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COUNSEL TO THE DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP,[1]	§	Case No. 18-33513-sgj-11
	§	
	§	(Jointly Administered)
	§	
Debtors.	§	

DEBTORS' MOTION PURSUANT TO SECTION 541(a) OF THE BANKRUPTCY CODE FOR DETERMINATION THAT CERTAIN CLAIMS AND CAUSES OF ACTION ARE PROPERTY OF THE ESTATE

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, 14TH FLOOR, DALLAS, TEXAS 75242 BEFORE CLOSE OF BUSINESS ON APRIL 15, 2019, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF. ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY. IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for their Motion Pursuant to Section 541(a) of title 11 of the United States Code (the "Bankruptcy Code") for Determination that Certain Claims and Causes of Action are Property of the Estate (the "Motion"), respectfully represent:

PRELIMINARY STATEMENT

1. As the Court is aware, prior to the Petition Date, certain of the Debtors' limited partners filed a putative class action asserting claims and causes of action against PDC, the Debtors' managing general partner, in Colorado federal district court.[2] The operative complaint in the Colorado Action labels most of these causes of action as "derivative" and the others as "direct." Despite these labels and the class action plaintiffs' contentions to the contrary, the Debtors believe all of the claims asserted in the Colorado Action are derivative and are, thus, property of the estate. This is because, among other reasons, all of the harms alleged by the plaintiffs derive from alleged harm to the Debtors.

2. As a result, by this Motion, the Debtors seek entry of an order confirming all claims asserted in the Colorado Action are derivative claims that are property of the Debtors' estates.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] The putative class has not been certified.

BACKGROUND

5. On October 30, 2018 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed.

7. The Debtors are West Virginia limited partnerships that own undivided working interests in oil and natural gas wells. PDC Energy, Inc. (f/k/a Petroleum Development Corp.) ("PDC") is the managing general partner of each of the Debtors and owns approximately 39% of the Debtors' equity interests. In the aggregate, the Debtors have over 3,700 limited partnership unit holders (the "Investor Partners").

8. The Debtors' wells have significant plugging and abandonment liability that, in the aggregate, exceed the cash flow generated by the wells. Although some of the Debtors' wells continue to generate revenue, factoring the P&A liability into the analysis results in the Debtors' wells having a negative aggregate value. As a result, these cases were filed to stem the Debtors' negative cash flow, efficiently liquidate their assets, and make a final distribution to the Investor Partners. Additional background information may be found in the Declaration of Karen Nicolaou in Support of Chapter 11 Petitions [Docket No. 10] (the "Nicolaou Declaration").

THE COLORADO ACTION

9. On December 20, 2017, five of the Investor Partners (the "LP Plaintiffs") filed a lawsuit against PDC in the United States District Court for the District of Colorado captioned *Dufresne, et al. v. PDC Energy, Inc., et al.,* Case No. 1:17-cv-03079-RBJ (the "Colorado Action"). The Debtors were named therein as "nominal defendants." A copy of the live second-

amended complaint [*Dufresne* Docket No. 37] (the "SAC"), without exhibits, is attached hereto as **Exhibit B**. In essence, the LP Plaintiffs assert that PDC is liable for breach of contract and breach of fiduciary duty for failing to transfer to the Debtors the full array of assets to which the Debtors were allegedly entitled – specifically, certain leasehold acreage surrounding the wellbores referred to as "spacing units." All injuries alleged in the SAC stem directly from this alleged failure to transfer leasehold acreage to the Debtors, or from an alleged failure to recomplete or refracture certain existing vertical wells owned by the Debtors.

10. The LP Plaintiffs assert eight claims for relief and label six of those claims either derivative or direct.[3] Of those six claims, four are asserted against PDC (Claims 1, 3, 4, and 5) and the other two are asserted against certain officers and directors of PDC (the "D&O Defendants") (Claims 2 and 6). The LP Plaintiffs admit that of the claims asserted against PDC, Claim 1 (breach of fiduciary duty) and Claim 3 (breach of contract) are derivative claims. The Debtors contend the remaining claims against PDC—Claim 4 (breach of contract) and Claim 5 (breach of fiduciary duty)—are also derivative, despite being labeled as direct in the SAC, because the Debtors are the primary beneficiaries of each of those claims.

11. Immediately below is a chart outlining the claims asserted by the LP Plaintiffs in the Colorado Action, and the alleged acts or omissions pled to support each claim. The "description" of a claim as direct or derivative is taken from the SAC; the Debtors do not agree that any of the claims are direct:

[3] The LP Plaintiffs also seek declaratory relief relating to (i) whether PDC was obligated to assign to the Debtors leasehold interests in spacing units with a minimum of 32 acres (Claim 7) and (ii) whether PDC was authorized to file bankruptcy on the Debtors' behalf (Claim 8). The Debtors contend Claim 8 is moot, or at the very least, is already the subject of a contested matter before this Court. *See Motion for Dismissal of Chapter 11 Case* [Docket No. 85]. For the reasons set forth herein, the Debtors contend Claim 7 is a threshold issue that is embedded in all the other claims for relief and is, thus, derivative.

Claim No.	Alleged act(s) or omission(s) supporting claim
Claim 1: Derivative Breach of Fiduciary Duty	1. PDC's failure to take reasonable steps to recomplete or refracture the Debtors' vertical wells; 2. PDC's failure to assign 32-acre spacing units to the Debtors, resulting in the: a. Failure to drill infill wells on the spacing units that should have been assigned to the Debtors; b. Failure to utilize other "standard" procedures to develop the spacing units that should have been assigned to the Debtors; c. Profiting from horizontal wells passing through the spacing units that should have been assigned to the Debtors; and d. Entering into an acreage swap with Noble, which included a portion of the spacing units that should have been assigned to the Debtors.
Claim 5: Direct Breach of Fiduciary Duty	1. PDC's failure to take reasonable steps to recomplete or refracture the Debtors' vertical wells; 2. PDC's failure to assign 32-acre spacing units to the Debtors, resulting in the: a. Failure to treat Investor Partners fairly and reasonably in retaining the spacing units that should have been assigned to the Debtors; b. Alleged increase of PDC's profits above 37%, effectively diminishing the Investor Partners' partnership profits to below 63%; c. Failure to drill infill wells on the spacing units that should have been assigned to the Debtors; d. Failure to utilize other "standard" procedures to develop the spacing units that should have been assigned to the Debtors; e. Profiting from horizontal wells passing through the spacing units that should have been assigned to the Debtors; and f. Entering into an acreage swap with Noble, which included a portion of the spacing units that should have been assigned to the Debtors.
Claim 3: Derivative Breach of Contract	1. PDC's failure to take reasonable steps to recomplete or refracture the Debtors' vertical wells; 2. PDC's failure to assign 32-acre spacing units to the Debtors, resulting in the: a. Failure to drill infill wells on the spacing units that should have been assigned to the Debtors; and b. Failure to pay the Debtors any value for, or allocate to the Debtors, any portion of the leasehold interests acquired as a result of the Noble swap.
Claim 4: Direct Breach of Contract	1. PDC's failure to assign 32-acre spacing units to the Debtors, resulting in the: a. Failure to treat Investor Partners fairly and reasonably in retaining the spacing units that should have been assigned to the Debtors; and b. Alleged increase of PDC's profits above 37%, effectively diminishing the Investor Partners' partnership profits to below 63%.

12. The remaining two claims asserted in the SAC are against the D&O Defendants for aiding and abetting PDC's alleged breaches of fiduciary duty (Claims 2 and 6). The LP Plaintiffs designate Claim 2 as derivative and Claim 6 as direct.[4]

RELIEF REQUESTED

13. By this Motion, the Debtors respectfully request entry of an order, pursuant to section 541(a) of the Bankruptcy Code, determining that the claims asserted in the SAC are derivative claims, and therefore, property of the Debtors' estates.[5]

ARGUMENT AND AUTHORITIES

14. There is no doubt that any cause of action owned by the Debtors as of the Petition Date constitutes "property of the estate" under section 541 of the Bankruptcy Code. 11 U.S.C. §541(a)(1); *see also, e.g. In re Cantu,* 784 F.3d 253, 257 (5th Cir. 2015); *Yaquinto v. Segerstrom (In re Segerstrom)*, 247 F.3d 218, 223-24 (5th Cir. 2001); *In re Stat-Tech Intern. Corp.*, 47 F.3d 1054, 1057 (10th Cir. 1995); *La. World Exposition v. Fed. Ins. Co. (In re La. World Exposition)*, 858 F.2d 233, 245 (5th Cir. 1988); *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc.* (*In re S.I.*

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[4] On February 19, 2019, approximately three and a half months after the Petition Date, the District Court in the Colorado Action entered its *Order on Motion to Dismiss* [*Dufresne* Docket No. 46] (the "Order"), attached hereto as **Exhibit C**. In its Order, the District Court dismissed Claims 2 and 6 with prejudice. *See* Order at page 12. On March 1, 2019, the Debtors filed their *Motion Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to Vacate Order on Motion to Dismiss* [*Dufresne* Docket No. 47] (the "Motion to Vacate") (i) asserting that the District Court inadvertently violated the stay by issuing the Order and (ii) seeking to vacate the Order so that the Debtors may exercise dominion and control over their claims. PDC has filed a response in opposition to the relief requested in the Motion to Vacate [*Dufresne* Docket No. 48]. Regardless of the outcome of the Motion to Vacate, the Debtors contend Claim 6 is also derivative.

[5] Counsel to the LP Plaintiffs has acknowledged that certain claims in the SAC are derivative in their pleadings, in conversations with Debtors' counsel, and in correspondence to Karen Nicolaou, wherein the LP Plaintiffs demanded that Ms. Nicolaou pursue the estates' claims against PDC and the D&O Defendants. However, counsel to the LP Plaintiffs has also made representations to the Investor Partners that counsel is participating in this bankruptcy "to protect the interests of both the [Debtors] and the limited partners." *See* www.PDCClassAction.com. To the extent the LP Plaintiffs or their counsel are purporting to act on behalf of the Debtors' estates and exercise ownership or control over estate claims, they are not only misleading the Investor Partners but are also precariously close to violating the automatic stay. *See, e.g.,* 11 U.S.C. § 362(a); *In re Ampal-Am. Israel Corp.,* 502 B.R. 361, 374 (Bankr. S.D.N.Y. 2013) (holding that letter by non-debtor to debtor's directors and officers demanding payment on account of estate claim violated automatic stay; the fact that letter also potentially asserted direct claims was irrelevant). As counsel to the LP Plaintiffs recognize on their website, because the District Court has not certified the class, counsel only represents the five named plaintiffs, not the Debtors, their estates, or the other Investor Partners.

Acquisition, Inc.), 817 F.2d 1142, 1149 (5th Cir. 1987); *In re Strada Design Associates, Inc*., 326 B.R. 229, 235 (Bankr. S.D.N.Y. 2005).

15. It is also beyond dispute that derivative claims are property of the estate. *Pub. Sch. Teachers'' Pension & Ret. Fund v. Ambac Fin. Group, Inc.* (*In re Ambac Fin. Group, Inc.*), 487 F. App'x 663, 665 (2d Cir. 2012) (holding that derivative claims become property of the estate upon bankruptcy filing); *Torch Liquidating Tr. ex rel. Bridge Associates L.L.C. v. Stockstill*, 561 F.3d 377, 386 (5th Cir. 2009) ("By definition then, a cause of action for breach of fiduciary duty owed to the corporation that is property of the corporation at commencement of the chapter 11 case becomes property of the debtor's estate, regardless of whether outside of bankruptcy the case was more likely to be brought by the corporation directly or by a shareholder or creditor through a derivative suit"); *San Mateo Plaintiffs v. At Home Corp. (In re At Home Corp.),* 154 F. App'x 666, 668 (9th Cir. 2005) ("A bankruptcy court may enjoin a derivative claim brought by shareholders because the claim is the property of the bankrupt estate"); *La. World Exposition*, 858 F.2d at 245 (holding that derivative action against debtor's officers and directors was property of the estate); *In re Fort Worth Osteopathic Hosp., Inc.*, 387 B.R. 706, 712 (Bankr. N.D. Tex. 2008) ("If a bankruptcy intervenes, it is the estate that is entitled to recovery on claims pursued derivatively of a debtor"); *In re RNI Wind Down Corp.*, 348 B.R. 286, 293 (Bankr. D. Del. 2006); *In re WorldCom, Inc.,* 323 B.R. 844, 849, 857 (Bankr. S.D.NY. 2005).

16. This is why the automatic stay applies to derivative claims, and why a debtor (or trustee) is the only entity (or person) who may commence and prosecute such claims absent another party (such as an official committee) seeking and securing authorization to do so on behalf of the estate, with the proceeds of the litigation being paid to the estate. *See, e.g., Ambac Fin. Group*, 487 F. App'x at 668 ("[W]hile normally the fiduciary obligation of officers, directors

and shareholders 'is enforceable directly . . . through a stockholder's derivative action, it is, in the event of bankruptcy of the corporation, enforceable by the trustee' ") (quoting *Pepper v. Litton*, 308 U.S. 295, 307 (1939)); *In re At Home Corp.*, 154 F. App'x at 668 (bankruptcy court may enjoin shareholders from bringing derivative claims pursuant to sections 541(a)(1) and 362(a)(3) of the Bankruptcy Code); *La. World Exposition*, 858 F.2d at 246 (trustee has the authority to assert derivative actions that accrued prior to bankruptcy); *WorldCom*, 323 B.R. at 849 (derivative action could only be maintained by the reorganized debtors).

17. Under West Virginia law,[6] a cause of action is direct only if the stockholder or limited partner is harmed individually and is the primary beneficiary of the action.[7] *See Bank of Mill Creek v. Elk Horn Coal Corp.*, 57 S.E.2d 736, 746 (W. Va. 1950); *see also Masinter v. Webco Co.*, 262 S.E.2d 433 (W. Va. 1980) (holding that a suit for oppressive conduct by an individual shareholder differs from a derivative suit; in an oppressive conduct suit the shareholder is seeking individual relief, whereas in a derivative suit, the relief sought is on behalf of the corporation and other similarly situated shareholders). Conversely, where the partnership is the primary beneficiary of the cause of action and is harmed by the action that is the subject of the suit, and the investor is only indirectly damaged (*i.e.,* in the form of decreased value of her limited partnership interest), the claim is derivative. *Bank of Millcreek*, 57 S.E.2d at 746; *see also Manville Personal Injury Tr. v. Blankenship*, No. 07-C-1333, 2011 WL 10831074 (W. Va.

[6] West Virginia law appears to apply given that the Debtors are West Virginia limited partnerships and each Debtor's partnership agreement has a West Virginia choice of law clause. *Sobchack v. American Nat'l Bank & Trust Co. of Chicago (In re Ionosphere Clubs, Inc.)*, 17 F.3d 600, 607 (2d Cir.1994) ("Bankruptcy courts have long been charged with ascertaining, under state law, whether claims belong to the bankruptcy estate or to other claimants"); *Brandt v. Bassett (In re Southeast Banking Corp.)*, 827 F. Supp. 742, 745 (S.D. Fla. 1993*), rev'd in part on other grounds*, 69 F.3d 1539 (11th Cir. 1995) ("Whether a claim is direct or derivative is a matter of state law").

[7] The analysis for direct/derivative standing is substantially the same for corporations and partnerships. *See Tri-State Petroleum Corp. v. Coyne*, 240 W. Va. 542, 568, 814 S.E.2d 205, 231 (2018) (Loughry, J., concurring in part and dissenting in part) (applying the same law and analysis of direct/derivative claims in both corporate and partnership contexts); *Culverhouse v. Paulson & Co.*, 133 A.3d 195, 198 n.9 (Del. 2016) (citations omitted) ("[t]he Tooley direct/derivative test is 'substantially the same' for claims involving limited partnerships").

