

CAUSE NO. 2013-59098

XS CAPITAL INVESTMENTS, LP and	§	IN THE DISTRICT COURT
RURAL ROUTE 3 HOLDINGS, LP,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
ORCA ICI DEVELOPMENT JV,	§	
ORCA ASSETS G.P., LLC,	§	
and MRC ENERGY CORPORATION	§	
f/k/a MATADOR RESOURCES COMPANY,	§	234th JUDICIAL DISTRICT
	§	
Defendants.	§	

PLAINTIFFS' THIRD AMENDED PETITION

To the Honorable Judge of said Court:

COME NOW, Plaintiffs XS Capital Investments, LP and Rural Route 3 Holdings, LP and file this Third Amended Petition complaining of Defendants Orca ICI Development JV, Orca Assets G.P., LLC, and MRC Energy Corporation f/k/a Matador Resources Company. In support thereof, Plaintiff would show the Court as follows:

**I.
DISCOVERY**

1. Plaintiffs respectfully request, pursuant to Tex. R. Civ. P. 190.1, that discovery be conducted in accordance with discovery Level 2

**II.
PARTIES**

2. Plaintiff, XS Capital Investments, LP ("XS Capital") is a Texas limited partnership duly authorized and conducting business in the State of Texas.

3. Plaintiff, Rural Route 3 Holdings, LP ("Rural Route") is a Texas limited partnership duly authorized and conducting business in the State of Texas.

4. XS Capital and Rural Route are collectively referred to herein as "Plaintiffs."

5. Defendant, Orca ICI Development JV (“Orca ICI”), is a general partnership organized and conducting business in the State of Texas. Orca ICI has been served with process and has made an appearance in this action.

6. Defendant, Orca Assets G.P., LLC, (“Orca Assets”) is a limited liability company organized and conducting business in the State of Texas. Orca Assets has been served with process and has made an appearance in this action.

7. Orca ICI and Orca Assets are collectively referred to herein as “Orca.”

8. Defendant, MRC Energy Corporation f/k/a Matador Resources Company (“Matador”), is a corporation organized and conducting business in the State of Texas. Matador has been served with process and has made an appearance in this action.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this dispute because it involves the application of Texas law, the subject matter has not been preempted by other law or statute, and the amount in controversy exceeds the minimum jurisdictional limits of this Court. This Court has personal jurisdiction over Defendants because all of them both reside and conduct business within the State of Texas and, as a consequence, have maintained the requisite purposeful and systematic contacts which subject them to the personal jurisdiction of this Court. Venue is proper in Harris County, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002, since all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas.

IV. OVERVIEW

10. This case is a classic “Heads I Win, Tails You Lose” scheme. Plaintiffs played a simple but crucial role in the development of the Cowey 3H and Cowey 4H Wells in DeWitt County: they paid more than \$8,600,000 of the wells’ Drilling and Completion Costs. In exchange, Plaintiffs were entitled to receive working interests in the wells, and revenues generated from production in the wells.

11. However, Defendants Orca and Matador conspired to use Plaintiffs’ money to take a risk-free gamble on the Cowey Wells. After Matador used Plaintiffs’ money to drill the wells and the wells proved economically viable, Defendants invented a bevy of excuses to deny Plaintiffs their rightful working interests. Instead, Defendants simply tried to return Plaintiffs’ money, despite the fact that they received the full benefit of Plaintiffs’ \$8,600,000, and took for themselves the working interests that Orca promised to give Plaintiffs’ in exchange for Plaintiffs’ \$8,600,000.

12. In short, Defendants treated Plaintiffs’ funds like gamblers using the casino’s own money to bet against the house. Defendants’ conspired to saddle Plaintiffs with all of the risk but none of the rewards. This transparent scheme is illegal, immoral, and inexcusable. It cannot stand.

V. BACKGROUND

13. On or about May 16, 2011, Orca and Matador entered into a Purchase Sale and Participation Agreement (the “PSPA”) for the sale of certain oil and gas leases in Dewitt, Karnes, Wilson and Gonzales Counties. Two of the several wells covered by the PSPA, the Cowey 3H and Cowey 4H Wells, are located in DeWitt County, Texas. Under the PSPA, Orca

was obligated to fund 50% of the Drilling and Completion Costs in order to participate in any well as a Consenting Party,.

14. The spud date for the Cowey 3H well was February 10, 2013. On February 14, 2013, Plaintiffs and Orca entered into a Working Interest Purchase and Sale Agreement (the “Working Interest Agreement”). Plaintiffs entered into the Working Interest Agreement so that, in exchange for providing Orca’s share of the Drilling and Completion Costs, Plaintiffs would own a working interest in the wells and leasehold if the wells proved economically viable. Orca entered into this Working Interest Agreement because it lacked the funds necessary to participate in the drilling and completion of the Cowey 3H and 4H wells. Without the benefit of Plaintiffs’ funding, Orca would have been deemed a Non-consenting Party under the Joint Operating Agreement (“JOA”). As a Non-consenting Party under the JOA, Orca would have been excluded from the substantial financial benefits of the Cowey 3H and Cowey 4H Wells.

