10.

11. Defendant denies the allegations in paragraph 11.

12. Defendant lacks sufficient information to either admit or deny the allegations in paragraph 12 and, therefore, denies them.

13. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 13 and, therefore, denies them.

14. Defendant denies that it is a Limited Liability Corporation and that it is currently operating an injection well known as the Wayne L. Edgmon No. 1 SWD Well in Sect. 6-T7N-R12W in Faulkner County, Arkansas (the "Clarita Well") but otherwise admits the allegations in paragraph 14.

15. Defendant affirmatively asserts that the Plaintiff lacks standing to bring the claim of public nuisance and so denies the allegation that this court has subject matter jurisdiction of that claim. Defendant reserves the right to challenge this court's exercise of subject matter jurisdiction over the remaining claims. Defendant denies that the Clarita Well is located in "this Court and judicial district." Defendant denies the remaining allegations in paragraph 15.

16. Defendant denies that venue is proper in Perry County. Neither well named in the Complaint is located in Perry County. The Complaint alleges injury to a potential class in six counties, but fails to allege damages, of any kind, in Perry County, meaning that a substantial part of the alleged events or omissions on which the Complaint is based did not actually occur in Perry County.

17. Defendant is without sufficient knowledge or information to either admit or deny the allegations in paragraph 17 and, therefore, denies them.

18. Defendant is without sufficient knowledge or information to either admit or deny the allegations in paragraph 18 and, therefore, denies them.

19. Defendant is without sufficient knowledge or information to either admit or deny the allegations in paragraph 19 and, therefore, denies them.

20. Defendant is without sufficient knowledge or information to either admit or deny the allegations in paragraph 20 and, therefore, denies them.

21. Defendant is without sufficient knowledge or information to either admit or deny the allegations in paragraph 21 and, therefore, denies them.

22. Defendant denies the allegations in paragraph 22.

23. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 22, as if fully set forth herein word for word.

24. Defendant denies the allegations in paragraph 24.

25. Defendant is without sufficient knowledge or information to admit or deny the allegations in paragraph 25 and, therefore, denies them.

26. Defendant denies the allegations in paragraph 26.

27. Defendant denies the allegations in paragraph 27.

28. Defendant denies the allegations in paragraph 28.

29. Defendant denies the allegations in paragraph 29 and each of its subparagraphs (a) through (f).

30. Defendant denies the allegations in paragraph 30.

31. Defendant denies the allegations in paragraph 31.

32. Defendant denies the allegations in paragraph 32.

33. Defendant is without knowledge or information to admit or deny the allegations in paragraph 33 and, therefore, denies them.

34. Defendant is without knowledge or information to admit or deny the allegations in paragraph 34 and, therefore, denies them.

35. Defendant is without knowledge or information to admit or deny the allegations in paragraph 35 and, therefore, denies them.

36. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 35, as if fully set forth herein word for word.

37. Defendant denies the allegations in paragraph 37.

38. Defendant denies the allegations in paragraph 38 and each of its subparagraphs (a) and (b).

39. Defendant denies the allegations in paragraph 39.

40. Defendant denies the allegations in paragraph 40.

41. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 40, as if fully set forth herein word for word.

42. Defendant denies the allegations in paragraph 42.

43. Defendant denies the allegations in paragraph 43.

44. Defendant denies the allegations in paragraph 44.

45. Defendant denies the allegations in paragraph 45.

46. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 45, as if fully set forth herein word for word.

47. Defendant denies the allegations in paragraph 47.

48. Defendant denies the allegations in paragraph 48.

49. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 48, as if fully set forth herein word for word.

50. Defendant denies the allegations in paragraph 50.

51. Defendant denies the allegations in paragraph 51 and each of its subparagraphs a through d.

52. Defendant restates and incorporates its responses to the allegations in paragraphs 1 through 51, as if fully set forth herein word for word.

53. Defendant denies the allegations in paragraph 53.

54. Defendant denies the allegations in paragraph 54 and denies that Plaintiff is entitled to the relief sought therein.

55. Defendant respectfully requests a jury trial.

56. Defendant denies the allegations in Plaintiff's Prayer for Relief, including subparagraphs i through viii, and denies that Plaintiff is entitled to the relief sought therein.