Cir. Ct. Sept. 29, 2011) (quoting *Tooley v. Donaldson, Lufkin & Jenrette, Inc*., 845 A.2d 1031, 1039 (Del. 2004)) ("whether a claim is direct or derivative is not a function of the label a party gives it [but] is determined with reference 'to the nature of the wrong and to whom the relief should go'").[8]

18. In other words, the limited partner must show an injury ***independent*** of any injury to the partnership in order to prove that a claim is direct, rather than derivative. *Manville Personal Injury Tr*., No. 07-C-1333, 2011 WL 10831074, at *8. Claims asserting injuries that derive from, or are dependent upon, injuries to the partnership, are derivative. Thus, if an award of damages to the Debtors can redress any loss to the Investor Partners, the action is derivative. *See Dowling v. Narragansett Capital Corp*., 735 F. Supp. 1105, 1113 (D.R.I. 1990); *see also In re Preferred Care Inc., et al.*, Case No. 17-44642-MXM-11, Mem. Op. (March 22, 2019) [Docket No. 1775] at 8-11 (discussing the direct v. derivative distinction, the Fifth Circuit's recent *Buccaneer* decision, and stating that if a claim depends upon or derives from harm to the estate or depletion of estate assets, the claims are derivative; and if the claims do not depend upon harm to the estate they are direct;); *In re Educators Group Health Trust,* 25 F.3d 1281, 1284-85 (5th Cir. 1994) (holding claims to be derivative where they asserted harms arising from harm to the estate).

19. The only slight exception to this rule applies to contract disputes — if contractual rights of limited partners are independent of the partnership's rights, claims based upon those rights are direct claims. *See El Paso Pipeline GP Co., L.L.C. v. Brinckerhoff*, 152 A.3d 1248,

[8] Because there is little West Virginia law on point, Delaware law has been consulted by West Virginia courts when analyzing corporate issues and is instructive. *See, e.g.*, *Hodges Realty Co., Inc. v. John Smiley's Motel, Inc.,* 183 W. Va. 328, 338, 395 S.E.2d 751, 761 (1990); *see also, e.g., Meridian Capital CIS Fund v. Burton (In re Buccaneer Resources, LLC)*, 912 F.3d 291, 293-96 (5th Cir. 2019) (analyzing the direct v. derivative distinction and holding that "[a]s long as the injury a creditor is pursuing against a third party *does not stem from the depletion of estate assets*, the injury is a direct one that does not belong to the estate" (emphasis added)).

1262 (Del. 2016). For example, a cause of action for breach of contract based upon a general partner and managing member preventing investors from viewing a partnership's financial statements and denying the investors their inspection rights is a direct claim, because those rights run directly to the investors. *Sehoy Energy LP v. Haven Real Estate Grp., LLC*, No. CV 12387-VCG, 2017 WL 1380619, at *9 (Del. Ch. Apr. 17, 2017).

I. All the Claims Against PDC in the Colorado Action are Derivative Claims

20. As set forth above, the LP Plaintiffs admit – and the Debtors agree – that Claims 1 and 3 against PDC are derivative. The Debtors assert that the remaining claims against PDC—Claim 4 (breach of contract) and Claim 5 (breach of fiduciary duty)—are also derivative, despite being labeled as direct, because the Debtors are the primary beneficiaries of each of those claims.

21. In addition, the LP Plaintiffs allege the same purported acts or omissions by PDC to support each claim, regardless of whether they are labeled direct or derivative, as summarized below:

Alleged Act or Omission by PDC	**Claim 1: Derivative Breach of Fiduciary Duty**	**Claim 5: Direct Breach of Fiduciary Duty**	**Claim 3: Derivative Breach of Contract**	**Claim 4: Direct Breach of Contract**
Failure to take reasonable steps to recomplete or refracture the Debtors' vertical wells	**X**	**X**	**X**	
Failure to assign 32-acre spacing units to the Debtors	**X**	**X**	**X**	**X**
Failure to drill infill wells on the spacing units that should have been assigned to the Debtors	**X**	**X**	**X**	
Failure to utilize other "standard" procedures to develop the spacing units that should have been assigned to the Debtors	**X**	**X**		
Profiting from horizontal wells passing through the spacing units that should have been assigned to the Debtors	**X**	**X**		

Entering into an acreage swap with Noble, which included a portion of the spacing units that should have been assigned to the Debtors	**X**	**X**		
Failure to treat the Investor Partners' fairly and reasonably in retaining the spacing units that should have been assigned to the Debtors		**X**		**X**
Alleged increase of PDC's profits above 37%, effectively diminishing the Investor Partners' partnership profits to below 63%		**X**		**X**
Failure to pay the Debtors any value for, or allocate to the Debtors, any portion of the leasehold interests acquired as a result of the Noble swap			**X**	

A. Breach of Contract Claims (Claims 3 and 4)

22. In Claim 3, the LP Plaintiffs allege that PDC breached the partnership agreements, injuring the Debtors and derivatively, the LP Plaintiffs, by (i) failing to take reasonable steps to recomplete or refracture the Debtors' vertical wells and (ii) failing to assign to the Debtors leasehold interests in 32-acre spacing units, resulting in the (a) failure to drill infill wells on the spacing units that should have been assigned to the Debtors, and (b) failure to pay the Debtors any value for, or allocate to the Debtors any portion of, the leasehold interests acquired by PDC as a result of the acreage swap with Noble Energy, Inc. ("Noble"). In Claim 4, the LP Plaintiffs allege that PDC breached the partnership agreements, and allegedly caused the LP Plaintiffs direct injury, by failing to assign to the Debtors leasehold interests in 32-acre spacing units, resulting in the (i) failure to treat the Investor Partners fairly and reasonably when PDC retained for itself the spacing unit acreage, and (ii) increase of PDC's profits derived from the Debtors' alleged assets above 37% and effectively diminishing the Investor Partners' profits.

23. However, none of these alleged breaches of contract creates an injury to the Investor Partners that is separate and distinct from any injury to the Debtors. *See, e.g.,*

Buccaneer, 912 F.3d at 294 (citing examples of derivative claims, where there was no distinct creditor injury separate from injury to the debtor).

24. First, the alleged failure of PDC to assign to the Debtors leasehold interests in 32-acre spacing units and to take reasonable steps to recomplete or refracture the Debtors' existing vertical wells are classic derivative claims—the injury is simply that ***the Debtors*** are allegedly left poorer as a result of PDC's actions, with a "follow on" injury to the Investor Partners through a diminution in the value of their partnership interests. *E.g.*, *In re NC12, Inc.*, 478 B.R. 820, 836 (Bankr. S.D. Tex. 2012) (failure to assign title to real property to corporation was derivative claim that was property of the corporation's bankruptcy estate); *Hodges v. Rajpal*, 459 S.W.3d 237, 249-250 (Tex. App. – Dallas 2015, no pet.) (injury to partnership that diminished value of limited partner's interest held to be derivative).

25. Since PDC's failure to assign to the Debtors leasehold interests in 32-acre spacing units is a derivative claim, it follows that any claims flowing from such alleged wrongful conduct are also derivative. The Investor Partners cannot show individualized harm separate from the alleged harm to the Debtors for the failure to drill infill wells on the spacing units that should have been assigned to the Debtors or the failure to pay the Debtors any value for, or allocate to the Debtors any portion of, the leasehold interests acquired by PDC as a result of the Noble swap. These claims are, therefore, all derivative. *Buccaneer*, 912 F.3d at 294 ("If harm to the creditor comes about only because of harm to the debtor, then its injury is derivative, and the claim is property of the estate").

26. Although the LP Plaintiffs' contention regarding fair and reasonable treatment on its face appears to relate specifically to the Investor Partners rather than the Debtors, closer inspection makes it clear that if PDC acquired or retained property that should have belonged to

the Debtors through transactions that were not fair and reasonable to the investors, then the Debtors themselves are the primary injured parties. *El Paso Pipeline*, 152 A.3d at 1262 (applying Delaware law and holding claim arising from contractual duty of good faith was owed to limited partnership and not limited partners, and therefore was derivative in nature even if derived from contract rights; limited partnership agreement is formational contract of the entity rather than a separate commercial contract among the partners). Furthermore, this alleged injury would most likely be redressed through the return to the Debtors of the property itself or the value thereof, which may ultimately benefit the Investor Partners on a pro rata basis. Accordingly, the LP Plaintiffs' second allegation in Claim 4 is also derivative.

27. Lastly, in alleging that PDC diminished the Investor Partners' profits by "effectively increase[ing] its profits derived from" the Debtors' assets, the LP Plaintiffs are essentially arguing that the Debtors' assets/funds were wrongfully depleted. Again, this is an injury chiefly to the Debtors and only harms the Investor Partners derivatively insofar as their profits (the value of their partnership interests and distributions in respect thereof) were lessened. *Buccaneer*, 912 F.3d at 294.

28. Additionally, to the extent that allegations in respect of this claim may relate to one or more breaches of fiduciary duty arising under the partnership agreement, it is the Debtors that would primarily suffer any alleged injury. Any potential recovery would only flow to the LP Plaintiffs *through the Debtors,* based upon the Investor Partners' respective ownership interests. Thus, the claims appearing under this heading in the SAC but premised on a breach of fiduciary duty are also derivative.

B. Breach of Fiduciary Duty Claims (Claims 1 and 5)

29. In Claim 1, the LP Plaintiffs allege that PDC, as the Debtors' managing general partner, owed various fiduciary duties to the Debtors that were violated by (i) failing to refracture and recomplete the Debtors' vertical wells, and (ii) failing to assign to the Debtors 32-acre spacing units surrounding each vertical well, resulting in the (a) failure to drill infill wells on the additional acreage in response to a statutory reduction in spacing requirements for vertical wells; (b) failing to develop horizontal wells on the spacing units that should have been assigned to the Debtors; (c) profiting, to the exclusion of the Debtors, from horizontal wells that diverted resources from the spacing units that should have been assigned to the Debtors; and (d) by entering into an acreage swap agreement with Noble using the spacing unit acreage that should have been assigned to the Debtors. In Claim 5, the LP Plaintiffs allege that, in addition to the actions listed in Claim 1, the Investor Partners were directly harmed by PDC's breach of fiduciary duties ***to the Debtors*** by (i) failing to treat the Investor Partners fairly and reasonably when it retained for itself the spacing unit acreage that should have been assigned to the Debtors, and (ii) increasing PDC's profits derived from the Debtors' assets above 37% and effectively diminishing the Investor Partners' profits.

30. These alleged breaches of fiduciary duty (if true), like those listed in Claims 3 and 4, would result in injuries primarily to the Debtors and only indirectly harm the LP Plaintiffs and the rest of the Investor Partners. Each of the alleged breaches would have only reduced or limited the value of the Debtors' assets which, in turn, would have reduced the respective distributions to the Investor Partners. *See, e.g.*, *In re SemCrude*, 796 F.3d 310, 318 (3rd Cir. 2015) (applying Oklahoma law (which looks to Delaware law, like West Virginia) and holding that claims against co-founder of bankrupt limited partnership for breach of fiduciary duty were

derivative since they were masked claims for diminution in value of interest as result of mismanagement). Since the alleged actions do not result in an independent injury to the LP Plaintiffs, Claims 1 and 5 are also derivative claims.

II. The Claims Against the D&O Defendants are also Derivative

31. A claim for aiding and abetting breach of fiduciary duty is dependent on the underlying breach of fiduciary duty claim. *NC12, Inc.*, 478 B.R. at 836. Because, as discussed above, the LP Plaintiffs' breach of fiduciary duty claims are derivative claims (and thus, property of the estate), the aiding and abetting claims against the D&O Defendants are also derivative claims. *Deep Marine Holdings, Inc. v. FLI Deep Marine LLC (In re Deep Marine Holdings, Inc.),* No. 10-3026, 2011 WL 2420274, at *10 (Bankr. S.D. Tex. June 13, 2011) ("The aiding and abetting claims are derivative claims to the extent that the actions that were aided and abetted resulted in derivative injuries").

CONCLUSION

32. The case law, as applied to the facts of this case and the allegations in the SAC, leave no doubt that the claims asserted in the SAC are all derivative claims and property of the Debtors' estates. The Court should enter an order so holding.

NOTICE

33. Notice of this Motion has been provided to: (i) counsel to PDC; (ii) counsel to the LP Plaintiffs; (iii) the U.S. Trustee; and (iv) the other parties appearing on the Limited Service List maintained in these chapter 11 cases. The Debtors respectfully submit that such notice is appropriate and that no other or further notice be provided.

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form of **Exhibit A** attached hereto (i) determining that the claims asserted in the Colorado Action are derivative and thus, property of the Debtors' estates and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 22nd day of March, 2019.

GRAY REED & McGRAW LLP

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COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of March, 2019, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these cases via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Lydia R. Webb
Lydia R. Webb

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
	§	
ROCKIES REGION 2006 LIMITED PARTNERSHIP and ROCKIES REGION 2007 LIMITED PARTNERSHIP,[1]	§	Case No. 18-33513-sgj-11
	§	
	§	(Jointly Administered)
	§	
Debtors.	§	

ORDER GRANTING DEBTORS' MOTION PURSUANT TO SECTION 541(a) OF THE BANKRUPTCY CODE FOR DETERMINATION THAT CERTAIN CLAIMS AND CAUSES OF ACTION ARE PROPERTY OF THE ESTATE

Upon the Motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") Pursuant to Section 541(a) of title 11 of the United States Code (the "Bankruptcy Code") for Determination that Certain Claims and Causes of Action Are Property of the Estate;[2] and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue before this Court being proper pursuant to 28 U.S.C. § 1408 and 1409; and the Court

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

[2] Capitalized terms used but not defined herein have the meanings set forth in the Motion.

being satisfied that the relief requested in the Motion is appropriate and is in the best interests of the Debtors and their respective estates; and it appearing that sufficient notice of the Motion has been given, and that no other or further notice is required; and after due deliberation and good cause appearing therefor, it is

ORDERED AS FOLLOWS:

1. The Motion is granted, as set forth herein.

2. All claims and causes of action asserted in the SAC are hereby deemed to be derivative and thus, property of the Debtors' estates.

3. Because the claims asserted in the SAC are property of the estate, the Debtors have the exclusive power and authority to prosecute, settle or otherwise deal with these claims, to the exclusion of all other parties and parties in interest.

END OF ORDER # #

Submitted by:

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COUNSEL TO THE DEBTORS

Exhibit B

Colorado Action: Second Amended Complaint
(without exhibits)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-03079

ROBERT R. DUFRESNE, as Trustee of the Dufresne Family Trust; MICHAEL A. GAFFEY, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; RONALD GLICKMAN, as Trustee of the Glickman Family Trust est. August 29, 1994; JEFFREY SCHULEIN, as Trustee of the Schulein Family Trust est. March 29, 1989; and WILLIAM MCDONALD, as Trustee of the William J. and Judith A. McDonald Living Trust dated April 16, 1991,

Plaintiffs,

v.

PDC ENERGY, INC., a Delaware corporation, in its capacity as the General Partner of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership; BART R. BROOKMAN, JR., an Individual; LANCE A. LAUCK, an Individual; JEFFREY C. SWOVELAND, an Individual; ANTHONY J. CRISAFIO, an Individual; and DAVID C. PARKE, an Individual

Defendants,

ROCKIES REGION 2006 LP, a West Virginia limited partnership; and ROCKIES REGION 2007 LP, a West Virginia limited partnership,

Nominal Defendants.

VERIFIED SECOND AMENDED COMPLAINT

Plaintiffs Robert R. Dufresne, as Trustee of the Dufresne Family Trust ("Dufresne"); Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000 ("Gaffey"); Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994 ("Glickman"); Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989 ("Schulein"); and William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991 ("McDonald"),[1] hereby bring this action as limited partners in the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership ("Partnerships"). By and through their counsel, Plaintiffs state as follows:

NATURE OF THE CASE

1. Derivative plaintiffs Dufresne, Gaffey, and Schulein (collectively, the "Derivative Plaintiffs"), on behalf of the Partnerships, seek relief against the Managing General Partner of the Partnerships, defendant PDC Energy, Inc. ("PDC") for the damages sustained and to be sustained by the Partnerships based on PDC's violations of West Virginia state law, including its breaches of fiduciary duty, abuse of control, gross mismanagement, waste of the Partnerships' assets, and unjust enrichment, which occurred from 2015 to the present (the "Relevant Period"). PDC's wrongful conduct also constitutes a breach of its contractual obligations to the Partnerships, as set forth in the Limited Partnership Agreements.

[1] Plaintiffs Dufresne, Gaffney, and Schulein will collectively be referred to hereinafter as the "Derivative Plaintiffs." Plaintiffs Glickman and McDonald will collectively be referred to hereinafter as the "Class Plaintiffs." Derivative Plaintiffs and the Class Plaintiffs will collectively be referred to hereinafter as the "Plaintiffs."