Plaintiffs Paid Matador \$8,686,244 in Exchange for Orca’s Working Interests

15. Orca agreed to sell, assign, and deliver all of its working interests in the Cowey 3H and Cowey 4H Wells to Plaintiffs.¹ In exchange for Orca’s working interest, Plaintiffs agreed to pay, directly to Matador—the well operator—Orca’s 50% share of the Drilling and Completion Costs of the Cowey 3H and 4H Wells.² The Drilling and Completion Costs paid by Plaintiffs to Matador attributable to the interest acquired from Orca ultimately exceeded \$8,600,000.00. There is no dispute that Plaintiffs paid \$8,686,244 to Matador as Drilling and Completion Costs for the Cowey 3H and Cowey 4H Wells. Matador accepted these funds as

¹ Orca agreed to assign its working interests and its leasehold interests, insofar as they related to the wells funded by Plaintiffs. Although Orca sold all of its working interest to Plaintiffs, it retained a Net Revenue Interest (“NRI”).

² Plaintiffs also purchased the right to participate in subsequent wells Matador planned to drill. Plaintiffs seek recovery of the damages caused by their exclusion from those subsequent wells.

operator of the Cowey 3H and Cowey 4H Wells, and acknowledged that Plaintiffs' funds were for Orca's Drilling and Completion Costs—and corresponding rights as a Consenting Party—under the PSPA and JOA.

16. Once Plaintiffs provided the funding to Matador, Orca was obligated to perform under the Working Interest Agreement and assign its interests to Plaintiffs. Plaintiffs would then receive payments from production to recoup their investment, up until Payout, at which time all parties would share in the proceeds of the successful well.

17. However, this did not occur. Though Plaintiffs fully funded the Drilling and Completion Costs and fully performed their obligations under the Working Interest Agreement, Orca has refused and continues to refuse to meet its obligations.

18. The Cowey 3H and Cowey 4H Wells have both been completed and are producing substantial quantities of oil and gas with 100% of the working interest shares of proceeds being paid to Matador. Plaintiffs have never received an interest in the well and have never shared in its proceeds.

Matador Accepted Plaintiffs' \$8,686,244 as Payment for Orca's Working Interests

19. On February 12, 2013, Sam Pryor of Matador wrote Gregory Forero of Orca that “Pursuant to your conversation and agreement with Joe, we have attached wiring instructions for your use in wiring to Matador's account Orca's proportionate share of the drilling and completion costs for the Cowey #3H well.” Matador added that “Matador will have the right to meet the Assignee and receive reasonable assurances of his financial wherewithal, ability to pay and industry knowledge.” These conditions are not a part of the Working Interest Agreement, are not stated in the PSPA, and are not included within the JOA.

20. On February 14, 2013, Joseph Foran of Matador wrote Gregory Forero of Orca

that “As we discussed during our telephone conversation earlier today, Matador is in receipt of two wires in the aggregate amount of \$4,343,122.00 from XS Capital Investments and Rural Route 3 Holdings (the ‘Cowey #3H Election Payment’).” Matador further added that “*Matador intends to apply these funds towards Orca’s participation obligation* relating to the Authorization for Expenditure dated December 28, 2012 for the Cowey #3H well (the ‘Cowey #3H AFE’).”

21. On February 21, 2013, pursuant to conversations with Orca, Matador stated that “Matador is reserving all rights provided for in the PSPA and the JOA, including the right to assurance that Orca remains ultimately responsible for its obligations under the Cowey#3H AFE, the PSPA and the JOA and the right to reasonable assurances from Mr. Sinn that Matador’s interests are protected going forward.” Not only did Matador fail to specify what interests supposedly needed protecting after Plaintiffs already paid \$4,343,122.00 for the Cowey #3H Election Payment, but none of these additional conditions were part of the Working Interest Agreement, the PSPA, or the JOA.

Orca’s Promise to Plaintiffs Was NOT Conditioned Upon Matador’s Consent

22. Article 1.3 of the Working Interest Agreement is entitled, “Joint Operating Agreement.” It states as follows: “Buyer understands and acknowledges that the Well is subject to the terms and provisions of the JOA, as well as that certain Purchase, Sale and Participation Agreement dated May 16, 2011.”

23. Both the JOA and the PSPA expressly allow for the assignment, transfer, or other disposition of interest between the parties and between third parties. The PSPA provides that Orca “may assign or otherwise transfer its right to participate arising under this agreement with the consent of the Buyer, which consent may not be unreasonably withheld.” The Working

Interest Agreement, however, does not reference the need for consent by Matador, and does not condition Orca's performance on any acts by Matador.

24. To be clear, Article 8 of the Working Interest Agreement provides certain "Conditions Precedent to Closing," including that "All representations and warranties of Buyer [and Seller] contained in this Agreement shall be true and correct in all material respects on and as of the Closing, and Buyer [and Seller] shall have performed and satisfied all covenants and agreements required by this Agreement to be performed and satisfied by Buyer [or Seller] at or prior to the Closing in all material respects," and "Buyer [and Seller] stands ready, willing and able to Close." None of the conditions precedent enumerated in Article 8 reference a need for consent by Matador, and nothing in Article 8 requires consent from Matador before Orca may be bound by the terms of the Working Interest Agreement.