57. Defendant denies each and every allegation not specifically admitted herein. Defendant also denies that the Plaintiff is entitled to any relief as against this Defendant. The Complaint of the plaintiff should each be dismissed at plaintiff's cost and Defendant should be granted such other and further relief to which it may be entitled.

58. Defendant asserts the common defense doctrine.

59. Defendant affirmatively pleads the applicable statute(s) of limitations as a

bar to recovery in this matter.

60. Defendant pleads insufficient process and insufficient service of process.

61. Defendant pleads that any injuries sustained by the plaintiff are the result of his own negligence or wrongful conduct, or the negligence or wrongful conduct of parties not legally under the control of, or otherwise responsible to, this defendant.

62. Defendant pleads the Uniform Contribution Among Tortfeasors Act.

63. Upon completion of further investigation and discovery, Defendant expressly reserves the right to plead further including the reservation of all affirmative defenses required to be pled in its initial pleadings, including counter-claims, cross-claims, and third-party complaints.

64. Defendant affirmatively pleads, pursuant to Ark. R. Civ. P. 12(b)(6), that Plaintiff has failed to state facts on which relief can be granted.

65. Defendant affirmatively pleads, pursuant to Ark. R. Civ. P. 8(c), all affirmative defenses available to it including but not limited to comparative fault, contributory negligence, and failure to mitigate damages.

66. Defendant affirmatively pleads, pursuant to Ark. R. Civ. P. 23, that class certification should be denied.

67. Defendant affirmative pleads compliance with its Arkansas Oil & Gas Commission and Arkansas Department of Environmental Quality issued permits and the obligations there under.

68. Defendant, pursuant to Ark. R. Civ. P. 9(g) affirmatively pleads that Plaintiff fails to specifically plead special damages and, therefore, they should be denied.

69. Defendant affirmatively pleads that it is entitled to indemnity,

contribution, or both, against a co-defendant with which it is adjudged to be a joint tortfeasor.

70. Plaintiff is not entitled to recover punitive damages, because an award of compensatory damages would fully compensate plaintiff and plaintiff has no standing to recover funds assessed against these defendants as punishment or as an example to others.

71. Plaintiff's claim for punitive damages asserts a liability which is criminal in nature, entitling these defendants to the protections of the Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution of the United States of America. Specifically, for these defendants to receive due process on such claim, plaintiff's proof must be beyond a reasonable doubt, and these defendants' liability must be tried by a unanimous jury. As to any punitive damages sought by plaintiffs, these defendants are entitled to (1) a trial bifurcating the issues of liability from punitive damages; (2) a clear and convincing burden of proof; and (3) effective limit on jury discretion as to the amount of punitive damages.

72. Plaintiff cannot recover punitive damages, because the relative position of the parties may be considered in such an award, which constitutes an impermissible punishment of status.

73. Plaintiff cannot recover punitive damages, because present Arkansas law under which such damages are sought is impermissibly vague, imprecise, and inconsistent, and is in violation of the due process clause of the United States Constitution and, therefore, the Fifth and Fourteenth Amendments.

74. Plaintiff cannot recover punitive damages against these defendants because of the likelihood of confusion of submission of cases of punitive damages against various defendants with differing circumstances.

75. This defendant affirmatively pleads that if the plaintiff was injured or damaged then such injuries and damages were caused in whole or in part by the acts, wrong doing, omissions, or negligence of others for whose acts this defendant is not responsible and which acts constitute an intervening and superseding proximate cause so as to relieve this defendant of any liability herein.

76. This defendant affirmatively pleads that, at all relevant times, this defendant complied with the rules, regulations and specification of the government of the United States.

77. Subject to the objections of Defendant to the subject matter jurisdiction of the Court and personal jurisdiction over Defendant, Defendant further responding states that the Complaint of the Plaintiff fails to state facts upon which relief can be granted against Defendant and should be dismissed pursuant to Rule 12(b)(6) and Rule 8 of the Arkansas Rules of Civil Procedure and otherwise.