2. Class plaintiffs McDonald and Glickman (together, the "Class Plaintiffs") seek relief against PDC and the other named defendants directly, and on behalf of all members of the putative class that includes all other limited partners of the Partnerships ("Investor Partners"), for PDC's violations of West Virginia state law, including breaches of commercial contractual terms set forth in the Limited Partnership Agreements (together, the "Partnership Agreements") and PDC's direct breaches of fiduciary duty to the Investor Partners.

3. Defendant PDC is a domestic independent natural gas and crude oil company. PDC owns, operates, and manages natural gas and crude oil properties located predominantly in Colorado (the Denver-Julesburg (D-J) and Piceance Basins), Texas (the Permian Basin), and West Virginia (the Appalachian Basin). In 2006 and 2007, PDC formed the Partnerships to raise funds to finance the acquisition and development of oil and gas properties primarily in the Wattenberg Field in the D-J Basin and attracted thousands of investors who paid tens of millions of dollars for their limited partnership interests in the Partnerships.

4. The two Partnerships at issue in this action were formed by PDC to obtain financing for oil and gas exploration and development in both the D-J and Piceance Basins. The interests the Partnerships owned in those oil and gas properties are very valuable—the D-J Basin includes the Wattenberg Field. According to PDC's public pronouncements, the Wattenberg Field, which includes the Niobrara and Codell formations, is PDC's "chief growth driver" in the Rocky Mountain Region and is one of PDC's "most prized assets." PDC has described the horizontal wells drilled in this field to be "very economic." The Piceance Basin fields were also deemed by PDC in its public pronouncements to be among its important "core" assets.

5. It should be noted from the outset that, since at least 1996, PDC funded much of its drilling operations by entering into limited partnerships with investors. But, at some point prior to 2010, PDC determined that it no longer wanted to operate through the use of these partnerships and devised a common plan or scheme by which it would ultimately purchase the partnerships and their assets at less than the value of those Partnership assets. Lance Lauck, along with other officers and directors of PDC masterminded this idea. PDC sought to divest the limited partners of all the partnerships of which it was the general partner of their interests in the assets of the partnerships so that PDC would be able to solely benefit from the production of oil and gas that occurs on the acreage in the Wattenberg Field that was (or should have been) assigned to the partnerships.

6. To accomplish this goal, PDC initially conceived of and implemented a plan to purchase (through cash-out merger transactions) certain of PDC's partnerships by the end of 2012. Through September 2010 and September 2011, PDC issued nearly identical proxy statements to the limited partners of the 2002, 2003, 2004, and 2005 partnerships announcing its intention to merge 11 drilling partnerships that had interests in mineral leases in the Wattenberg Field into a wholly owned subsidiary, without disclosing in the proxy statements concerning the proposed mergers that, among other things, the partnerships PDC intended to purchase had prospects as defined in the partnership agreements ("Prospects") consisting of 32-acre spacing units in the Wattenberg Field on which horizontal wells could be drilled. In the proxy statements issued to the investor partners of the 2002-2005 partnerships, PDC expressly states that one of the reasons for the proposed merger was a "Shift in Corporate Strategy" defined as a "… fundamental shift in its business strategy away from the partnership model to a more traditional

exploration and production company model." (**Exhibit A** at 42.) PDC informed the investor partners that the mergers would allow PDC to "position itself as a growth company" and would provide the company with "production and reserves from assets" that were currently in the partnerships' possession. (*Id.*)

7. Subsequent to the completion of the mergers of the 2002-2005 partnerships, a class action complaint against PDC was filed with the U.S. District Court for the Central District of California by several limited partners of the 2002-2005 partnerships, including Jeffery Schulein, Christopher Rodenfels, and William McDonald, alleging violations of section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n (a), 17 C.F.R. §240.14a-9 (*Schulein v. Petroleum Dev. Co.*, Case No. SAVV11-1891 AG (ANx) ("*Schulein*").) PDC subsequently entered into a court-approved $37 million class action settlement in the *Schulein* case with the investors in the 2002-2005 partnerships. (*Schulein* Doc. No. 265.)[2]

8. As a result of the filing of the *Schulein* action, PDC halted its overarching plan to purchase the 2006-2007 Partnerships but, at the same time, refused to take any steps to profitably operate the unmerged partnerships (including the Rockies Region 2006 and 2007 Partnerships) in an effort to make the continued position as an Investor Partner financially unattractive.

9. PDC took other steps to obtain the Partnerships' assets for itself. For example, in 2013 PDC filed Chapter 11 bankruptcy petitions for 11 drilling partnerships[3] in a consolidated

[2] The limited partnerships involved in the *Schulein* Action include the: (1) PDC 2002-D LP; (2) PDC 2003-A LP; (3) PDC 2003-B LP; (4) PDC 2003-C LP; (5) PDC 2003-D LP; (6) PDC 2004-A LP; (7) PDC 2004-B LP; (8) PDC 2004-C LP; (9) PDC 2004-D LP; (10) PDC 2005-A LP; (11) PDC 2005-B LP; (12) and Rockies Region Private LP.

[3] The limited partnerships included in the 2013 bankruptcy sale include the: (1) Eastern 1996D LP; (2) Eastern 1997D LP; (3) Eastern 1998D LP; (4) Colorado 2000B LP; (5) Colorado 2000C LP; (6) Colorado 2000D LP; (7) Colorado 2001A LP; (8) Colorado 2001B LP; (9)

bankruptcy proceeding in Texas. (*See, e.g., In re* Eastern 1996D Limited Partnership, No. 13-34773 (N.D. Tex. Bankr. Dec. 13, 2013.) PDC as general partner of the debtors in possession filed a motion requesting the bankruptcy court to sell all the Bankrupt Partnerships assets free and clear of all liens. (*Id.* at Doc. 46.) Ultimately the bankruptcy court conducted an auction sale, at which PDC was the only bidder, and the mineral leases of the 11 Bankrupt Partnerships were sold to PDC. (*Id.* at Doc. 158 ["Supplemental Order Granting Amended Motion to Sell Property"].) Because any successful bidder for the Bankrupt Partnerships' oil and gas leases had to take title subject to a Drilling & Operating Agreement ("D&O Agreement") that gave PDC sole control of the operation of wells on the Bankrupt Partnerships' leaseholds, there were no third-party bidders at the bankruptcy option sale. PDC was the only bidder at the bankruptcy court auction, and the mineral leases of the Bankrupt Partnerships were sold to PDC as the only bidder.

10. PDC's use of merger transactions and the 2013 bankruptcy of the Bankrupt Partnerships to obtain, for itself, the assets owned by the partnerships provides needed context for PDC's refusal to take any meaningful steps to develop the spacing units rightfully owned by the 2006-2007 Partnerships at issue here. The wrongful conduct complained of in this first amended complaint is but one more facet of PDC's plan and "Corporate Strategy" to rid itself of the partnerships and the Investor Partners so that PDC can take advantage of the horizontal drilling opportunities on the partnerships' Prospects in the Wattenberg Field.

Colorado 2001C LP; (10) Colorado 2001D LP; (11) Colorado 2002A LP; and (12) CO and PA 1999D LP, herein after collectively referred to as the "Bankrupt Partnerships."

11. Here, in breach of the fiduciary duties it owed to the 2006-2007 Partnerships and/or the Investor Partners, PDC refused to take steps to allow the 2006-2007 Partnerships to benefit from the development of horizontal wells on their Prospects in the Wattenberg Field and engaged in conduct to actively deprive the Partnerships of the benefit of their properties.

12. More specifically, PDC failed to take reasonable steps to recomplete or refracture ("refrac") the Partnerships' existing verticals wells that had been drilled on the Partnerships' Prospects in the Wattenberg Field.[4] PDC refused to take these steps despite its ability to fund recompletions with the ongoing proceeds from the operation of the Partnerships' existing vertical wells, and despite PDC's representation to Investor Partners in the prospectus, prior to the formation of the Partnerships, that such recompletions of the Partnerships' existing vertical wells would be done within 5 to 6 years after the initial drilling of the Partnerships' vertical wells. The Partnership Agreements for the 2006-2007 Partnerships also contained language that, at the very least, implied PDC would refrac the Partnerships vertical wells after five to six years.

13. PDC also failed to drill infill wells on the Partnerships' spacing units when the State of Colorado in 2009 reduced the minimum spacing unit for a vertical well in the Wattenberg Field from 32 acres to 20 acres. PDC refused to drill such infill vertical wells despite the fact that it drilled infill vertical wells on its own properties in the Wattenberg Field in which no partnerships had an interest, which properties were located near the spacing units held by the Partnerships.

[4] As discussed in more detail below, a "Prospect" is defined in the Partnership Agreements as "… the drilling or spacing unit on which the well will be drilled by the Partnership."

14. In addition, PDC breached its fiduciary duties to the Partnership and/or the Investor Partners by failing to utilize other procedures that are standard in the oil and gas industry, and failed to utilize alternative means of developing the Partnerships' prospects expressly permitted by the Partnerships Agreements including, but not limited to, farmouts, pooling, and term assignments to participate in developing horizontal wells on the Partnerships' spacing units in the Wattenberg Field to produce oil and gas on Partnerships' Prospects. As part of its fiduciary obligations to the Partnerships and/or the Investor Partners, PDC was required to fully utilize the Partnerships' assets for the benefit of the Partnership and/or the Investor Partners. PDC's failure to do so constitutes waste and is a breach of fiduciary duty to the Partnerships and/or the Investor Partners.

15. Furthermore, PDC breached its fiduciary duties to the Partnerships and/or the Investor Partners by using its position as Managing General Partner to misappropriate the assets of the Partnerships for its own benefit, effectively diluting the Investor Partners' interests in the Partnerships. In particular, PDC has breached its fiduciary duties by (1) profiting, to the exclusion of the Partnerships and/or the Investor Partners, from the drilling of horizontal wells that pass through the Partnerships' spacing units in the Wattenberg Field; and (2) by entering into an agreement with Noble Energy, Inc. ("Noble") by which PDC traded to Noble a portion of the Partnerships' spacing units/acreage in the Wattenberg Field for other acreage in the Wattenberg Field that is more contiguous with PDC's own acreage in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships' own working interests in their Prospects.

16. PDC's wrongful conduct also constitutes a breach of its contractual obligations to both the Partnerships and/or the Investor Partners. Under the terms of the Partnership Agreements, PDC was obligated to assign to the Partnerships "Prospects," which are defined in the Partnership Agreements as a "drilling or spacing unit on which [a] well will be drilled by the Partnership which is the minimum area permitted by state law or local practice on which one well may be drilled." (**Exhibit B** at 18.) At the time the Partnerships were formed—as confirmed by both the prospectus that PDC utilized to solicit the Investor Partners to invest in the 2006-2007 Partnerships and in the D&O Agreements executed by PDC as both the operator and Managing General Partner of the Partnerships—the minimum drilling or spacing unit for a vertical well in the Wattenberg Field at the time both Partnerships were formed was 32 acres under Colorado law. **Therefore, the terms of the Partnership Agreements unmistakably provide that PDC was obligated to transfer 32-acre spacing units to the Partnerships.** In breach of this contractual obligation, PDC purportedly, and without notice to the Investor Partners, assigned interests to the Partnerships only a "wellbore," which is only the shaft of a vertical well drilled by the Partnerships, which Wellbore interests are significantly less than the 32-acre spacing unit mandated by the Partnership Agreements.

17. At a Scheduling Conference on March 15, 2018 with the Court in this case, PDC's counsel informed the Court and Plaintiffs that it intended to file bankruptcy proceedings for the 2006-2007 Partnerships. The filing bankruptcy proceedings for the 2006-2007 Partnerships could enable PDC as general partner for the debtors in possession to sell all of the Partnerships' assets, including the Partnerships' derivative claims against PDC, at an auction sale at which PDC would likely be the only bidder because of the D&O Agreements (as discussed above). Over the past few years, PDC unilaterally decided to "plug and abandon" a large number of the Partnerships' vertical wells in the Wattenberg Field instead of recompleting the wells, as PDC represented to the Investor Partners it would do when it was seeking investment for the Partnerships. According to PDC's own statements, more than thirty of the Partnerships' vertical wells in the Wattenberg Field have been plugged as of September 2017, with plans to plug nearly fifty more wells before the end of 2017 at a cost of more than $2 million. This is but one example of PDC's ongoing efforts, as part of its overarching "Corporate Strategy," to present the Partnerships' as financially unattractive to encourage the Investor Partners to abandon their interests when PDC ultimately seeks to purchase those interests at a bankruptcy sale, which will allow PDC to exploit the Partnerships' acreage for its own benefit.

IDENTIFICATION OF THE PARTIES

18. Plaintiff Robert R. Dufresne ("Dufresne"), as Trustee of the Dufresne Family Trust, a resident of the State of Florida, is a current limited partner in the Rockies Region 2006 Limited Partnership.

19. Plaintiff Michael A. Gaffey ("Gaffey"), as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000, a resident of the State of Nevada, is a current limited partner in the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership.

20. Plaintiff Ronald Glickman ("Glickman"), as Trustee of the Glickman Family Trust established August 29, 1994, a resident of Orange County, California, is a current limited partner in the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership.

21. Plaintiff Jeffrey Schulein ("Schulein"), as Trustee of the Schulein Family Trust established March 29, 1989 and governed by agreement dated December 5, 2002, a resident of Orange County, California, is a current limited partner in the Rockies Region 2007 Limited Partnership. Mr. Schulein was approved as a class representative by the Federal District Court in the *Schulein* class action.

22. Plaintiff William McDonald trustee of the William Jon McDonald and Judith Anne McDonald 1991 Trust ("McDonald"), a resident of California, and the McDonald Trust is a current limited partner in both the 2006 and 2007 Partnerships. The McDonald Trust invested $1 million in the 2006 Partnership and $1.2 million in the 2007 Partnership. Mr. McDonald was approved as a class representative by the Federal District Court in the *Schulein* class action.

23. Defendant PDC Energy, Inc., a corporation organized under the laws of the State of Delaware with its principal executive offices located in Denver County, Colorado, is the Managing General Partner of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership.

24. Defendant Bart A. Brookman, Jr. ("Brookman") is a resident of Denver County, Colorado and is the current President and Chief Executive Officer of defendant PDC Energy, Inc. and is also a member of PDC's Board of Directors. Mr. Brookman was the President and Chief Executive Officer of PDC and a member of PDC's Board of Directors during the Relevant Period.

25. Defendant Lance A. Lauck ("Lauck") is a resident of Denver County, Colorado and is the current Executive Vice President Corporate Development and Strategy of defendant

PDC Energy, Inc. Mr. Lauck was the Executive Vice President Corporate Development and Strategy of PDC during the Relevant Period.

26. Defendant, Jeffrey C. Swoveland ("Swoveland") is a resident of Pittsburgh, Pennsylvania, and is the Non-Executive Chairman of the Board of PDC Energy, Inc. PDC touts his "understanding of management processes of oil and gas companies" which "benefits PDC as it continues to grow." Mr. Swoveland was a member of PDC's board of directors at the time PDC filed the bankruptcy proceedings for the Bankrupt Partnerships and when PDC merged the Merged Partnerships into a wholly owned subsidiary of PDC.

27. Defendant Anthony J. Crisafio ("Crisafio") is a resident of Pittsburgh, Pennsylvania, and is a PDC director, who has significant experience in the oil and gas industry, particularly mergers and acquisitions. Mr. Crisafio was a member of PDC's board of directors at the time PDC filed the bankruptcy proceedings for the Bankrupt Partnerships and when PDC merged the Merged Partnerships into a wholly owned subsidiary of PDC.

28. Defendant David C. Parke ("Parke") is a resident of Pittsburgh, Pennsylvania, and is a PDC director, who has significant investment banking and strategic advisory experience, particularly in the oil and gas context, and was brought onto the PDC board of directors to provide guidance on capital accounts and acquisition matters. Mr. Parke was a member of PDC's board of directors at the time PDC filed the bankruptcy proceedings for the Bankrupt Partnerships and when PDC merged the Merged Partnerships into a wholly owned subsidiary of PDC.

29. Brookman, Lauck, Swoveland, Crisafio, and Parke will hereinafter collectively be referred to as the “Individual Defendants.” The Individual Defendants and PDC will hereinafter be referred to collectively as the “Defendants.”