Orca Owed Plaintiff Its Working Interests, But Used Matador's Consent as a Pretext

25. On March 5, 2013, Matador completed drilling the Cowey 3H Well and it proved successful. Thus, on March 5, 2013, Matador proposed to drill the Cowey 4H Well and provided Orca notice of its option to participate in the Well, provided that Orca pay its portion of the Drilling and Production Costs. On March 7, 2013, Orca forwarded Matador's notice to Plaintiffs and requested that Plaintiffs make another payment of \$4,343,122, in exchange for a working interest in the Cowey 4H Well.

26. On March 15, 2013, after the Cowey 3H Well proved successful, Matador piled on additional demands and additional conditions that are entirely absent from the Working Interest Agreement, the PSPA, and the JOA. Again, Orca's performance under the Working Interest Agreement was not conditioned on Matador's actions in any way, including satisfaction of any demands made by Matador. These demands included an acknowledgement of Plaintiffs'

obligation to pay the proportionate share of costs prior to assignment; an acknowledgement by Plaintiffs and Orca of joint responsibility for additional costs incurred by Matador; an agreement on the allocation formula for costs common to all Cowey Wells; an agreement by Plaintiffs to not protest downsizing of oil production units; a representation of Plaintiffs' industry experience and ability to pay; and an agreement by Plaintiffs to be made party to the JOA and PSPA. Only the final condition in Matador's long list of extra-contractual demands—that Plaintiffs be made party to the JOA and PSPA—was incorporated into the Working Interest Agreement.³ None of Matador's other extra-contractual demands are found anywhere in the Working Interest Agreement, the PSPA, or the JOA.

27. Although Matador represented that “Matador would immediately thereafter approve the proposed assignment” if these additional conditions are met, Orca's performance under the Working Interest Agreement was not conditioned on Matador's extra-contractual demands. Indeed, Matador was in no position vis-à-vis Plaintiffs to make any such demands. Nonetheless, Plaintiffs met with Matador at their offices in Dallas, and Matador expressed no reservations concerning Plaintiffs or their ability to fund the on-going operations. Instead, Matador welcomed Plaintiffs as business partners.

Orca and Matador Took Plaintiffs' Money, and Gave Plaintiffs Nothing

28. Based upon Matador's representations and expressed willingness to proceed with the deal, Plaintiffs made another payment of \$4,343,122 for the Drilling and Completion Costs attributable to the Cowey 4H Well. Orca used these funds to maintain its status as a “Drilling

³ Matador's demand that Plaintiffs be made party to the PSPA and JOA was and is a non-issue. Plaintiffs had expressly agreed in the Working Interest Agreement to be made party to those agreements at the time of closing, and at the same time that Orca would transferred its interests to Plaintiffs. Plaintiffs have always intended to comply with the provision and will comply with that provision when Plaintiffs' bargained-for interests are transferred from Orca to Plaintiffs.

Party” and “Consenting Party” under the PSPA, and Matador used the funds to ensure that its costs for drilling and completing the Cowey 4H Well would be covered in advance of drilling operations. Importantly, Plaintiffs’ funds allowed Matador to drill and complete the Cowey 4H Well without Matador having to shoulder the entire financial risk if the well failed to be economically viable. Instead, the risk was shared between Matador and Plaintiffs.

29. On May 10, 2013, Jeb Brown of Orca manufactured yet another excuse failing to provide Plaintiffs their bargained-for exchange. Jeb Brown reported that “Matador’s position is that they are not willing to consent to an assignment where Sinn’s entities have long-term positions in surrounding acreage, and for which Matador will have to treat Sinn as a non-operator, even on unknown future wells within the surrounding acreage.” This additional condition was not a condition that Matador stated in any of its previous correspondence, was not a condition precedent to the Working Interest Agreement, and was not a term set forth in the PSPA or the JOA.

30. On May 28, 2013, more than three months after Plaintiffs made their first payment of \$4,343,122 to Matador for 50% of the cost of drilling and completing the Cowey 3H Well and nearly six weeks after Plaintiffs made a second payment of \$4,343,122 to Matador for 50% of the drilling and completion costs for the Cowey 4H Well, Orca informed Plaintiffs by email that Matador claimed to be withholding its consent to the sale. Further, Orca—wrongfully and without explanation—attempted to unilaterally terminate the Working Interest Agreement, saying “Orca considers the deal 100% dead at COB [close of business] today.” Under the provisions of the Working Interest Agreement, Orca had no right to unilaterally cancel, terminate, or “consider 100% dead” the Working Interest Agreement or Plaintiffs’ election to participate in the Cowey 3H and Cowey 4H Wells for which Plaintiffs paid over \$8,600,000, and

from which Orca received substantial benefit.

31. Matador also improperly benefitted from Plaintiffs' investment of over \$8,600,000 in the Cowey 3H and Cowey 4H Wells. Most importantly, Plaintiffs' funds allowed Matador to drill and complete the Cowey 3H and Cowey 4H Wells without being exposed to 100% of the financial risk if either of the wells proved to be economically unviable. Instead, Plaintiffs and Matador bore that substantial financial risk—to the tune of more than \$8,600,000—equally. Of course, Plaintiffs only bore that risk in exchange for their bargained-for reward: an interest in the wells and leaseholds if the wells were successful. Matador of course already retained an interest in the wells.