78. If the Plaintiff was injured and damaged as alleged in his Complaint, alternatively, any such injury or damage was occasioned by the Plaintiff's own assumption of the risk and such assumption of the risk was present to such a degree so as to constitute a complete bar of the right of any recovery by the Plaintiff.

79. The Defendant asserts that Plaintiff has failed to mitigate his damages.

80. Defendant further pleads and claims the benefits as applicable derived from Act 649 of the Acts of Arkansas of 2003 which became effective March 25, 2003.

81. Plaintiff's claims, both individually and in his capacity as class representative, must fail to the extent Plaintiff lacks standing to pursue such claims.

82. Plaintiff and his claims fail to meet the necessary prerequisites and requirements for the maintenance of a class action.

83. Defendant asserts that Plaintiff is not similarly situated to others of the

alleged class for purposes of serving as class representative.

84. Plaintiff has interests that conflict with those of the putative class.

85. Plaintiff lacks standing to assert some or all of his claims against Defendants and to represent any putative class.

86. Class certification is inappropriate in this action under Ark. R. Civ. Pro 23(a)(1) because the alleged class members are not too numerous to join as parties and joinder is practicable as a matter of law.

87. Plaintiff cannot maintain this action as a class action under Ark. R. Civ. Pro 23(a)(2) because there are not questions of law or fact common to the purported class.

88. Plaintiff cannot maintain this action as a class action under Ark. R. Civ. Pro 23(a)(3) because Plaintiff's claims cannot be typical of any claims of other persons would be involved. Further under Ark. R. Civ. Pro 23(a)(3) a class is inappropriate because real property is regarded as unique by the law. See Shelton v. Keller, 24 Ark. App. 68, 748 S.W.2d 153 (1988).

89. Pursuant to Ark. R. Civ. Pro. 23(a)(4), Plaintiff cannot maintain this action as a class action because Plaintiff is not a proper representative of the alleged class, and the alleged class does not have adequate representation.

90. Class certification is inappropriate because common questions of law or fact do not predominate over questions affecting only individual members.

91. Class certification is inappropriate because Plaintiff cannot demonstrate that class litigation is superior to other available means of adjudication.

92. The Answer of Defendant is being filed prior to any discovery and prior to the completion of investigation and, therefore, Defendant reserves the right to amend its Answer, to plead further by way of Counterclaim, Cross-Complaint, Third Party



Complaint, or otherwise, as investigation and discovery may reveal are appropriate.

WHEREFORE, Separate Defendant Clarita Operating, LLC respectfully requests that this Court dismiss the plaintiff's Complaint and award it its costs, fees, and all other legal and equitable relief to which it is entitled.

Respectfully submitted,

Attorneys for Separate Defendant  
Clarita Operating, LLC

PERKINS & TROTTER, P.L.L.C.

P. O. Box 251618

Little Rock, AR 72225-1618

Phone: (501) 603-9000

Facsimile: (501) 603-0556

A handwritten signature in black ink, appearing to be 'JLR' with a stylized flourish at the end.

---

JOHN F. PEISERICH, #2002009

And

Darrell W. Downs, #2010283

TAYLOR, BURRAGE, FOSTER, MALLETT,  
DOWNS, RAMSEY & RUSSELL, P.C.

P.O. Box 309

Claremore, OK 74018

**CERTIFICATE OF SERVICE**

I, John F. Peiserich, do hereby certify that a true and correct copy of the foregoing Answer was sent by first-class U.S. Mail, postage prepaid, on this 12<sup>th</sup> day of April 2011, to the following:

**EMERSON POYNTER, LLP**

Scott E. Poynter  
Christopher D. Jennings  
William T. Crowder  
500 President Clinton Ave.  
Suite 305  
Little Rock, AR 72201

And  
John G. Emerson  
830 Apollo Lane  
Houston, TX 77058

A handwritten signature in dark ink, appearing to read 'JLR', is positioned above a horizontal line.

JOHN F. PEISERICH