30. Nominal defendant Rockies Region 2006 Limited Partnership maintains its executive offices at 1775 Sherman Street, Suite 3000, Denver, Colorado 80203. The Rockies Region 2006 Partnership is a privately subscribed West Virginia Limited Partnership which owns an undivided working interest in wells located in Colorado, from which it produces and sells crude oil, natural gas and natural gas liquids (“NGLs”). The 2006 Partnership was organized and began operations in 2006 with cash contributed by limited and additional general partners and the Managing General Partner. The Investor Partners own 63% of the 2006 Partnership’s units. Defendant PDC is the Managing General Partner of the 2006 Partnership and owns the remaining 37% of the 2006 Partnership’s units.

31. Nominal defendant Rockies Region 2007 Limited Partnership maintains its executive offices at 1775 Sherman Street, Suite 3000, Denver, Colorado 80203. The Rockies Region 2007 Partnership is a privately subscribed West Virginia Limited Partnership which owns an undivided working interest in wells located in Colorado, from which it produces and sells crude oil, natural gas and NGLs. The 2007 Partnership was organized and began operations in 2007 with cash contributed by limited and additional general partners and the Managing General Partner. The Investor Partners own 63% of the 2007 Partnership’s units. Defendant PDC is the Managing General Partner of the 2007 Partnership and owns the remaining 37% of the Partnership’s units.

JURISDICTION AND VENUE

32. The Partnerships were formed under West Virginia law, and there is a West Virginia choice of law provision in the Partnership Agreements. The claims asserted herein arise under West Virginia state law for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and/or breach of contract.

33. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) in that Plaintiffs and Defendants are citizens of different states and the matter in controversy exceeds $75,000, exclusive of interest and costs. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

34. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(a)(1) because Defendant PDC maintains its executive offices in this Judicial District, defendants Brookman and Lauck reside in this Judicial District, and a substantial portion of the acts and transactions constituting the violations of law alleged in this First Amended Complaint occurred in substantial part in this Judicial District. Moreover, Defendants have received substantial compensation in this Judicial District by doing business here and engaging in numerous activities that had an effect in this Judicial District.

FACTUAL ALLEGATIONS

35. The Rockies Region 2006 Limited Partnership ("Rockies Region 2006") and the Rockies Region 2007 Limited Partnership ("Rockies Region 2007") were organized in 2006 and 2007, respectively, and are limited partnerships formed in accordance with the laws of the State of West Virginia for the purpose of engaging in the exploration and development of crude oil and natural gas properties. Business operations commenced upon closing of the offerings for the

private placement of the Partnerships' limited partnership units. Upon funding, each of the Partnerships entered into a Drilling and Operating Agreement ("D&O Agreement") with the Managing General Partner, PDC, that authorized PDC to conduct and manage the Partnerships' oil and gas acreage. Copies of the D&O Agreements were not provided to the Investor Partners for their review. In accordance with the terms of the Partnerships' organizing documents—their Limited Partnership Agreements—the Managing General Partner is authorized to manage all activities of the Partnerships and to initiate and complete substantially all of the Partnerships' transactions, except for matters specified in the partnership agreements which require a vote of the majority of the limited partners, including taking any action which would make it impossible to carry on the Partnerships' business (Section 6.03 of the partnership agreements for both the 2006 and 2007 Partnerships). (**Exhibit B** at 53; **Exhibit C** at 33.) As of June 30, 2017, there were 1,977 Investor Partners in the Rockies Region 2006 Limited Partnership and 1,753 Investor Partners in the Rockies Region 2007 Limited Partnership.

36. By reason of its position of Managing General Partner of the Partnerships, and because of its ability to control the business and financial affairs of the Partnerships, under West Virginia partnership law PDC owed the Partnerships and/or the Investor Partners (1) the duty to exercise due care and diligence in the management and administration of the affairs of the Partnerships and in the use and preservation of their property and assets; (2) the duty of loyalty, to put the interests of the Partnerships and the Investor Partners above its own financial interests; and (3) the duty of candor, including full and candid disclosure of all material facts related to the Partnerships. The conduct of PDC complained of herein involves knowing violations of its duties

as General Partner of the Partnerships, and the absence of good faith on its part, which PDC was aware or should have been aware, posed a risk of serious injury to the Partnerships.

37. Defendants Brookman, Lauck, Swoveland, Crisafio, and Parke as officers and/or directors of PDC during the Relevant Period, were responsible for PDC's conduct as it relates to the Partnerships and the Investor Partners. All of the Individual Defendants had actual knowledge of PDC's "Shift in Corporate Strategy" away from using drilling partnerships and PDC's plan to obtain the partnerships' assets at unfairly low prices so that the company could exploit those assets for its sole benefit. Given their positions as directors and/or officers of PDC, they had complete knowledge of PDC's obligations owed to the Partnerships and the Investor Partners, and the breaches of such obligations. As set forth in more detail below, the Individual Defendants were the primary decision-makers for PDC in connection with PDC's breaches of duties.

38. As stated above, the Partnerships were formed pursuant to Limited Partnerships Agreements that were executed on one hand by PDC, as the general partner, and on the other hand by the Investor Partners of the Partnerships. The terms of the Limited Partnership Agreements for both of the Partnerships are materially identical. Attached hereto as **Exhibits B** and **C** are the Limited Partnership Agreements for Rockies Region 2006 and Rockies Region 2007 Partnerships, respectively. Each limited partner was required to execute a signature page agreeing to the terms of the Partnership Agreements.

39. The Partnership Agreements provide that they are the sole agreements between the parties, constituting their "entire understanding." (**Exhibit B** at p. 82 (Article XI, § 11.05.)

40. As a preliminary matter, the Partnership Agreements affirm the fiduciary obligations of PDC as the Managing General Partner, owed to the Partnerships, providing that:

> The Managing General Partner shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in the Managing General Partner's possession or control, and shall not employ or permit another to employ such funds or assets in any manner except for the exclusive benefit of the Partnership.

(**Exhibit B** at p. 43 (Article V, § 5.02(n)).) Hence, the fiduciary obligations owed to the Partnerships imposed on PDC are derived from both West Virginia law and also the contractual obligations that PDC voluntarily assumed when entering into the Partnership Agreements. Of particular importance is the statement in the Partnership Agreements that PDC is charged with the safekeeping of the Partnerships' assets, and that those assets can only be used for the "exclusive benefit" of the Partnerships. Any use of the Partnerships' assets that is not for their exclusive benefit—such as the drilling of horizontal wells by PDC for its own benefit through the Partnerships' acreage that does not benefit the Partnerships, or the wholesale exchange of the Partnerships' acreage for other acreage that allows PDC to benefit from longer horizontal laterals—is a breach of the "fiduciary responsibility" that was voluntarily assumed by PDC and imposed upon it by West Virginia law.

41. The business of the Partnerships is well defined in the Partnership Agreements. Specifically, the Partnership Agreements define the character of the Partnerships' business, stating that:

> The principal business of the Partnership shall be to acquire Leases, drill sites, and other interests in oil and/or gas properties and to drill for oil, gas, hydrocarbons, and other minerals located in, on, or under such properties, to produce and sell oil, gas, hydrocarbons, and other minerals from such properties, and to invest and generally engage in any and all phases of the oil and gas business. Such business purpose shall include without limitation the purchase, sale, acquisition, disposition, exploration, development, operation, and production of oil and gas properties or any character.

(**Exhibit B** at p. 5 (Article I, § 1.03).) As confirmed by the express language of the Partnership Agreements, the Partnerships were not intended as mere funding mechanisms for PDC's own drilling operations. Instead, the Partnerships were to be full-fledged participants in the oil and gas industry; "engag[ing] in any and phases of the oil and gas business." As defined by the Partnership Agreements, the scope of the Partnerships' business is exceedingly broad.

42. In order for the Partnerships to engage in the oil and gas business, PDC stated in the initial Prospectus for both Partnerships that PDC, as the Managing General Partners, would identify "Prospects" on which the Partnership would conduct its drilling operations. Attached hereto as **Exhibits D** and **E** are the Private Placement Offering Memoranda (hereafter, "Prospectus" or "Prospectuses") for Rockies Region 2006 and Rockies Region 2007 Partnerships, respectively. The term "Prospect" is defined in the Prospectuses for both Partnerships as follows: "The drilling or spacing unit on which the well will be drilled by the Partnerships which is the minimum area permitted by state law or local practice on which one well may be drilled." (**Exhibit D** at p. 117.)

43. Moreover, the Prospectuses for both Partnerships, in describing PDC's drilling policy, confirmed that the Partnerships would invest in a number of "prospects" which would be a minimum of 32 acres in the Wattenberg Field:

> The partnership will invest in a number of prospects, either by itself, or in conjunction with other parties, consistent with the objective of maintaining a meaningful interest in the wells to be drilled. … The spacing unit for Colorado wells will encompass approximately 32 acres for wells drilled in the Wattenberg Field and approximately 10-20 acres for wells drilled in the Grand Valley Field, however smaller units may be utilized, provided the reduced spacing unit has been approved by the appropriate state regulatory authority. …

(**Exhibit D** at p. 50.)

44. As stated above, PDC entered into D&O Agreements with the Partnerships, acting as both the Managing General Partner of the Partnerships and as the "Operator." Attached hereto as **Exhibits F** and **G** are the Drilling and Operating Agreements for Rockies Region 2006 and Rockies Region 2007 Partnerships, respectively. Importantly, the D&O Agreements provide that the Partnerships were formed "to explore and develop certain Prospects for the production of oil and gas as hereinafter provided. …" (**Exhibit F** at p. 1.) The D&O Agreements for both Partnerships define a "Prospect" as follows: "The term 'Prospect' shall be deemed to consist of the drilling or spacing unit on which the well will be drilled by the partnership which is the minimum area permitted by state law or local practice on which one well may be drilled." (*Id.*)

45. The Partnership Agreements expressly define "Prospect" as the following: "[A] 'Prospect' shall be deemed to consist of the drilling or spacing unit on which the well will be

drilled by the Partnership which is the minimum area permitted by state law or local practice on which one well may be drilled." (**Exhibit B** at p.18 (Article I, § 1.08(vv).)[5] Thus, a Prospect is synonymous with the 32-acre drilling or spacing unit mandated by Colorado law at the time the Partnerships were formed. The Partnership Agreements go on to provide that:

> The Managing General Partner shall establish a program of operations for the Partnership which shall be in conformity with the following policies: … **Prospects** will be acquired pursuant to an arrangement whereby the Partnership will acquire up to 100% of the Working Interest, subject to landowners' royalty interests and the royalty interests payable to unaffiliated third parties in varying amounts, provided that the average of the maximum royalty interests for all Prospects of the Partnership shall not exceed 25%.

(**Exhibit B** at pp. 40-41 (Article V, § 5.02(a)(1)(z).) The Partnerships Agreements provide that a "Working Interest" is defined as "an interest in an oil and gas leasehold which is subject to some portion of the costs of development, operation, and maintenance." (*Id.* at § 1.08(iii).)

46. Thus, PDC was to acquire Prospects and assign the **entire** Working Interest in those Prospects to the Partnerships subject **only** to the royalty interests of landowners and other

[5] Similarly, Section 5.07 of the Partnership Agreements, titled "Certain Transactions," provides the following: "A Prospect shall be deemed to consist of the drilling or spacing unit on which the well will be drilled by the Partnership, which is the minimum area permitted by state law or local practice on which one well may be drilled, for wells drilled on the Company's Puckett or Chevron leasehold in Garfield County, Colorado; on the Company's Bakken or Nesson leasehold located in North Dakota or on development prospects in the Greater Wattenberg Field Area in Colorado." (**Exhibit B** at p. 45.)

third parties. There is no reference in the Partnership Agreements to some smaller amount of acreage, i.e. a well bore interest, being transferred to the Partnerships.

47. Furthermore, as to the Partnerships' business to "acquire Leases," the Partnership Agreements provide, at Section 5.04, that:

> Record title to each Lease acquired by the Partnership may be temporarily held in the name of the Managing General Partner, or in the name of any nominee designated by the Managing General Partner, as agent for the Partnership until a productive well is completed on a Lease. **Thereafter, record title to Leases shall be assigned to and placed in the name of the Partnership.**

(**Exhibit B** at p. 44 (emphasis added).) Thus, PDC is obligated to obtain record title to "Leases" and to later assign those "Leases" to the Partnerships. The plain language of this provision of the partnership agreements means that PDC was obligated to transfer, **in its entirety**, the "Leases" obtained for the Partnerships' behalf.

48. To bolster this conclusion, the partnership agreements for both Partnerships provide in Section 5.03 titled "Acquisition and Sale of Leases," that:

> Any Leases acquired by the Partnership from the Managing General Partner shall be acquired only at the Managing General Partner's Cost, unless the Managing General Partner shall have reason to believe that Cost is in excess of the fair market value of such property, in which case the price shall not exceed the fair market value. … [¶] … Neither the Managing General Partner nor its Affiliates, except other partnerships sponsored by them, shall purchase any productive properties from the Partnership.

(**Exhibit B** at p. 43.) In other words, PDC was obligated to provide to the Partnerships the Leases that PDC obtained for the Partnerships' benefit using the Partnerships funds at either (1) the cost PDC itself paid for the Lease, or (2) the fair market value of the leased property, whichever was less. PDC was able to charge the Partnerships the full value of the Lease that it obtained but it could not do so if the cost exceeded fair market value. Importantly, the fact that PDC was able to charge the Partnerships the full cost of the Lease that was to be assigned to the Partnerships demonstrates that PDC was required to assign the **entirety** of the Lease to the Partnerships and not a lesser wellbore interest.

49. Moreover, the Partnership Agreements also provide that: "During the existence of the Partnership, and before it has ceased operations, neither the Managing General Partner nor any of its Affiliates … shall acquire, retain, or drill for their own account any oil and gas interest in any Prospect in which the Partnership possesses an interest." (**Exhibit B** at p. 46 (Article V, § 5.07(c).) Thus, PDC was forbidden from obtaining any oil and gas interest, on any Prospect assigned to one of the Partnerships, for the entire duration of the Partnerships.

50. In addition, "[n]either the Managing General Partner nor an Affiliate … may purchase or acquire any property from the Partnership, directly or indirectly, except pursuant to transactions that are fair and reasonable to the Investor Partners of the Partnership …" (**Exhibit B** at p. 48 (Article V, § 5.07(i).)

51. Hence, the fiduciary obligations owed to the Investor Partners imposed on PDC are derived from both West Virginia law and also the contractual obligations that PDC voluntarily assumed when entering into the Partnership Agreements with the limited partners. Of particular importance is the statement in the partnership agreements that PDC cannot acquire any

of the Partnerships' property unless "**fair and reasonable** to the Investor Partners." By acquiring for itself Partnerships' assets, horizontal wells PDC drilled on the Partnerships Prospects in the Wattenberg Field, without **any** compensation to the Investor Partners, PDC breached its fiduciary responsibility (that was voluntarily assumed by PDC and imposed upon it by West Virginia law) by not acting "fair[ly] and reasonabl[y] with the Investor Partners."

52. Furthermore, as to the allocation of profits and losses among the partners, the Partnership Agreements provide that: "Profits and Losses during the production phase of the Partnership shall be allocated 63% to the Investor Partners and 37% to the Managing General Partner." (**Exhibit B** at p. 26 (Article III, § 3.02(a).) And, the Partnership Agreement provides that "all distributions … shall be made 63% to the Investor Partners and 37% to the Managing General Partner." (**Exhibit B** at p. 39 (Article IV, § 4.02(a).)

53. After both Partnerships were formed, and with no notice to the Investor Partners, PDC entered into an Assignment of Working Interests ("Assignment") for each Partnership, whereby PDC purported to assign to the Partnerships a "wellbore" interest instead of a 32-acre spacing unit as required by Colorado law and local regulation.[6] PDC now takes the position that PDC, as Managing General Partner, assigned to both Partnerships one specific vertical well on each 32-acre spacing unit in the Wattenberg Field, and that PDC reserved to itself, in the

[6] PDC did not provide the Investor Partners with copies of the Assignments for either of the Partnerships. Instead, PDC filed the Assignments with the Securities and Exchange Commission—the Assignment for Rockies Region 2006 was filed with the SEC on December 24, 2007, and the Assignment for Rockies Region 2007 was filed with the SEC on August 6, 2008. A claim for breach of a written contract must be brought within ten years after it has accrued under West Virginia law. (W. Va. Code § 55-2-6.) Irrespective of PDC's filings with the SEC, Plaintiffs were not aware of the claims brought herein until in or about October 2017 when Plaintiffs discovered through a letter sent to all Investor Partners that PDC was plugging the Partnerships' vertical wells. (*See* **Exhibit H**.)