Orca and Matador Took Plaintiffs' Money, and Took Plaintiffs Working Interests Too

32. On June 12, 2013, Orca and Matador entered into the First Amendment to the PSPA (the "Amended PSPA"). In that document, Orca falsely represented that it "rightfully terminated" the Working Interest Agreement with Plaintiffs and instructed Matador to return the \$8,686,244 (without interest) to Plaintiffs. Pursuant to the Amended PSPA, once the Cowey 3H and the Cowey 4H Wells reached Payout, Orca would receive a 25% working interest in the Wells and Matador would retain the 25% working interest paid for and earned by Plaintiffs under the Working Interest Agreement.

33. Thus, as a consequence of Defendants' wrongful actions, instead of Plaintiffs owning 50% of the working interest in the Cowey 3H and Cowey 4H Wells (*i.e.*, 100% of Orca's 50% working interest before Payout and 25% of the working interest in each well and leasehold after Payout), Orca will own a 25% working interest, Matador will own a 75% working interest, and Plaintiffs—which paid and risked the \$8,686,244 in Drilling and Completion Costs—will own nothing.

VI.
CAUSES OF ACTION:
Breach of Contract

34. Plaintiffs incorporate herein all the allegations set forth above.

35. The Working Interest Agreement is a valid, enforceable contract. Plaintiffs performed or tendered performance according to the terms of the Working Interest Agreement. Orca breached the Working Interest Agreement by refusing to sell, assign, and deliver to Plaintiffs all of Orca's working interest in the Cowey 3H and Cowey 4H Wells and corresponding leaseholds. Plaintiffs bargained for these interests in exchange for paying Orca's share of the Drilling and Completion Costs for those wells. Orca also breached the representations and warranties it made to Plaintiffs in the Working Interest Agreement.

36. Although Plaintiffs entirely and unequivocally fulfilled their obligations under the Working Interest Agreement and paid directly to Matador one hundred percent (100.00%) of Orca's share of the Drilling and Completion Costs for the Cowey 3H and Cowey 4H Wells, so that Orca could maintain its status as a "Drilling Party" and "Consenting Party," Orca intentionally and willfully breached at least the following provisions of the Working Interest Agreement:

- In violation and material breach of Section 1.1, Orca failed to sell, assign and deliver to Plaintiffs, all of Orca's working interest in the Leases described in the Working Interest Agreement, insofar as the Leases cover and relate to the Cowey 3H and 4H Wells and the property adjacent thereto containing approximately eighty (80) acres, more or less, being a rectangular shaped tract with a width of six hundred sixty (660) feet extending from the west at the Proposed First Take Point for each Well, and extending easterly to the Proposed Last Take Point for each Well, and all unitization, pooling and communitization agreements, declarations, orders, and the units created thereby relating to the properties and interests, and to the production of oil, gas and other hydrocarbons, attributable to said properties and interests, and all surface leases, permits, rights-of-way, easements and other surface rights agreements used or held in connection with the exploration, drilling, production, gathering, treatment, processing, storing, sale or disposal of hydrocarbons or produced water from the interests described above (collectively, the "Assets"). Orca's violation and material breach of Section 1.1 severely damaged and injured Plaintiffs,

because Plaintiffs have not received the benefit of their bargain or the interests that Orca promised to sell, assign, and deliver.

- In violation and material breach of Section 1.2, Orca failed to convey all of Orca's interest in the Cowey 3H and 4H Wells, which equate to a thirty-seven and one-half percent (37.5%) net revenue interest in each Well. Orca's violation and material breach of Section 1.2 severely damaged and injured Plaintiffs, because Plaintiffs have not received the benefit of their bargain or the interests that Orca promised to convey.
- In violation and material breach of Section 2.3, Orca failed to cause Matador to pay Plaintiffs one hundred percent (100%) of the revenues attributable to Orca's and/or Plaintiffs' interest in the Assets in an amount equal to the Drilling and Completion Costs actually paid by Plaintiffs to Matador. Orca's violation and material breach of Section 2.3 severely damaged and injured Plaintiffs, because Plaintiffs have not received the benefit of their bargain or the \$8,686,244 in Drilling and Completion Costs that Plaintiffs actually paid to Matador.
- In violation and material breach of Section 2.5, Orca failed to provide Plaintiffs their undivided twenty-five percent (25%) interest in the Assets; Orca failed to provide Plaintiffs all revenues with respect to the Assets based on Plaintiffs' respective ownership percentage; and Orca further failed to provide Plaintiffs an opportunity to participate in subsequent operations with respect to the Assets on a heads-up basis. Orca's violation and material breach of Section 2.5 severely damaged and injured Plaintiffs, because Plaintiffs have not received the benefit of their bargain or the interests, revenues, and opportunities that Orca promised.
- In violation and material breach of Section 5.2, Orca falsely and incorrectly represented that the execution and delivery of the Working Interest Agreement did not, and the fulfillment of and compliance with the terms and conditions of the Working Interest Agreement would not violate, or be in conflict with, any material provision of any agreement or instrument to which Orca was a party or by which it was bound. To the contrary, and according to Matador, Orca's attempt to assign its interest to a third party without the requisite notice was not authorized by the Purchase, Sale, and Participation Agreement between Matador and Orca. Orca's violation and material breach of Section 5.2 severely damaged and injured Plaintiffs, because Plaintiffs materially relied upon Orca's false and incorrect misrepresentations and as a result, have not received the benefit of their bargain or the interests, revenues, and opportunities that Orca promised.
- In violation and material breach of Section 7.1, Orca failed to fulfill its obligation to obtain Plaintiffs' consent before Orca agreed to (i) commit to drill wells on the Lands and conduct oil and gas exploration, development and production operations on the Leases, and lands pooled or unitized therewith, (ii) sell, transfer, assign, convey, or otherwise dispose of the Assets, or any interest therein; (iii) enter into a farm-out agreement, farm-in agreement or other contract affecting the Assets; and (iv) create a lien, security interest or encumbrance on the Assets, the oil or gas attributable to the Assets, or the proceeds thereof. To the contrary, and without obtaining or even requesting Plaintiffs' consent, Orca entered into a First Amendment to Purchase Sale and Participation Agreement that

