CAUSE NO. 2013-59098

§	IN THE DISTRICT COURT
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ORCA DEFENDANTS' ORIGINAL ANSWER AND COUNTERCLAIM

COME NOW Defendants, Orca ICI Development JV ("Orca ICI") and Orca Assets, GP, LLC ("Orca Assets"), collectively referred to as "Orca Defendants", in the above-captioned cause, and file their Original Answer to Plaintiffs' Petition and Counterclaim and would respectfully show this Honorable Court as follows:

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Orca ICI Development JV and Orca Assets, GP, LLC deny each and every allegation and cause of action set forth in Plaintiffs' Petition, and demands strict proof of the charges and allegations contained therein as required by the Constitution and the laws of the State of Texas.

II. AFFIRMATIVE DEFENSES

2. Orca Defendants will further show, by way of affirmative defense, and without waiver of the foregoing, the following:

- a. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate damages.
- b. Plaintiffs' claims are barred, in whole or in part, by payment.
- c. Plaintiffs' claims are barred, in whole or in part, by release.

III. COUNTERCLAIM

3. The Working Interest Purchase and Sale Agreement (the "Agreement") between Orca ICI and counter-Defendant XS Capital Investments, LP and Rural Route 3 Holdings, LP is unambiguous. It clearly provides for the following:

- 6.5: Buyer is an experienced and knowledgeable investor in the oil and gas business . . .[and has] been advised by and has relied solely upon its own expertise in legal, tax and other professional counsel concerning the transaction contemplated by this Agreement . . .
- 13.8: Each of the Parties hereby knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of any litigation based hereon, arising out of, under or in connection with this Agreement. . .
- 13.9: This Agreement constitutes the entire understanding among the Parties . . .
 with respect to the subject matter hereof, superseding all negotiations, prior discussion and prior agreements and understandings relating to such subject matter.
- 13.13: The Parties hereto expressly waive any and all rights to consequential, special, incidental, punitive or exemplary damages, or loss of profits resulting from any breach of this Agreement.

Orca Defendants' Original Answer and Counterclaim 4. Pursuant to TEX.CIV.PRAC.&REM.CODE §37.001, Orca Defendants seek the following declaration:

- A. Counter Defendants have disclaimed any and all reliance on any statement, act, or representation of Orca Defendants other than those statements contained within the Agreement;
- B. Counter Defendants have waived their right to trial by jury in this matter;
- C. The Agreement constitutes the entire agreement between the Parties and supersedes all negotiations, prior discussions, prior agreements and prior understandings between the Parties; and,
- D. Counter Defendants have waived any right to consequential, special, incidental, punitive or exemplary damages, or loss of profits resulting from any breach of this Agreement.

All conditions precedent to recovery have been met, waived or excused.

5. Pursuant to TEX.CIV.PRAC.&REM.CODE §37.009, Orca Defendants are entitled to recovery of their reasonable and necessary attorneys' fees and costs.

<u>PRAYER</u>

WHEREFORE, PREMISES CONSIDERED Defendants Orca ICI Development JV and Orca Assets, GP, LLC, pray that this Honorable Court dismiss all of Plaintiffs' claims and deny all such relief requested by Plaintiffs against Orca Defendants, that Orca Defendants obtain the Declarations they seek, and recover attorneys' fees and costs, and any such further relief, at law or in equity, to which these Orca Defendants may show themselves justly entitled.

Orca Defendants' Original Answer and Counterclaim Respectfully submitted,

LEVINTHAL WILKINS & NGUYEN, PLLC By: Jared I. Levinthal

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AND

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ATTORNEYS FOR **ORCA** ICI DEVELOPMENT JV AND ORCA ASSETS, GP, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on the 7th day of November 2013, a true and correct copy of the above and foregoing was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the following:

Carlton D. Wilde, Jr. Matthew R. Begley CRADY, JEWETT & MCCULLEY, LLP 2727 Allen Parkway, Suite 1700 Houston, Texas 77019-2125

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Orca Defendants' Original Answer and Counterclaim