Assignment, the remainder of the lease and the leasehold oil and gas estate, including the right to produce other wells that might subsequently be located on the lands described in the leasehold and land pooled therewith without the obligation to account to the Partnerships for any production from the subsequently drilled wells. Thereafter, PDC drilled horizontal wells through spacing units in the Wattenberg Field assigned to the 2006 and 2007 Partnerships, which had the effect of draining oil and gas from the Partnerships' existing vertical wells, and PDC refused to provide any of the revenues from those horizontal wells to the Partnerships.

54. PDC's motivation to rid itself of its relationship to the Partnerships is clear; having used the Partnerships to develop the Partnerships' Prospects, it no longer wants to share the income with the Investor Partners from any future production of horizontal wells that PDC has drilled or will drill in the future on those Partnership Prospects. PDC embarked on a campaign to wrest, from all the limited partnerships it formed, the right to future production in the Wattenberg Field for subsequently drilled horizontal wells.[7] PDC made this "Shift in Corporate Strategy" with the knowing participation of the Individual Defendants, who acted to approve and enact this strategy with actual knowledge of PDC's fiduciary obligations to the Partnerships and the Investor Partners.

55. PDC has breached the fiduciary duties owed to the Partnerships and/or the Investor Partners by failing to refrac or recomplete the initial vertical wells that were drilled on the Partnerships' spacing units. PDC refused to take these steps despite its ability to fund

[7] Another example of PDC wresting away partnership interests from the limited partners is the *Schulein* Action referenced above.

recompletions with the ongoing proceeds from the operation of the Partnerships' existing vertical wells, or from borrowing as expressly permitted by the Partnership Agreements.

56. In addition, PDC represented, in its prospectuses delivered to potential investors in the Partnerships that it would recomplete the Partnerships' initial vertical wells within 5 or 6 years after those initial wells were drilled. More specifically, in the Private Placement Offering Memorandum for the Rockies Region 2006 Limited Partnership, it provides that:

> If the partnership participates in Codell formation wells in Wattenberg Field, we expect to be able to 'recomplete' the Codell formation after the wells have been in production for 5 years or more. … PDC has recompleted over 180 Codell wells to date. Substantially all of those wells have experienced significant production increases. [¶] Currently we plan to recomplete most Codell wells that the partnership drills after approximately six years of production, although the exact timing may be delayed if we are experiencing a period of low prices or for operational reasons. The partnership may borrow the funds necessary to pay for the recompletions, and payment for those loans will be made from the partnership production proceeds, or may enter into joint venture or other arrangements to finance the recompletions.

(**Exhibit D** at p. 50.) The same document also provided that: "The partnership will invest in a number of prospects," that the "partnership is expected to acquire spacing units on each prospect," and that the "spacing unit for Colorado wells will encompass approximately 32 acres for wells drilled in the Wattenberg Field." (*Id.*) Thus, PDC represented to the Investor Partners in the prospectuses that it distributed, that it was going to recomplete the Partnerships' initial vertical wells, and that PDC had already successfully and profitably recompleted a large number of vertical wells in the Wattenberg Field.

57. In addition, the Partnership Agreements provide that: “The Managing General Partner may in its discretion conduct recompletion and further development services with respect to the Partnership’s wells in the Greater Wattenberg Field Area that the Managing General Partner determines may enhance the recovery of oil and natural gas from such wells.” (**Exhibit B** at p. 40 (Article V, § 5.02(a)(3).)

58. The recompletion of the Partnerships’ vertical wells was and continues to be a viable option to increase the Partnerships’ production and revenue. PDC has chosen not to recomplete the Partnerships’ vertical wells because it wants to depress the Partnerships’ production in an effort to make continued participation in the Partnerships’ operations economically unappealing, so that it can file bankruptcy proceedings for the 2006 and 2007 Partnerships. This is demonstrated by, among other things, PDC’s stated success at recompleting other vertical wells located in the same area in which the Partnerships’ wells in the Wattenberg are located.

59. On this issue, it is important note that the Partnerships possess the ability to use the proceeds from its drilling operations to further develop its assets:

> … revenues from Partnership operations may be used for other Partnership operations, including without limitation for the purposes of drilling, completing, maintaining, recompleting, and operating wells on existing Partnership Prospects and acquiring and developing new Leases to the extent such Leases are considered by the Managing General Partner in its sole discretion

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> to be a part of a Prospect in which the Partnership then owns a Lease.

(**Exhibit B** at p. 55 (Article VI, § 6.03(a).) For example, a few recompletions of existing vertical wells could be used to fund even more recompletions by the Partnerships or the funding of drilling a horizontal well by the Partnerships on the Partnerships' spacing units. None of these options has been explored by PDC for the simple reason that it is not interested in allowing the Partnerships to obtain the benefit of development of their own oil and gas interests on their Prospects in the Wattenberg Field.

60. PDC has breached its fiduciary duties to the Partnerships and/or the Investor Partners by failing to utilize other procedures expressly permitted by the Partnership Agreements that are standard in the oil and gas industry, including but not limited to farmouts, pooling, carried interests, overrides, and term assignments, or a combination of these procedures to participate in installing horizontal wells on the Partnerships' spacing units in the Wattenberg Field to produce oil and gas on Partnership spacing units. In fact, the Partnership Agreements specifically provides that the Managing General Partners has the authority to:

> Enter into and execute pooling agreements, farm out agreements, operating agreements, unitization agreements, dry and bottom hole and acreage contribution letters, construction contracts, joint venture or other arrangements with or on behalf of the Partnership, and any and all documents or instruments customarily employed in the oil and gas industry in connection with the acquisition, sale, exploration, development, or operation of oil and gas properties, and all other instruments deemed by the Managing General Partner to be necessary or appropriate to the proper operation of oil or gas

> properties or to effectively and properly perform its duties or exercise its powers …

(**Exhibit B** at p. 53 (Article VI, § 6.02(b).) As with PDC's refusal to recomplete the Partnerships' existing vertical wells, PDC's refusal to utilize other means to increase production on the Partnerships' acreage is intended to make continued participation in the Partnerships operations economically unattractive in furtherance of its overall scheme to ultimately purchase the assets of the Partnerships for its own benefit, which it has now confirmed it plans to do by filing bankruptcy petitions for the Partnerships. Importantly, PDC ongoing contention, that there are no "economically feasible" options to develop the Partnerships' assets, is false because many of the aforementioned procedures would not require the Partnerships to spend a single dollar to obtain profits from their assets.

61. In addition, PDC has gone beyond refusing to recomplete the Partnerships' vertical wells by plugging and abandoning the Partnerships' vertical wells. In a recent communication to the Investor Partners of the Partnerships, PDC stated that, as of September 2017, it has plugged 31 of the Partnerships' vertical wells (14 for Rockies Region 2006 and 17 for Rockies Region 2007). PDC also stated that it intends to plug and abandon between 35 and 45 additional vertical wells before the end of 2017. The work to plug these wells will cost the Partnerships between $1,750,000 and $2,200,000. Attached as **Exhibit H** is a true and correct copy of PDC's October 9, 2017 correspondence informing the Investor Partners of its intent to plug and abandon Partnership wells. This is an additional example of PDC's ongoing efforts to present the Partnerships' as financially unattractive to encourage the Investor Partners to abandon their interests when PDC ultimately seeks to purchase those interests so it can more

easily exploit the Partnerships' acreage for its own benefit by purchasing the Partnerships assets at a bankruptcy auction.

62. PDC's conduct is particularly egregious when one considers that PDC itself has used means to fund its own drilling operations that are equally available to the Partnerships. In 2013, PDC sold its own interest and the Partnerships' acreage in the Piceance Basin in order to further fund its operations of drilling horizontal wells in the Wattenberg Field. However, PDC did not use the proceeds from the sale of the Partnerships' interests of the remaining, unmerged partnerships in the Piceance Basin to assist the Partnerships in taking advantage of further developing the Partnerships Wattenberg assets. Instead, PDC simply returned the proceeds from the sale to the limited partners' interests in the Piceance Basin claiming, at the same time, that the development of the Partnerships' Wattenberg assets cannot move forward based on a lack of funds.

63. PDC's recent agreement to "swap" acreage owned by the Partnerships is an additional breach of PDC's ongoing fiduciary obligations to the Partnerships and/or the Investor Partners. On June 16, 2016, PDC announced that it had entered into an agreement with Noble Energy, Inc. ("Noble") to strategically trade or "swap" acreage held by the two companies in the Core Wattenberg area in Colorado. In its Form 10-K filing for fiscal year 2016, PDC disclosed this "swap" transaction, providing that:

> Pursuant to the transaction, we exchanged leasehold acreage and, to a lesser extent, interests in certain development wells. Upon closing, we received approximately 13,500 net acres in exchange for approximately 11,700 net acres, with no cash exchanged between the parties. The difference in net acres was primarily due

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> to variances in leasehold net revenue interests and third-party mid-stream contracts. This acreage trade has resulted in opportunities for longer length horizontal laterals with increased working interests, while minimizing potential surface impact.

(Attached as **Exhibit I** is PDC's Form 10-K for fiscal year ending Dec. 31, 2016, United States Securities and Exchange Commission, Commission File No. 001-37419.) And, in a June 2016 press release, PDC stated that: "Pursuant to the terms of the Agreements, this strategic trade includes leasehold acreage only, and does not include production or wellbores." Attached as **Exhibit J** is a true and correct copy of PDC's June 2016 press release. The swap with Noble allowed PDC to consolidate its and the Partnerships' holding in the Wattenberg Field, providing it with more contiguous acreage, which in turn will allow PDC to drill longer and more profitable horizontal wells on Partnership acreage.

64. On October 10, 2016, PDC recorded the Memorandum of Agreement between itself and Noble, which contained the terms of the swap agreement between the two companies. In that filing, PDC identified the specific leases that were included in the swap. These are leases that were in PDC's possession but were transferred or assigned to Noble in exchange for other acreage in the Wattenberg Field.

65. A review of the leases that PDC transferred or assigned to Noble as part of the swap agreement reveals that several of the leases that were assigned or transferred by PDC to Noble were leases that were or should have been assigned to the Rockies Region 2006 or Rockies Region 2007 Limited Partnerships. Thus, PDC traded a portion of the Partnerships' spacing units/acreage for acreage that is more contiguous with **PDC's own acreage** in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the

expense of the Partnerships' own working interests in their prospects. In the end, PDC traded acreage that was owned (or should have been owned) by the Partnerships in order to obtain acreage, for itself, that enabled it to drill longer and more profitable horizontal wells. PDC did so without the permission of the Partnerships and without the Partnerships receiving any compensation for those assets transferred to Noble in the swap.

DERIVATIVE ALLEGATIONS

66. Derivative plaintiffs Dufresne, Schulein, and Gaffey, herein after collectively referred to as the "Derivative Plaintiffs," bring derivative claims in the right and for the benefit of the Partnerships to redress the injuries suffered, and to be suffered, by the Partnerships as a direct result of the breach of fiduciary duty, waste of corporate assets, and unjust enrichment, alleged herein, as well as breaches of contract. The Partnerships are named as nominal defendants solely in a derivative capacity.

67. Derivative Plaintiffs will adequately and fairly represent the interests of all Investor Partners who are similarly situated in enforcing the rights of the Partnerships.

68. Derivative Plaintiffs are and have continuously been Investor Partners of the Partnerships during the wrongful conduct alleged herein.

69. On or about August 29, 2017, a written demand letter was sent on behalf of Christopher Rodenfels, the trustee of the Christopher Rodenfels of the Christopher J. Revocable Trust established May 10, 2000 on behalf of the 2006 and 2007 Partnerships to PDC, as Managing General Partner, demanding that the board of directors of PDC initiate legal proceedings, on behalf of the Partnerships, to enforce the rights set forth in this Complaint. The Rodenfels Trust is a limited partner of both the 2006 and 2007 Partnerships. Attached as **Exhibit**

K is a true and correct copy of the Rodenfels Trust's August 29, 2017 demand letter. On November 13, 2017, counsel for PDC sent a letter acknowledging receipt of the Rodenfels' Trust's August 29, 2017 letter, and stated that PDC was formulating a response to the demand letter and requesting to schedule an interview with Mr. Rodenfels regarding the claims made on behalf of the Partnerships "in the next month or so"; a true and correct copy of that November 13, 2017 letter is attached hereto as **Exhibit L**.

70. On November 15, 2017, counsel for Plaintiffs emailed PDC's attorneys with potential dates on which the requested interview with Mr. Rodenfels could take place, and informed PDC's counsel that because of upcoming statute of limitations deadlines the requested interview had to be scheduled in the near future. Later the same day, November 15, 2017, counsel for PDC responded that they would confer with their client regarding scheduling of interviews; a copy of Plaintiffs counsels' email dated November 15, 2017 and a copy of PDC's counsels' responsive email dated the same day is attached **Exhibit M** attached hereto.

71. A second demand letter dated November 16, 2017 was sent by the Derivative Plaintiffs to PDC, on behalf of the Rockies Region Partnerships, to the board of directors of PDC demanding that the board cause PDC to file suit on behalf of the 2006 and 2007 Partnerships against PDC seeking the same relief as the earlier August 29, 2017 letter; a true and correct copy of that November 16, 2017 letter is attached hereto as **Exhibit N**. The November 16, 2017 demand letter sent by the Derivative Plaintiffs incorporated by reference the claims made on behalf of the Partnerships in the Rodenfels' Trust's demand letter dated August 29, 2017.

72. On November 22, 2017, PDC's counsel sent a letter acknowledging receipt of the November 16, 2017 demand letter on behalf of the Derivative Plaintiffs, and stated that PDC was

considering the allegations in the demand letter; a true and correct copy of that November 22, 2017 letter is attached hereto as **Exhibit O**. No further response setting forth PDC's response has been received to the November 16, 2017 demand letter on behalf of the Derivative Plaintiffs.

73. In an email dated November 27, 2017 counsel for Derivative Plaintiffs sent an email inquiring if PDC wanted to schedule interviews with the Derivative Plaintiffs; a true and correct copy of that email dated November 27, 2017 is attached hereto as **Exhibit P**. Despite the fact that counsel for Messrs. Dufresne, Gaffey, Glickman and Schulein informed counsel for PDC that the interviews had to be scheduled soon because of upcoming arguable statute of limitations deadlines, more than thirty days having elapsed, PDC's counsel has not communicated any proposed dates to schedule interviews with Mr. Rodenfels or Messrs. Dufresne, Gaffey, Glickman and Schulein.

74. In November 2017, Plaintiffs' counsel informed PDC's counsel of the potential statute of limitation issue.

75. Derivative Plaintiffs made the aforementioned demand on PDC in an abundance of caution and assert that a demand on PDC is likely a futile, wasteful, and useless act for the following reasons:

(a) In order to bring this action, Defendant PDC would be required to sue itself as the sole general partner of the Partnerships. For this reason, PDC cannot be relied upon to reach a truly independent decision as to whether to commence the demanded actions against itself. Based on this manifest conflict of interest, Defendant PDC cannot validly exercise its business judgment and is incapable of reaching an independent decision as to whether to accept Plaintiffs' demands.

(b) The wrongful conduct alleged herein constitutes self-dealing, whereby Defendant PDC breached and abandoned its fiduciary duties to the Partnerships in order to benefit itself. As the sole general partner, Defendant PDC participated in, approved, and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs and, therefore, is not disinterested parties. Defendant PDC was at all relevant times responsible for conducting and managing the Partnerships' activities. As the sole general partner, the Partnerships may only act through the authority and conduct of Defendant PDC.

(c) There was no basis or justification for PDC's conduct. It was designed solely to benefit PDC in a manner that is inconsistent with PDC's fiduciary duties to the Partnerships and was detrimental to the Partnerships. Hence, the transactions constituted a waste of the Partnerships' assets, and could not have been the product of the proper exercise of business judgment by PDC as General Partner.

(d) By instituting an action against itself for the wrongful conduct alleged herein, Defendant PDC would be forced to acknowledge certain disclosures made by PDC to the Securities and Exchange Commission ("SEC") concerning the financial condition of the Partnerships were materially false or misleading and therefore amount to securities fraud. Thus, any suit brought by Defendant PDC to remedy the wrongs complained of herein would also expose it to suit for securities fraud. Therefore, Defendant PDC is hopelessly conflicted in making any supposedly independent determination of a demand that it cause the Partnerships to bring this action.