provides “Matador will be entitled to receive one hundred percent (100%) of the production attributable to each of the Cowey 3H Well and Cowey 4H Well until such time as such wells have reached Payout,” and that “Once each of the Cowey 3H Well and Cowey 4H Well has reached Payout, Orca will be deemed to back-in for a twenty-five percent (25%) working interest in the Cowey 3H Well and a twenty-five percent (25%) working interest in the Cowey 4H Well on a well-by-well basis,” and that pursuant to the agreement, Matador will receive a twenty-five percent (25%) working interest in the Cowey 3H Well and a twenty-five percent (25%) working interest in the Cowey 4H Well, which is the same working interest percentage that Orca originally promised to Plaintiffs in exchange for Plaintiffs’ payment of the Drilling and Completion Costs. Orca’s violation and material breach of Section 7.1 severely damaged and injured Plaintiffs, because Plaintiffs have not received the benefit of their bargain, and because Orca sold, transferred, assigned, and conveyed interests to Matador—interests that properly belonged to Plaintiffs—without first obtaining or even requesting Plaintiffs’ consent, approval or agreement.

- In violation and material breach of Section 8.2, Orca falsely covenanted that all representations and warranties of Orca contained in the Working Interest Agreement are true and correct in all material respects on and as of the Closing, and Orca shall have performed and satisfied all covenants and agreements required by the Working Interest Agreement to be performed and satisfied by Orca at or prior to the Closing in all material respects. Orca further falsely covenanted that Orca stands ready, willing and able to close the Working Interest Agreement with Plaintiffs. To the contrary, and according to Matador, Orca’s attempt to assign its interest to a third party without the requisite notice was not authorized by the PSPA between Matador and Orca, and unbeknownst to Plaintiffs, Orca’s representation that the fulfillment of and compliance with the terms and conditions of the Working Interest Agreement would not violate, or be in conflict with, any material provision of any agreement or instrument to which Orca was a party could not have been and decidedly was not true and correct. Further, Orca wrongfully attempted to import conditions precedent into the Working Interest Agreement that were not expressly stated within the Working Interest Agreement. Namely, Matador’s consent to the agreed-upon assignment to Plaintiffs. No such condition precedent is listed in the Working Interest Agreement. Orca’s violation and material breach of Section 8.2 severely damaged and injured Plaintiffs, because Plaintiffs materially relied upon Orca’s false and incorrect misrepresentations and as a result, have not received the benefit of their bargain or the interests, revenues, and opportunities that Orca promised.
- In violation and material breach of Section 9.2(b), Orca wrongfully failed to tender performance at Closing and materially breached the Agreement prior to Closing, due to no fault of Plaintiffs, which were ready, willing and able to Close. Pursuant to Section 9.2(b), Orca agreed that Plaintiffs would be entitled to the return of its funds, and “shall retain any legal or equitable remedies for Seller’s breach of this Agreement, including without limitation, specific performance.” Contrary to the terms of the Working Interest Agreement, Orca improperly and misleadingly informed this Court that Plaintiffs were not entitled to any legal or equitable remedy.

- In violation and material breach of Section 10.2, Orca failed to execute and deliver to Matador an executed counterpart of the JOA, and failed to deliver a copy of the same to Plaintiffs; Orca failed to deliver to Plaintiffs possession of the Assets; and Orca further failed to deliver to Plaintiffs a completed UCC-1 financing statement in accordance with the terms of Section 2.5. Orca's violation and material breach of Section 1.2 severely damaged and injured Plaintiffs, because Plaintiffs have not received the benefit of their bargain or the interests that Orca promised to convey.

37. As expressly set forth above, Orca's numerous breaches caused substantial injury to Plaintiffs. All conditions precedent to recovery have been met, waived, or excused.

38. The PSPA is a valid, enforceable contract, which says in pertinent part: "Provided that any assignment transfer or security interest is made specifically subject to the terms and conditions of this Agreement and the JOA," Orca "may assign or otherwise transfer its right to participate arising under this agreement with the consent of the Buyer, which consent may not be unreasonably withheld." In this case, Matador actually consented to the assignment and transfer of interests from Orca to Plaintiffs by accepting wires from Plaintiffs in the amount of \$8,686,244, by applying those funds towards Orca's Drilling and Completion Costs for the Cowey 3H and Cowey 4H Wells, by using Plaintiffs' funds to ensure that half of the estimated Drilling and Completion Costs were paid into Matador's account during the drilling and completion of the Cowey 3H and Cowey 4H Wells, and by putting Plaintiffs' capital at risk in the event of a failed well.

39. Alternatively, and to the extent that Matador did not consent to the assignment or transfer, Matador breached the PSPA by improperly importing extra-contractual conditions into the PSPA, unreasonably withholding its consent for the assignment of Orca's working interest rights to Plaintiffs, and improperly using the consent provision within the PSPA as a pretext to take for itself the working interests that Orca promised to Plaintiffs and for which Plaintiffs handsomely paid Matador over \$8,600,000.

40. Matador's breach caused substantial injury to Plaintiffs. Namely, Matador has

taken away from Plaintiffs a twenty-five percent (25%) working interest in the Cowey 3H Well, and secreted away a twenty-five percent (25%) working interest in the Cowey 4H Well. These are the same working interest percentages that Orca originally promised to Plaintiffs in exchange for Plaintiffs' payment of \$8,686,244 to Matador, and the same working interest percentages that rightfully belong to Plaintiffs under the Working Interest Agreement.

Statutory Fraud, Common-Law Fraud, and Fraud in the Inducement

41. Plaintiffs incorporate hereby all the allegations set forth above.

42. The sale, assignment, and delivery of Orca's working interests is a transaction involving real estate. During the transaction, Orca made false, material representations of fact and false promises with the intent and for the purpose of inducing Plaintiffs into the Working Interest Agreement, and inducing Plaintiffs to make payments of over \$8,600,000 towards the Drilling and Completion Costs for the Cowey 3H Well and Cowey 4H Well. Plaintiffs justifiably relied on Orca's false representations and promises. That justifiable reliance caused damage to Plaintiffs.

43. For example, Orca falsely and incorrectly represented that the execution and delivery of the Working Interest Agreement did not, and the fulfillment of and compliance with the terms and conditions of the Working Interest Agreement would not, violate, or be in conflict with, any material provision of any agreement or instrument to which Orca was a party or by which it was bound. To the contrary, and according to Matador, Orca's attempt to assign its interest to a third party without the requisite notice was not authorized by the Purchase, Sale, and Participation Agreement between Matador and Orca. Plaintiffs materially relied upon Orca's false and incorrect misrepresentations, and as a result, have not received the benefit of their bargain or the interests, revenues, and opportunities that Orca promised.

44. Orca falsely covenanted that all representations and warranties of Orca contained in the Working Interest Agreement were true and correct in all material respects on and as of the Closing, and Orca shall have performed and satisfied all covenants and agreements required by the Working Interest Agreement to be performed and satisfied by Orca at or prior to the Closing in all material respects. Orca further falsely covenanted that Orca stood ready, willing and able to Close the Working Interest Agreement with Plaintiffs. To the contrary, and according to Matador, Orca's attempt to assign its interest to a third party without the requisite notice was not authorized by the PSPA between Matador and Orca, and unbeknownst to Plaintiffs, Orca's representation that the fulfillment of and compliance with the terms and conditions of the Working Interest Agreement would not violate, or be in conflict with, any material provision of any agreement or instrument to which Orca was a party could not have been and decidedly was not true and correct.

45. Further, Orca wrongfully attempted to import conditions precedent into the Working Interest Agreement that were not expressly stated within the Working Interest Agreement. Namely, Matador's consent to the agreed-upon assignment to Plaintiffs. No such condition precedent is listed in the Working Interest Agreement. Plaintiffs materially relied upon Orca's false and incorrect misrepresentations that Orca's performance under the Working Interest Agreement was not conditional and as a result, have not received the benefit of their bargain or the interests, revenues, and opportunities that Orca promised.

46. Orca improperly and fraudulently requested payment of Drilling and Completion Costs in the amount of \$4,343,122 for the Cowey 3H Well without first complying with its obligations, representations, warranties, and covenants under the Working Interest Agreement. Despite its representation that it was ready, willing and able to close the Working Interest

Agreement with Plaintiffs, Orca had no intention to fulfill its obligations under the Working Interest Agreement as written and agreed to by Orca and Plaintiffs. Instead, Orca, with the assistance of Matador, orchestrated a scheme to induce Plaintiffs to pay \$4,343,122 directly to Matador, so that Orca could retain its status as a “Drilling Party” and “Consenting Party” under the PSPA, and so that Matador could risk the money Plaintiffs paid to drill the Wells and later steal the working interests promised to Plaintiffs once the Wells proved successful.