(e) Despite these clear breaches of duty, defendant PDC has not been relieved of its duties as General Partner, nor has PDC disclosed this conflict to the Partnerships.

CLASS ALLEGATIONS

76. Class plaintiffs William McDonald and Ronald Glickman, hereinafter collectively referred to as the "Class Plaintiffs," bring this action on behalf of a class composed of the limited partners of the 2006 and 2007 Partnerships pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Class is defined as: "All persons and entities who own or owned partnership units in any of the following partnerships (a) Rockies Region 2006 Limited Partnership, and (b) the Rockies Region 2007 Limited Partnership."

77. The members of the Class are so numerous that joinder of all members is impracticable. As of June 30, 2017, there were 1,977 Investor partners in the Rockies Region 2006 Limited Partnership and 1,753 Investor partners in the Rockies Region 2007 Limited Partnership. While the exact number of class members is unknown to Class Plaintiffs at this time, and can only be ascertained through appropriate discovery, Class Plaintiffs believe that there are at least a couple thousand members of the Class. Absent members of the Class may be identified from records maintained by defendant PDC and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

78. Class Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class were similarly affected by defendants' wrongful common course of conduct complained of herein.

79. Class Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

80. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether PDC breached a commercial contract with the Investor Partners;

(b) whether PDC undertook a fiduciary obligation to the Investor Partners based on promises made in the Partnership Agreements;

(c) whether PDC was required to act fairly and reasonably with the Investor Partners when it acquired the Partnerships' acreage for itself;

(d) whether PDC promised the Investor Partners that PDC will assign to the Partnership acreage as opposed to a wellbore;

(e) whether the Individual Defendants' had knowledge of PDC's obligations owed to the Investor Partners;

(f) whether the Individual Defendants substantially assisted or encouraged PDC to breach its obligations owed to the Investor Partners; and

(g) the extent to which the members of the Class have sustained damages and the proper measure of damages.

81. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it virtually impossible as a practical matter for members of the Class

to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM FOR RELIEF

FOR BREACH OF FIDUCIARY DUTY—DERIVATIVE

(Brought by Derivative Plaintiffs Derivatively on Behalf of the Partnerships, Against PDC)

82. Derivative Plaintiffs incorporate Paragraphs 1 and 3–49, 53–76 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead the derivative claims alleged herein.

83. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative pursuant to FED. R. CIV. P. 8(d)(2), which provides "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones" and 8(d)(3), which provides that "a party may state as many separate claims or defenses as it has, regardless of consistency."

84. Defendant, as the general partner of each of the Partnerships, owed fiduciary duties to the Partnerships. In addition, PDC is in possession of material non-public information concerning the value of the Partnerships' assets, business, and future prospects. Thus, there exists an imbalance and disparity of knowledge and economic power between PDC and the limited partners.

85. Defendants have breached their fiduciary duties owed to the by, among other things:

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(a) Failing to take reasonable steps to recomplete or refracture ("refrac") the Partnerships' vertical wells in the Wattenberg Field, when similar efforts had proven effective on vertical wells that PDC maintained on non-Partnership acreage;

(b) Failing to drill infill wells on the Partnerships' spacing units when the State of Colorado in 2009 reduced the minimum spacing unit for a vertical well in the Wattenberg Field;

(c) Failing to utilize other procedures that are standard in the oil and gas industry, including but not limited to farmouts, pooling, and term assignments to participate in developing horizontal wells on the Partnerships' spacing units in the Wattenberg Field;

(d) Profiting, to the exclusion of the Partnerships, from the drilling of horizontal wells that pass-through Partnership spacing units and drain available oil and natural gas which belong to the Partnerships; and

(e) By entering into an agreement with Noble by which PDC traded a portion of the Partnerships' spacing units/acreage for acreage that is more contiguous with PDC's own acreage in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships' own working interests in their prospects.

86. By reason of the foregoing common wrongful course of conduct, Defendants breached their fiduciary obligations owed to the Partnerships for their own gain, at the expense of the Partnerships.

87. As a direct and proximate cause of Defendants' wrongful course of conduct, the Partnerships suffered damages, the exact extent of which will be proven at trial, and Defendants were unjustly enriched.

88. The conduct of PDC in breaching its fiduciary duties as set forth in this cause of action constitutes gross fraud, malice, oppression, or wanton, willful or reckless conduct or criminal indifference to civil obligations and justify an award of punitive damages.

SECOND CLAIM FOR RELIEF

FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY—DERIVATIVE

(Brought by Derivative Plaintiffs Derivatively on Behalf of the Partnerships Against Defendants Brookman, Lauck, Swoveland, Crisafio, and Parke)

89. Derivative Plaintiffs incorporate Paragraphs 1 and 3–49, 53–76, 83–89 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead the derivative claims alleged herein.

90. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative pursuant to FED. R. CIV. P. 8(d)(2), which provides “A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones” and 8(d)(3), which provides that “a party may state as many separate claims or defenses as it has, regardless of consistency.”

91. As board members and/or officers of PDC, each of the Individual Defendants had actual knowledge of PDC’s promises made in the Partnership Agreements, as well as the breaches of fiduciary duty to the Partnerships, and with such knowledge, substantially assisted PDC in committing such breaches, or, at the very least, substantially encouraged PDC to breach its fiduciary duty to the Partnerships. Each of the Individual Defendants acted with knowledge that PDC’s conduct that they advocated or assisted constituted a breach.

92. Here, each of the Individual Defendants participated in PDC's board decisions, or otherwise caused PDC's Board to make the decisions to breach PDC's fiduciary obligations owed to the Partnerships.

93. The wrongful conduct of PDC alleged herein is part of a "Shift in Corporate Strategy" adopted by PDC to take control of the drilling partnerships in order to exploit the assets of the partnerships for its sole benefit. PDC itself has explained that this new "Corporate Strategy":

> Drilling partnerships are not part of PDC's strategic plan going forward, and PDC wishes to buy them back, to the extent feasible. PDC has not established a drilling partnership since 2007 and has publicly announced a **fundamental shift in its business strategy** away from the partnership model to a more traditional exploration and production company model. PDC also wishes to position itself as a growth company. The merger will provide PDC with growth in both production and reserves from assets with which it is very familiar, and will permit PDC to invest further capital in those assets on a timetable of its own choosing.

(**Exhibit A** at 42 (emphasis added).) As a "fundamental shift in [PDC's] business strategy," PDC's officers and directors were intimately aware of the plan to obtain partnership assets and PDC's plan to maximize its profit by obtaining these assets are unfairly low prices.

94. Importantly, the merger transactions proposed by PDC as part of its "Corporate Strategy" were reviewed and approved by a "special committee" of PDC's board of directors. (**Exhibit A** at 46.) Three of the four members of the "special committee" were the Individual Defendants Anthony J. Crisafio, David C. Parke, and Jeffrey C. Swoveland—all directors on

PDC's board of directors at the time of the merger transactions who approved the "Shift in Corporate Strategy" and facilitated the mergers by serving on the "special committee" recommending the merger transaction to the limited partners. According to the proxy statements issued to the limited partners in support of the merger transaction:

> The special committee of the board of directors of PDC … on behalf of PDC in its capacity as the managing general partner of the partnership, **has approved the merger agreement, has determined that the merger is advisable and in the best interests of the partnership and reasonably believes that the merger is fair to the investors**, each of whom is unaffiliated with PDC.

(**Exhibit A** at 50 (emphasis added).)

95. The proxy statements also state that each member of the "special committee" possesses fiduciary "duties to the investors in his capacity as a member of the special committee" as well as "duties to the shareholders of PDC in his capacity as a member of PDC's board of directors." (**Exhibit A** at 80.) Hence, the "special committee" was aware of PDC's and its own fiduciary obligations to the partnerships and to the investor partners. The members of the "special committee" had full knowledge of PDC's fiduciary obligations, were part of the "Corporate Strategy" to wrongfully obtain the partnerships' assets, and participated in carrying out that strategy.

96. The proxy statements issued to the limited partners of the 2002-2005 partnerships also identify Individual Defendants Bart Brookman and Lance Lauck as officers of PDC.

(**Exhibit A** at 128.) Brookman is also identified as the president of "Merger Sub," the single purpose entity formed by PDC to facilitate the merger transactions. (*Id.* at 132.)

97. Individual Defendant Brookman has been a member of PDC's executive team during the entire period in which the wrongful conduct alleged herein took place. Brookman was CEO of PDC for more than 3 years, since January 2015, but joined the company in July 2005 and served as Senior Vice President-Exploration and Production, Chief Operating Officer, Executive Vice President, and President between that time and January 2015. (**Exhibit Q**.) Moreover, as demonstrated by the proxy statements referenced above, Brookman had actual knowledge of PDC's fiduciary obligations to Plaintiffs at the time of the merger transactions and participated in adopting and carrying out PDC's "Corporate Strategy" to take control of the assets held by all of PDC's drilling partnerships. Brookman also knowingly participated in PDC's ongoing breaches of fiduciary duty that have and continue to cause injury to the Partnerships and the Investor Partners. For example, the acreage trade between PDC and Noble occurred while Brookman was CEO of PDC. Brookman has actual knowledge that the acreage trade involved acreage owned by the Partnerships but, as a continuation of PDC's "Corporate Strategy," assisted PDC in wrongfully appropriating that acreage for its own benefit. PDC disclosed the acreage trade with Noble on June 16, 2016 (**Exhibit J**) and again in a quarterly filing with the SEC on August 9, 2016—a document which Brookman personally reviewed and certified (**Exhibit R** at 47 and 49). In both disclosures, PDC states that the acreage trade is part of the company's overall strategy to strengthen its position in the Wattenberg Field in Colorado; a continuation of the "Corporate Strategy" adopted by PDC to obtain the partnerships' assets for itself, which it was able to accomplish through the acreage trade with Noble.

98. Moreover, PDC has historically provided bonuses to members of its management team in connection with the company's acquisition of Partnership assets at less than fair market value. For example, defendant Lauck received a bonus in 2011 for, *inter alia*, his work in connection with PDC's acquisition of certain drilling partnerships through the use of cash-out mergers. PDC continues to provide incentive compensation and bonuses to members of its executive team (*See*, *e.g.*, **Exhibit S**.) Importantly, PDC states that its current incentive strategy is intended to (among other things) compensate individual contribution to the company (i.e., not to simply award executives for a general increase in PDC's profitability) and to align executive compensation with the interests of the shareholders. (*Id.* at 17.)

99. As a direct and proximate cause of the Individual Defendants' wrongful course of conduct, the 2006 and 2007 Partnerships suffered damages, the exact extent of which will be proven at trial, and Defendants were unjustly enriched as they received directors' fees and may have receive bonuses based on their aiding and abetting PDC's breach of fiduciary duties to the 2006-2007 Partnerships.

100. The conduct of the Individual Defendants in aiding and abetting PDC's breach of its fiduciary duties as set forth in this cause of action constitutes gross fraud, malice, oppression, or wanton, willful or reckless conduct or criminal indifference to civil obligations and justify an award of punitive damages.

THIRD CLAIM FOR RELIEF

FOR BREACH OF CONTRACT—DERIVATIVE

(Brought by Derivative Plaintiffs Derivatively on Behalf of the Partnerships, Against Defendant PDC)

101. Derivative Plaintiffs incorporate Paragraphs 1 and 3–49, 53–76, 83–96 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead the derivative claims alleged herein.

102. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative pursuant to FED. R. CIV. P. 8(d)(2), which provides "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones" and 8(d)(3), which provides that "a party may state as many separate claims or defenses as it has, regardless of consistency."

103. Rockies Region 2006 and Rockies Region 2007 are the sole intended third-party beneficiaries of their respective Partnership Agreements with respect to the assignment of acreage and are therefore able to bring an action to enforce their terms.

104. Defendant PDC breached its contractual obligations to the Partnerships by, among other things, failing to assign oil and gas interests in prospects (minimum 32-acre spacing units) to the Partnerships in accordance with the terms of the Partnership Agreements.

105. PDC also failed to recomplete the Partnerships vertical wells, or to drill additional infill wells permitted which Colorado changed the minimum acreage for spacing units for vertical wells in the Wattenberg Field. Had PDC recompleted the vertical wells and drilled the

infill wells, the Partnerships would have had the funds to drill horizontal wells on their prospects in the Wattenberg Field.

106. By swapping the Partnerships prospects in the Wattenberg Field to Noble and not paying any value for the Partnerships interests in the prospects transferred to Noble, and not allocating the Partnerships any portion of the leasehold interests that PDC received from Noble as a result of the swap transaction.

107. By reason of the foregoing common wrongful course of conduct, Defendants breached their contractual obligations owed to the Partnerships for their own gain at the expense of the limited partners

108. As a direct and proximate cause of Defendants' wrongful course of conduct, the Partnerships suffered damages, the exact extent of which will be proven at trial.

FOURTH CLAIM FOR RELIEF

FOR BREACH OF CONTRACT—DIRECT

(Brought by Class Plaintiffs, as Individuals and on Behalf of the Class, Against Defendant PDC)

109. Plaintiffs incorporate Paragraphs 2–66 and 77–82 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead direct, class claims alleged herein.

110. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative, pursuant to FED. R. CIV. P. 8(d)(2), which provides "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or

defense or in separate ones" and 8(d)(3), which provides that "a party may state as many separate claims or defenses as it has, regardless of consistency."

111. Class Plaintiffs, and the individual Investor Partners, each entered into a commercial contract with PDC, whereby, PDC agreed to, among other things:

(a) Assign acreage to the Partnerships;

(b) Not "acquire any property from the Partnership, directly or indirectly, except pursuant to transactions that are **fair and reasonable** to the Investor Partners of the Partnership …" (**Exhibit B** at p. 48 (Article V, § 5.07(i)) (emphasis added)); and

(c) Allocate the 63% of the profits to the Investor Partners and 37% of the profits to PDC (**Exhibit B** at p. 26 (Article III, § 3.02(a)); *see also* p. 38 (Article IV, § 4.02(a)).)

112. Defendant PDC breached its commercial contractual obligations owed to the Class Plaintiffs and the Investor Partners by, among other things,

(a) failing to assign oil and gas interests in prospects (minimum 32-acre spacing units) to the Partnerships in accordance with the terms of the Partnership Agreements;

(b) not treating the Investor Partners fairly and reasonably when it acquired for itself the Partnership's acreage; and

(c) effectively increased its profits derived from Partnership assets above 37% and effectively diminishing the Investor Partners' profit derived from Partnership assets to below 63%.

113. By reason of the foregoing common wrongful course of conduct, PDC breached its commercial contractual obligations owed to the Investor Partners for their own gain at the expense of the Investor Partners.

114. As a direct and proximate cause of PDC's breaches, the Class Plaintiffs and the rest of the Investor partners suffered damages, the exact extent of which will be proven at trial.

FIFTH CLAIM FOR RELIEF

FOR BREACH OF FIDUCIARY DUTY—DIRECT

(Brought by Class Plaintiffs, as an Individuals and on Behalf of the Class, Against Defendant PDC)

115. Plaintiffs incorporate Paragraphs 2–66, 77–82, and 105–110 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead direct, class claims alleged herein.

116. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative, pursuant to FED. R. CIV. P. 8(d)(2), which provides "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones" and 8(d)(3), which provides that "a party may state as many separate claims or defenses as it has, regardless of consistency."

117. Class Plaintiffs, and the Investor Partners, each entered into a commercial contract with PDC, whereby, PDC agreed to, among other things:

(a) Assign acreage to the Partnerships;

(b) Not "acquire any property from the Partnership, directly or indirectly, except pursuant to transactions that are **fair and reasonable** to the Investor Partners of the Partnership …" (**Exhibit B** at p. 48 (Article V, § 5.07(i)) (emphasis added)); and

(c) Allocate the 63% of the profits to the Investor Partners and 37% of the profits to PDC (**Exhibit B** at p. 26 (Article III, § 3.02(a)); *see also* p. 38 (Article IV, § 4.02(a)).)

118. By **directly** promising the Investor Partners that none of the Partnership's property will be acquired by PDC unless such transaction is "fair and reasonable to the Investor Partners…," PDC imposed upon itself a fiduciary obligation to the Investor Partners to act reasonably and fairly towards them in connection with PDC's acquisition of partnership property. This was a direct fiduciary duty owed to the Investor Partners.