47. Orca improperly and fraudulently requested payment of Drilling and Completion Costs in the amount of \$4,343,122 for the Cowey 4H Well without first complying with its obligations, representations, warranties, and covenants under the Working Interest Agreement. Despite its representation that it was ready, willing and able to close the Working Interest Agreement with Plaintiffs, Orca had no intention to fulfill its obligations under the Working Interest Agreement as written and agreed to by Orca and Plaintiffs. Instead, Orca, with the assistance of Matador, orchestrated a scheme to induce Plaintiffs to pay \$4,343,122 directly to Matador, so that Orca could retain its status as a “Drilling Party” and “Consenting Party” under the PSPA, and so that Matador could risk the money Plaintiffs paid to drill the Wells and later steal the working interests promised to Plaintiffs once the Wells proved successful.

48. Orca falsely and misleadingly altered material terms of the Working Interest Agreement after final execution by the parties, without the consent or authority of Plaintiffs. Worse, Orca falsely and misleadingly represented that the entire Working Interest Agreement and/or portions of the Working Interest Agreement had been terminated without following any of the procedures or provisions set forth in the Working Interest Agreement, and without any other right to do so.

49. Similarly, Matador made false, material representations of fact and false promises

with the intent and for the purpose of inducing Plaintiffs into the Working Interest Agreement, and inducing Plaintiffs to perform under the Working Interest Agreement by making payments directly to Matador of over \$8,600,000 in Drilling and Completion Costs for the Cowey 3H and Cowey 4H Well.

50. For example, Matador falsely represented that it viewed Plaintiffs as business partners on the Cowey 3H and Cowey 4H Wells; that the only condition to any consent would relate to Plaintiffs' financial circumstances and creditworthiness (which are not in dispute); that Orca had the right to enter into the Working Interest Agreement with Plaintiffs; and that acceptance of Plaintiffs' funds would satisfy the Consenting Party requirements of the JOA and PSPA. Plaintiffs justifiably relied on Matador's false representations and promises. That justifiable reliance caused damage to Plaintiffs.

Conversion

51. Plaintiffs incorporate hereby all the allegations set forth above.

52. Plaintiffs had the right to immediate possession of the ownership interests at issue in this lawsuit under the Working Interest Agreement. The ownership interests at issue are mineral interests severed from realty in the form of working interests in the oil and gas leases.

53. Orca and Matador have wrongfully exercised dominion and control over the property to the exclusion of and inconsistent with Plaintiffs' rights under the Working Interest Agreement. Plaintiffs have demanded transfer or return of the property. Defendants Orca and Matador have failed to transfer or return it to Plaintiffs.

Civil Conspiracy

54. Plaintiffs incorporate herein all the allegations set forth above.

55. Orca and Matador conspired to defraud Plaintiffs into paying the Drilling and

Completion Costs of the Cowey 3H and 4H wells without providing a corresponding benefit to Plaintiffs. Contrary to Plaintiffs' rights under the Working Interest Agreement, Orca and Matador fraudulently conspired and agreed that "Matador will be entitled to receive one hundred percent (100%) of the production attributable to each of the Cowey 3H Well and Cowey 4H Well until such time as such wells have reached Payout," that "Once each of the Cowey 3H Well and Cowey 4H Well has reached Payout, Orca will be deemed to back-in for a twenty-five percent (25%) working interest in the Cowey 3H Well and a twenty-five percent (25%) working interest in the Cowey 4H Well on a well-by-well basis," and that Matador would receive a twenty-five percent (25%) working interest in the Cowey 3H Well and a twenty-five percent (25%) working interest in the Cowey 4H Well, which is the same working interest percentage that Orca promised to Plaintiffs, and which rightfully belongs to Plaintiffs under the Working Interest Agreement.

56. In furtherance of this conspiracy, Orca and Matador conspired to wrongfully convert working interests that properly and contractually belong to Plaintiffs. Orca and Matador conspired to fraudulently induce Plaintiffs to enter the Working Interest Agreement and pay to Matador over \$8,600,000 towards the Drilling and Completion Costs for the Cowey 3H and Cowey 4H Wells.

57. Orca and Matador engaged in these acts, pursuant to agreement among them, for the unlawful purpose of defrauding Plaintiffs. As a proximate result of defendants' wrongful, conspiratorial acts, Plaintiffs suffered damages, including the loss of over \$8,600,000 paid towards the Drilling and Completion Costs for the Cowey 3H and Cowey 4H Wells, the loss of a twenty-five percent (25%) working interest in the Cowey 3H Well, the loss of a twenty-five percent (25%) working interest in the Cowey 4H Well, and the loss of other participation rights

and interests enumerated in the Working Interest Agreement.

58. Each Defendant is thus liable for the acts of its fellow Defendant.

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

Tortious Interference with Contract

60. Plaintiffs incorporate hereby all the allegations set forth above.

61. Plaintiffs and Orca had a valid contract—the Working Interest Agreement.

Matador was fully aware of Plaintiffs' and Orca's valid contract.

62. Although Matador knew about the Working Interest Agreement, and accepted payments pursuant to the Working Interest Agreement, Matador willfully and intentionally interfered with the Working Interest Agreement, without authority or privilege to do so. To the extent that Matador claims it withheld its consent under the PSPA, such consent was unreasonably withheld.

63. As a direct and proximate cause of Matador's wrongful interference with contract, Plaintiffs have suffered damages in an amount to be determined at trial.