119. PDC's fiduciary obligations arose both from contract, i.e. the partnership agreements, and under West Virginia law.

120. PDC breached this duty by not treating the Investor Partners fairly and reasonably when it acquired for itself the Partnership's acreage.

121. Moreover, PDC breached its fiduciary duty to the Investor Partners when it effectively diluted the Investor Partners' interests in the Partnerships to below 37%, and increased its own interests to above 37%, by benefitting from the Partnership's acreage, to the exclusion of the Investor Partners.

122. Additionally, PDC breached its fiduciary duty to the Investor Partners by

(a) Failing to take reasonable steps to recomplete or refracture ("refrac") the Partnerships' vertical wells in the Wattenberg Field, when similar efforts had proven effective on vertical wells that PDC maintained on non-Partnership acreage;

(b) Failing to drill infill wells on the Partnerships' spacing units when the State of Colorado in 2009 reduced the minimum spacing unit for a vertical well in the Wattenberg Field;

(c) Failing to utilize other procedures that are standard in the oil and gas industry, including but not limited to farmouts, pooling, and term assignments to participate in developing horizontal wells on the Partnerships' spacing units in the Wattenberg Field;

(d) Profiting, to the exclusion of the Partnerships, from the drilling of horizontal wells that pass-through Partnership spacing units and drain available oil and natural gas which belong to the Partnerships; and

(e) By entering into an agreement with Noble by which PDC traded a portion of the Partnerships' spacing units/acreage for acreage that is more contiguous with PDC's own acreage in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships' own working interests in their prospects.

123. By reason of the foregoing common wrongful course of conduct, PDC breached its fiduciary duty owed to the Investor Partners for its own gain at the expense of the Investor Partners.

124. As a direct and proximate cause of PDC's wrongful course of conduct, the Class Plaintiffs and the rest of the Investor Partners suffered damages, the exact extent of which will be proven at trial.

125. The conduct of PDC in breaching its fiduciary duties as set forth in this cause of action constitutes gross fraud, malice, oppression, or wanton, willful or reckless conduct or criminal indifference to civil obligations and justify an award of punitive damages.

SIXTH CLAIM FOR RELIEF

FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY—DIRECT

(Brought by Class Plaintiffs, as Individuals and on Behalf of the Class, Against Defendants Brookman, Lauck, Swoveland, Crisafio, and Parke)

126. Plaintiffs incorporate Paragraphs 2–66, 77–82, and 105–121 set forth above as if fully set forth herein. This claim does not incorporate any allegations that could be construed to run contrary to the right to plead direct, class claims alleged herein.

127. To the extent this Claim is inconsistent with any other claim, it is being brought in the alternative, pursuant to FED. R. CIV. P. 8(d)(2), which provides "A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones" and 8(d)(3), which provides that "a party may state as many separate claims or defenses as it has, regardless of consistency."

128. Each of the Individual Defendants had actual knowledge of PDC's breaches of fiduciary duty to the Investor Partners, and with such knowledge, substantially assisted PDC in committing such breaches, or, at the very least, substantially encouraged PDC to breach its fiduciary duty to the Investor Partners. Each of the Individual Defendants acted with knowledge that PDC's conduct that they advocated or assisted constituted a breach.

129. As PDC's Directors and/or Officers, each of the Individual Defendants had knowledge of the promises made to the Investor Partners in the Partnership Agreements and the Fiduciary Obligations that PDC owed to the Investor Partners, and also knew that PDC did not assign to the Partnerships interest in the acreage, but instead, purported to assign to the Partnerships a Wellbore interest only.

130. Here, each of the Individual Defendants participated in PDC's board decisions or otherwise caused PDC's Board to make the decisions at issue.

131. The wrongful conduct of PDC alleged herein is part of a "Shift in Corporate Strategy" adopted by PDC to take control of the drilling partnerships in order to exploit the assets of the partnerships for its sole benefit. PDC itself has explained that this new "Corporate Strategy":

> Drilling partnerships are not part of PDC's strategic plan going forward, and PDC wishes to buy them back, to the extent feasible. PDC has not established a drilling partnership since 2007 and has publicly announced a **fundamental shift in its business strategy** away from the partnership model to a more traditional exploration and production company model. PDC also wishes to position itself as a growth company. The merger will provide PDC with growth in both production and reserves from assets with which it is very familiar, and will permit PDC to invest further capital in those assets on a timetable of its own choosing.

(**Exhibit A** at 42 (emphasis added).) As a "fundamental shift in [PDC's] business strategy," PDC's officers and directors were intimately aware of the plan to obtain partnership assets and PDC's plan to maximize its profit by obtaining these assets are unfairly low prices.

132. Importantly, the merger transactions proposed by PDC as part of its "Corporate Strategy" were reviewed and approved by a "special committee" of PDC's board of directors. (**Exhibit A** at 42.) Three of the four members of the "special committee" were the Individual Defendants Anthony J. Crisafio, David C. Parke, and Jeffrey C. Swoveland—all directors on PDC's board of directors at the time of the merger transactions who approved the "Shift in

Corporate Strategy" and facilitated the mergers by serving on the "special committee" recommending the merger transaction to the limited partners. According to the proxy statements issued to the limited partners in support of the merger transaction:

> The special committee of the board of directors of PDC … on behalf of PDC in its capacity as the managing general partner of the partnership, **has approved the merger agreement, has determined that the merger is advisable and in the best interests of the partnership and reasonably believes that the merger is fair to the investors**, each of whom is unaffiliated with PDC.

(**Exhibit A** at 50 (emphasis added).)

133. The proxy statements also state that each member of the "special committee" possesses fiduciary "duties to the investors in his capacity as a member of the special committee" as well as "duties to the shareholders of PDC in his capacity as a member of PDC's board of directors." (**Exhibit A** at 80.) Hence, the "special committee" was aware of PDC's and its own fiduciary obligations to the partnerships and to the investor partners. The members of the "special committee" had full knowledge of PDC's fiduciary obligations, were part of the "Corporate Strategy" to wrongfully obtain the partnerships' assets, and participated in carrying out that strategy.

134. The proxy statements issued to the limited partners of the 2002-2005 partnerships also identify Individual Defendants Bart Brookman and Lance Lauck as officers of PDC. (**Exhibit A** at 128.) Brookman is also identified as the president of "Merger Sub," the single purpose entity formed by PDC to facilitate the merger transactions. (*Id.* at 132.)

135. Individual Defendant Brookman has been a member of PDC's executive team during the entire period in which the wrongful conduct alleged herein took place. Brookman was CEO of PDC for more than 3 years, since January 2015, but joined the company in July 2005 and served as Senior Vice President-Exploration and Production, Chief Operating Officer, Executive Vice President, and President between that time and January 2015. (**Exhibit Q**.) Moreover, as demonstrated by the proxy statements referenced above, Brookman had actual knowledge of PDC's fiduciary obligations to Plaintiffs at the time of the merger transactions and participated in adopting and carrying out PDC's "Corporate Strategy" to take control of the assets held by all of PDC's drilling partnerships. Brookman also knowingly participated in PDC's ongoing breaches of fiduciary duty that have and continue to cause injury to the Partnerships and the Investor Partners. For example, the acreage trade between PDC and Noble occurred while Brookman was CEO of PDC. Brookman has actual knowledge that the acreage trade involved acreage owned by the Partnerships but, as a continuation of PDC's "Corporate Strategy," assisted PDC in wrongfully appropriating that acreage for its own benefit. PDC disclosed the acreage trade with Noble on June 16, 2016 (**Exhibit J**) and again in a quarterly filing with the SEC on August 9, 2016—a document which Brookman personally reviewed and certified (**Exhibit R** at 47 and 49). In both disclosures, PDC states that the acreage trade is part of the company's overall strategy to strengthen its position in the Wattenberg Field in Colorado; a continuation of the "Corporate Strategy" adopted by PDC to obtain the partnerships' assets for itself, which it was able to accomplish through the acreage trade with Noble.

136. Moreover, PDC has historically provided bonuses to members of its

management team in connection with the company's acquisition of Partnership assets at less than fair market value. For example, defendant Lauck received a bonus in 2011 for, *inter alia*, his work in connection with PDC's acquisition of certain drilling partnerships through the use of cash-out mergers. PDC continues to provide incentive compensation and bonuses to members of its executive team (*See, e.g.,* **Exhibit S**.) Importantly, PDC states that its current incentive strategy is intended to (among other things) compensate individual contribution to the company (i.e., not to simply award executives for a general increase in PDC's profitability) and to align executive compensation with the interests of the shareholders. (*Id.* at 17.)

137. As a direct and proximate cause of the Individual Defendants' wrongful course of conduct, the 2006 and 2007 Partnerships suffered damages, the exact extent of which will be proven at trial, and Defendants were unjustly enriched as they received directors' fees and may have receive bonuses based on their aiding and abetting PDC's breach of fiduciary duties to the 2006-2007 Partnerships.

138. The conduct of the Individual Defendants in aiding and abetting PDC's breach of its fiduciary duties as set forth in this cause of action constitutes gross fraud, malice, oppression, or wanton, willful or reckless conduct or criminal indifference to civil obligations and justify an award of punitive damages.

SEVENTH CLAIM FOR RELIEF

FOR DECLARATORY RELIEF—WELLBORE ISSUE

(Brought by Plaintiffs Dufresne, Schulein, Gaffey, Glickman, and McDonald, as Individuals, Against Defendant PDC)

139. Plaintiffs incorporate paragraphs 1–66 set forth above as if fully set forth herein.

140. An actual controversy has arisen and now exists between the parties with respect to the nature and extent of the Partnerships' property interests. On one hand, Plaintiffs assert that defendant PDC assigned to them, or was obligated to assign to them, prospects being leasehold interests in spacing units with a minimum of 32 acres. On the other hand, Defendant PDC contends that only a "wellbore interest" (or other lesser interest) was assigned to the Partnerships.

141. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to Partnerships' property interests is necessary and appropriate under the circumstances.

EIGHTH CLAIM FOR RELIEF

FOR DECLARATORY RELIEF—BANKRUPTCY

(Brought by Plaintiffs Dufresne, Schulein, Gaffey, Glickman, and McDonald, as Individuals, Against Defendant PDC)

142. Plaintiffs incorporate Paragraphs 1–66 set forth above as if fully set forth herein.

143. An actual controversy has arisen and now exists between the parties with respect to the process by which PDC may proceed to file bankruptcy on behalf of the Partnerships. On one hand, Plaintiffs assert that PDC must obtain consent from the holders of the majority of the outstanding units entitled to vote in order to file for bankruptcy on behalf of the Partnerships. PDC disagrees. Attached hereto as **Exhibit T** is a true and correct copy of a letter dated March 29, 2018 that Plaintiffs' counsel sent to PDC's counsel. Attached hereto as **Exhibit U** is a true and correct copy of a letter dated April 6, 2018, where PDC expressly states that it disagrees with Plaintiffs' position.

144. The Limited Partnership Agreement Provides that "Notwithstanding any other provisions of this Agreement to the contrary, neither the Managing General Partner nor any Affiliate of the Managing General Partner shall have the power or authority to, and shall not perform, or authorize …Without having first received the prior consent of the holders of the majority of the then outstanding Units entitled to vote … do any other act which would make it impossible to carry on the ordinary business of the Partnership."

145. If PDC as managing partner files bankruptcy petitions on behalf of the 2006 and 2007 Partnerships, it will make it impossible to carry on the business of the Partnership, and thus, a vote of the majority of the limited partners of the Partnerships is required.

146. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to Partnerships' property interests is necessary and appropriate under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment, as follows:

A. As to the derivative claims (First, Second, and Third Claims)

i. Award damages in favor of the Partnerships against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including prejudgment interest thereon;

ii. Award equitable relief to the Partnerships;

iii. Award of punitive damages;

iv. Award Derivative Plaintiffs their reasonable attorney fees, costs, and expenses incurred in this action, including expert fees; and

v. Award such other and further relief as the Court may deem just and proper.

B. As to the Class Action Claims (Fourth, Firth, and Sixth Claims):

i. Determine that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;

ii. Award damages in favor of the Class Plaintiffs and the Investor Partners against Defendants for all damages sustained as a result of PDC's breaches and wrongdoing, in an amount to be proven at trial, including prejudgment interest thereon;

iii. Award Class Plaintiffs their reasonable attorney fees, costs, and expenses incurred in this action, including expert fees; and

iv. Award such other and further relief as the Court may deem just and proper.

C. As to the Declaratory Relief—Wellbore Claim (Seventh Claim): A finding that defendant PDC assigned to the Partnerships, or was obligated to assign to the Partnerships, prospects being leasehold interests in spacing units with a minimum of 32 acres, and not only a "wellbore interest."

D. As to Declaratory Relief – Bankruptcy (Eighth Claim): A finding that in order for PDC to file for bankruptcy on behalf of the Partnerships, it must first obtain consent from the holders of the majority of the outstanding units entitled to vote.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiffs request trial by jury in this action of all issues so triable.

Dated: July 10, 2018

By __/s/ Thomas G. Foley Jr.______________

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Attorneys for Plaintiffs

VERIFICATION

I, Michael A. Gaffey, hereby declare as follows:

I am trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000, one of the plaintiffs in the within entitled derivative action. I have read the Verified Derivative Second Amended Complaint brought, in part, on behalf of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership. Based upon discussions with, and reliance upon my counsel, and as to those facts of which I have personal knowledge, I am informed and believe that the allegations in Verified Derivative Second Amended Complaint are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing it true and correct. Executed on July 6, 2018.

TTEE

Michael A. Gaffey, as Trustee

VERIFICATION

I, Robert R. Dufresne, hereby declare as follows:

I am trustee of the Dufresne Family Trust, one of the plaintiffs in the within entitled derivative action. I have read the Verified Derivative Second Amended Complaint brought, in part, on behalf of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership. Based upon discussions with, and reliance upon my counsel, and as to those facts of which I have personal knowledge, I am informed and believe that the allegations in Verified Derivative Second Amended Complaint are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing it true and correct. Executed on July 8th, 2018.

Robert R. Dufresne

Robert R. Dufresne, as Trustee

VERIFICATION

I, Jeffrey Schulein, hereby declare as follows:

I am trustee of the Schulein Family Trust established March 29, 1989, one of the plaintiffs in the within entitled derivative action. I have read the Verified Derivative Second Amended Complaint brought, in part, on behalf of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership. Based upon discussions with, and reliance upon my counsel, and as to those facts of which I have personal knowledge, I am informed and believe that the allegations in Verified Derivative Second Amended Complaint are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing it true and correct. Executed on July July 9, 2018.

Jeffrey Schulein, as Trustee

Exhibit C

Colorado Action: Order on Motion to Dismiss

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Judge R. Brooke Jackson

Civil Action No 17-cv-03079-RBJ

ROBERT R. DUFRESNE, a Trustee of the Dufresne Family Trust;
MICHAEL A. GAFFEY, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000;
RONALD GLICKMAN, a Trustee of the Glickman Family Trust est. August 29, 1994;
JEFFREY SCHULEIN, a Trustee of the Schulein Family Trust est. March 29, 1989; and
WILLIAM MCDONALD, as Trustee of the William J. and Judith A. McDonald Living Trust est. April 16, 1991,

Plaintiffs,

v.

PDC ENERGY, INC., a Delaware corporation, in its capacity as the General Partner of the Rockies Region 2006 Limited Partnership and the Rockies Region 2007 Limited Partnership;
BART R. BROOKMAN, JR., an individual as the Chief Executive Officer of the defendant PDC Energy, Inc.;
LANCE A. LAUCK, an individual as the Executive Vice President of defendant PDC Energy, Inc.;
JEFFREY C. SWOVELAND, an Individual;
ANTHONY J. CRISAFIO, an Individual; and
DAVID C. PARKE, an Individual,

Defendants,

and

ROCKIES REGION 2006 LP, a West Virginia limited partnership; and
ROCKIES REGION 2007 LP, a West Virginia limited partnership,

Nominal Defendants.

ORDER ON MOTION TO DISMISS

This matter is before the Court on defendants PDC Energy, Inc. (“PDC”), Bart Brookman, Jr., Lance Lauck, Jeffrey Swoveland, Anthony Crisafio, and David Parke’s ("individual defendants") motion to dismiss [ECF No. 39] plaintiffs' second amended complaint ("SAC") [ECF No. 37]. For reasons stated below, the motion is GRANTED in part and DENIED in part.