Declaratory Judgment

64. Plaintiffs incorporate hereby all the allegations set forth above.

65. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001, Plaintiffs seek a declaration that:

- a. Plaintiffs performed all conditions precedent to closing under the Working Interest Agreement;
- b. Plaintiffs performed their obligations under the Working Interest Agreement;
- c. The Working Interest Agreement does not condition Orca's performance on obtaining consent for the transaction from Matador;
- d. Orca obtaining consent from Matador is neither a condition precedent, nor a dependent covenant under the Working Interest Agreement

- e. Specific performance is a remedy available to Plaintiffs under the Working Interest Agreement for Orca's failure to close;
- f. Matador consented to the transaction by accepting Plaintiffs' money;
- g. In the alternative, to the extent that Matador withheld its consent, any such withholding of consent by Matador was unreasonable under the PSPA; and
- h. Orca and Matador have acted with unclean hands.

Quasi Estoppel

66. Plaintiffs incorporate hereby all the allegations set forth above.

67. Defendants accepted the benefits of the Working Interest Agreement and subsequently took inconsistent positions regarding the Working Interest Agreement and the PSPA to avoid their corresponding obligations to Plaintiffs. Defendants are estopped from taking such an inconsistent position, as allowing them to do so would be unconscionable.

Money Had and Received

68. Plaintiffs incorporate hereby all the allegations set forth above.

69. Defendant Matador holds \$8,686,244 belonging to Plaintiffs. The money belongs to Plaintiffs in equity and good conscience. Matador should return the money to Plaintiffs to further avoid unjust enrichment.

70. Indeed, both Orca and Matador have falsely represented in discovery and to this Court that Matador has returned the \$8,686,244 to Plaintiffs. Most recently, in its motion for summary judgment, Orca stated, under oath, that "Matador returned every cent of the \$8,686,244 paid by Plaintiffs to Matador." Not true. Matador continues to hold Plaintiffs' \$8,686,244 in its bank, has not returned a single red cent of Plaintiffs' \$8,686,244, and has taken no steps to tender the money to the Court or back into Plaintiffs' position where it belongs.

Waiver, Ratification, Course of Conduct/Dealing

71. Plaintiffs incorporate hereby all the allegations set forth above.

72. Plaintiffs affirmatively invoke the doctrines of waiver, ratification, and course of conduct/dealing.

Specific Performance

73. Plaintiffs incorporate hereby all the allegations set forth above.

74. The Working Interest Agreement is a valid contract involving the sale, transfer, or assignment of real property interests. Section 9.2(b) of the Working Interest Agreement expressly reserves for Plaintiffs the right to specific performance in the event of Orca's pre-closing breach, which occurred.

75. Plaintiffs were ready, willing, and able to timely perform their obligations under the Working Interest Agreement. Indeed, Plaintiffs tendered performance and actually performed all of their obligations under the Working Interest Agreement.

76. The ownership interests to which Plaintiffs are entitled under the Working Interest Agreement are property that has a special, peculiar, or unique value or character. Plaintiffs would not be adequately compensated by an award of monetary damages. Orca and Plaintiffs expressly recognized this fact in the Working Interest Agreement by providing Plaintiffs the right to specific performance in the event of Orca's pre-closing breach, which occurred.

77. Specific performance is imminently possible for Orca, which owns an interest in the Cowey 3H and Cowey 4H Wells that is identical to the ownership interest to which Plaintiffs are entitled.

Exemplary Damages

78. Defendants' aggravated and intentional conduct entitles Plaintiffs to the recovery

of exemplary damages.

Tex. R. Civ. P. 47(c) Statement

79. Pursuant to Tex. R. Civ. P. 47(c), Plaintiffs state that they seek specific performance of the Working Interest Agreement, monetary relief over \$1,000,000, and all other relief to which Plaintiffs may be entitled.

Attorneys' Fees

80. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001, 38.001 and Tex. Bus. & Com. Code Ann. § 27.01(e), Plaintiffs are entitled to recovery of their reasonable and necessary attorneys' fees, costs, and expert witness fees.

**VII.
RELIEF REQUESTED**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, XS Capital Investments, LP and Rural Route 3 Holdings, LP, pray that Defendants, Orca ICI Development JV, Orca Assets G.P., LLC, MRC Energy Corporation f/k/a Matador Resources Company, be cited to appear and answer this Petition, and that this Court enter judgment in their favor, declare their rights under the Working Interest Agreement and the PSPA as described above, order specific performance under the Working Interest Agreement including but not limited to Defendants' assignment and delivery of an undivided 50% of 100% working interest in the Cowey 3H and Cowey 4H Wells to Plaintiffs, award Plaintiffs their monetary damages, exemplary damages, pre- and post-judgment interest, attorneys' fees, costs of suit, expert witness fees, and such other and further relief to which Plaintiffs may be justly entitled, including any such other order, directions, and inquiries that the circumstances require.

Dated: June 7, 2014

Respectfully submitted,

By: /s/ Chanler A. Langham
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CERTIFICATE OF SERVICE

This is to certify that on this the 7th day of June, 2014, a true and correct copy of the above and foregoing instrument was properly forwarded to the following counsel of record in accordance with Rule 21 of the Texas Rules of Civil Procedure as indicated below:

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