I. BACKGROUND

PDC is a publicly traded oil and gas company headquartered in Denver, Colorado. SAC, ECF No. 37 at ¶¶3, 23. It owns, operates, and manages oil and gas properties primarily in Colorado, Texas, and West Virginia. *Id.* at ¶3. In the mid-1980s until 2007, PDC formed dozens of limited partnerships to raise capital to finance the acquisition and development of additional oil and gas properties. *Id.* PDC served as the managing general partner for the limited partnerships, and it used the millions invested to drill new wells. *Id.* at ¶15.

Of the 76 limited partnerships that PDC formed, there are just two at issue in this case: the Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership (collectively, the "Partnerships"). *Id.* at ¶4. The Partnerships owned the rights to multiple oil and gas properties, including rights in the Wattenberg Field in Colorado. *Id.* According to plaintiffs, the Wattenberg Field is one of PDC's most profitable properties. *Id.* As such, this field became a central figure in the alleged wrongful scheme to deprive the Partnerships of their interests.

The alleged scheme began at some point prior to 2010. Plaintiffs allege that PDC decided to divest itself of its obligations to the numerous partnerships, including the Partnerships involved in this case, because PDC wanted to solely benefit from the production of oil and gas that the Wattenberg Field produced. *Id.* at ¶5. So, PDC devised a scheme to purchase the Partnerships and their associated assets below market value. *Id.* Mr. Lauck was the supposed "mastermind" of the plan. *Id.* Plaintiffs believe that PDC concealed the wrongful scheme under the guise of a "shift in corporate strategy" away from the partnership model to a more traditional oil and gas model. *Id.* at ¶6.

According to the SAC, PDC's alleged scheme went into action when it started merging earlier partnerships formed between 2002 and 2005. *Id.* at ¶7. This sparked a separate class action lawsuit against PDC in the Central District of California, where plaintiff Schulein served as the lead plaintiff. *Id.* (citing *Schulein v. Petroleum Dev. Corp.*, No. SACV 11-1891 AG ANX, 2014 WL 114520, at *1 (C.D. Cal. Jan. 6, 2014)). In that case, the district court ultimately approved a $37 million settlement. *Id.* As a result, plaintiffs assert that PDC halted the alleged scheme to purchase the 2006 and 2007 Partnerships. *Id.* at ¶8.

Nonetheless, plaintiffs allege at least four specific wrongful acts committed by PDC as part of the broader scheme. First, plaintiffs allege that defendants failed to assign the Partnerships 32-acre spacing units as required by the agreement. SAC, ECF No. 37 at ¶53. The terms of the Partnership Agreement required PDC to assign to the Partnerships "prospects," which the agreement defines as a "drilling or spacing unit on which [a] well will be drilled by the Partnership which is the minimum area permitted by state law or local practice on which one well may be drilled." *Id.* at ¶16; Ex. 2, ECF No. 37-2 at 18. Because at the time the minimum drilling or spacing unit for a vertical well in the Wattenberg Field was 32 acres, plaintiffs assert that PDC was obligated to transfer 32-acre spacing units to the Partnership. SAC, ECF No. 37 at ¶16. So, when PDC assigned the Partnerships lesser "wellbore" interests—which is simply the shaft of a vertical well drilled by the Partnerships—instead of the full 32-acre spacing units, plaintiffs assert that PDC breached its contractual obligations. *Id.* at ¶16. Plaintiffs primarily object to this decision because it allowed PDC to drill horizontal wells through the spacing units in the Wattenberg Field assigned to the Partnerships, which effectively drained the oil and gas from the Partnerships' existing vertical wells and thus drained plaintiffs' expected revenue. *Id.* at ¶53.

Second, plaintiffs allege that defendants failed to take proper steps to maximize the profits of the Partnerships' property. To start, plaintiffs allege that PDC represented to investors that it would "recomplete or refracture" the Partnerships' existing wells within five or six years after the initial drilling. *Id.* at ¶12. Despite this alleged representation, PDC ultimately decided to "plug and abandon" most of the Partnerships' vertical wells. *Id.* at ¶¶12, 17. Plaintiffs further allege that defendants refused to drill additional infill wells on the Partnerships' spacing units when in 2009 Colorado reduced the minimum spacing unit for a vertical well from 32 to 20 acres. *Id.* at ¶16. Finally, plaintiffs allege that PDC failed to maximize the Partnerships' profits by failing to utilize other standard procedures to develop Partnership prospects, such as farmouts or pooling. *Id.* at ¶14.

Third, plaintiffs allege PDC breached its fiduciary duties when it profited from the drilling of horizontal wells that passed through the Partnerships' spacing units in the Wattenberg Field without compensating the Partnerships. *Id.* at ¶15. And lastly, plaintiffs allege yet another breach of fiduciary duty by PDC when it entered into an agreement with Noble Energy, Inc. ("Noble") by which it traded to Noble a portion of the Partnerships' spacing acreage for other acreage in the Wattenberg Field that is adjoining PDC's own acreage. *Id.* This allowed PDC to drill longer and more profitable horizontal wells for its own benefit and at the expense of the Partnerships' interest. *Id.*

Defendants tell a different story. They contend that after paying significant distributions to plaintiffs for many years, the productivity of the Partnerships' wells naturally declined with age. ECF No. 39 at 3. In fact, defendants allege that the costs to maintain plaintiffs' wells started to exceed revenues by hundreds of thousands of dollars per year. *Id.* This loss required PDC to plug or abandon the Partnerships' wells beginning in October 2017. *Id.* Further, defendants allege that plaintiffs' only beef with them is that they want a share of the profits PDC has earned from the horizontal wells that it operated in the same area as the Partnerships' wells. *Id.* at 2. However, defendants refuse to share in their profits from the horizontal wells because the original investment offerings concerned only the original wells; any additional wells that PDC drilled were explicitly not part of the agreement. Thus, defendants believe that the Partnerships have no rights to any subsequently drilled wells. *Id.*

Procedural History

Derivative plaintiffs Dufresne, Gaffey, and Schulein ("derivative plaintiffs"), on behalf of the Partnerships, brought their initial complaint on December 20, 2017. ECF No. 1. Derivative plaintiffs amended their complaint on April 26, 2018 to add class claims. ECF No. 26. Plaintiffs Glickman and McDonald are the "class plaintiffs." SAC, ECF No. 37 at 2 n.1. Plaintiffs subsequently filed a second amended complaint on July 10, 2018. ECF No. 37. Defendants filed their motion to dismiss on July 31, 2018. ECF No. 39. Plaintiffs responded on August 21, 2018, ECF No. 41, and defendants filed a reply brief shortly thereafter, ECF No. 42. The motion is now ripe for review.

II. STANDARD OF REVIEW

To survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss, the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim is a claim that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009). While the Court must accept the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the plaintiff, *Robbins v. Wilkie*, 300 F.3d 1208, 1210 (10th Cir. 2002), conclusory allegations are not entitled to be presumed true. *Iqbal*, 556 U.S. at 681. However, so long as the plaintiff offers sufficient factual allegations such that the right to relief is raised above the speculative level, he has met the threshold pleading standard. *See*, *e.g.*, *Twombly*, 550 U.S. at 556; *Bryson v. Gonzales*, 534 F.3d 1282, 1286 (10th Cir. 2008).

III. ANALYSIS

Defendants' motion to dismiss rests on three primary arguments. *See* ECF No. 39 at 4–15. First, defendants assert that plaintiffs' SAC does not contain sufficient facts to support plaintiffs' claim that the individual defendants aided and abetted PDC's breach of fiduciary duty. *Id.* at 4–11. Next, defendants contend that plaintiffs' claims based on PDC's alleged failure to assign the Partnerships 32-acre spacing units are time-barred. *Id.* at 11–14. Lastly, defendants assert that the class claims relating to the 2006 Partnership wellbore assignments are time-barred. *Id.* at 14–15.

A. Aiding and Abetting the Alleged Breach of Fiduciary Duty Claim Against Individual Defendants Brookman, Lauck, Swoveland, Crisafio, and Parke.

In claims two (brought by derivative plaintiffs) and six (brought by class plaintiffs), plaintiffs allege a claim for aiding and abetting a breach of fiduciary duty against individual defendants Brookman, Lauck, Swoveland, Crisafio, and Parke. SAC, ECF No. 37 at 39. Under Delaware law,[1] a claim for aiding and abetting a breach of fiduciary duty is a "stringent

[1] The parties agree that the Partnership Agreements are governed by West Virginia law. ECF No. 39 at 5 n.2; ECF No. 41 at 2 n.1. The parties also agree that, in the absence of controlling precedent, West Virginia courts apply Delaware law on issues related to corporate governance. Thus, I will apply Delaware law for the first issue because it relates to corporate governance.

[standard], one that turns on proof of scienter of the alleged abettor." *Binks v. DSL.net, Inc.*, No. CIV.A. 2323-VCN, 2010 WL 1713629, at *10 (Del. Ch. Apr. 29, 2010). The claim has four elements: "(1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty, . . . (3) knowing participation in that breach by the defendants, and (4) damages proximately caused by the breach." *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001) (internal citation and quotation marks omitted). The only element at issue in this motion is the third element. "[T]he element of 'knowing participation' requires that the secondary actor have provided 'substantial assistance' to the primary violator." *In re Dole Food Co., Inc. Stockholder Litig.*, No. CV 8703-VCL, 2015 WL 5052214, at *41 (Del. Ch. Aug. 27, 2015) (internal citation and quotation marks omitted). Whether a defendant "knowingly" provided "substantial assistance" is a fact intensive analysis. *Id.* at *42.

To survive a Rule 12(b)(6) motion on this claim, the SAC must allege sufficient facts from which "knowing participation can be inferred." *McGowan v. Ferro*, No. CIV.A. 18672-NC, 2002 WL 77712, at *2 (Del. Ch. Jan. 11, 2002) (internal citation and quotation marks omitted). Importantly, plaintiffs are not required to plead knowing participation with particularity, but "[c]onclusory statements that are devoid of factual details to support an allegation of knowing participation will fall short of the pleading requirement needed to survive a Rule 12(b)(6) motion to dismiss." *Id.* (internal citation and quotation marks omitted).

Defendants attack plaintiffs' aiding and abetting claims by arguing that the SAC asserts conclusory facts and fails to plead any facts showing that the individual defendants substantially assisted in the alleged acts. ECF No. 39 at 6. Defendants first focus on the most remote allegation: that PDC assigned the Partnerships lesser wellbore interests instead of 32-acre spacing units. *Id.* at 7. Defendants correctly highlight that the SAC itself states that these assignments occurred in 2007 and 2008, respectively. *See* SAC, ECF No. 37 at ¶53 n.6. Because Mr. Brookman did not become a senior officer until 2013, and because Mr. Lauck did not join PDC until 2009, defendants argue that they could not have assisted in these assignments. ECF No. 39 at 7. As for Messrs. Swoveland, Crisafio, and Parke, all of whom are nonexecutive (outside) directors, defendants argue that plaintiffs only assert that they "knew" of the wellbore assignments. *See* SAC, ECF No. 37 at ¶129. Defendants contend that such knowledge cannot constitute substantial assistance under the law. ECF No. 39 at 7. Defendants go on to argue that, as outside directors, they were in no way involved in day-to-day operations and thus could not have offered substantial assistance to this alleged scheme. *Id.* Defendants then argue that any reference to previous mergers concerning different partnerships are wholly irrelevant to plaintiffs' assertion that these individual defendants facilitated and encouraged the alleged wrongful scheme at issue in this case. *Id.* at 9.

In response, plaintiffs argue that defendants' motion overstates the pleading requirement for knowing participation of aiding and abetting a breach of fiduciary duty. ECF No. 41 at 1. Plaintiffs believe that it has pled sufficient facts from which a claim for aiding and abetting can be inferred, such as PDC's decision to pay Mr. Lauck a bonus for his work in acquiring other drilling partnerships and the nonexecutive directors' role in approving other merger transactions. *Id.* at 3–8. Plaintiffs contend that mergers and transactions concerning similar partnerships is evidence of the ongoing plan and scheme to harm the Partnerships. *Id.* Defendants counter that plaintiffs still do not (and cannot) point to any specific facts that the individual defendants participated in or knew about PDC's purported decisions to plug the Partnerships' wells or otherwise squander their assets and revenues. ECF No. 42 at 1–2. The Court agrees.

The SAC is simply conclusory concerning the individual defendants. Alleging that the "Individual Defendants were either officers or directors of PDC during the time in which PDC crafted its strategy and began taking steps to bring it to fruition" is not helpful to show how each defendant substantially assisted in the breach. ECF No. 41 at 6 (citing SAC, ECF No. 37 at ¶¶24–28). While I agree with plaintiffs that they are not required to plead this claim with particularity, the facts they allege are insufficient to withstand a Rule 12(b)(6) motion.

Starting with Mr. Brookman, PDC's current president, chief executive officer ("CEO"), and board member, defendants allege that he could not have provided substantial assistance to the alleged scheme—which purportedly began prior to 2010—because he has only held the role of president and CEO since January 2015. Plaintiffs don't dispute this fact, but they argue that he was involved in the scheme in his previous roles as senior vice president, chief operating officer, and executive vice president starting in July 2005. Regardless of his title, the SAC fails to plead facts which would allow me to draw an inference that he provided substantial assistance to the alleged scheme. In paragraph 97 of the SAC, plaintiffs allege that he "had actual knowledge of PDC's fiduciary obligations to Plaintiffs at the time of the merger transactions and participated in adopting and carrying out PDC's 'Corporate Strategy' to take control of the assets held by all of PDC's drilling partnerships." Paragraph 97 goes on to alleged that he "knowingly participated in PDC's ongoing breaches of fiduciary duty that have and continue to cause injury to the Partnerships and the Investor Partners." This is not enough to show that Mr. Brookman knowingly participated in the alleged wrongful conduct. Plaintiffs fail to cite any facts that allege substantial assistance on behalf of Mr. Brookman. Paragraph 97 does provide one example: that the acreage trade between PDC and Noble occurred while Mr. Brookman was CEO, and that he personally certified the land swap as required by the SEC filings. Although this shows that Mr. Brookman was eventually informed of the Noble transactions, it again fails to plead facts which show that Mr. Brookman substantially assisted PDC in carrying out the wrongful act or scheme. As such, this claim fails.

Allegations against Mr. Lauck fare no better. The SAC alleges that Mr. Lauck, the current executive vice president for corporate development and strategy, "masterminded" the idea of the entire scheme. *See* SAC, ECF No. 37 at ¶5. But defendants' motion explicitly states that Lauck did not join PDC until 2009, and plaintiffs completely ignore this fact in their response. If the first step in the alleged scheme (PDC's decision to assign the Partnerships wellbore assignments) occurred in 2007 and 2008, as plaintiffs allege, *see* SAC, ECF No. 37 at ¶53 n.6, I fail to see how Mr. Lauck could have masterminded this plan. Plaintiffs also argue that Mr. Lauck received a bonus in 2011 for his contributions to his work associated with PDC's mergers of other partnerships, and assert that this bonus was made to induce his involvement in the alleged scheme. ECF No. 41 at 8. However, the case that plaintiffs cite for support does not help their case. In *McGowan v. Ferro*, the court granted the motion to dismiss because the complaint did not allege that the side payments were so "grossly excessive as to be inherently wrong." No. CIV.A. 18672-NC, 2002 WL 77712, at *3 (Del. Ch. Jan. 11, 2002) (internal citations and quotation marks omitted). One case that the *McGowan* court surveyed involved a side payment to the corporation's directors and officers which ranged between $15 to $17 million. *Id.* Here, plaintiffs do not specify the value of Mr. Lauck's bonus, but I will not infer that it is grossly excessive without any factual support.[2] As such, the SAC's factual allegations against Mr. Lauck are not legally sufficient to allege inducement to breach a fiduciary duty.

[2] According to PDC's 2016 Schedule 14A SEC filing, Mr. Lauck received an annual bonus of $512,000 in 2016. ECF No. 37-27 at 45. This is the only bonus information I could find that was attached to the SAC.

Finally, turning to the three outside directors, Messrs. Swoveland, Crisafio, and Parke, plaintiffs argue that these three individual defendants were part of a special committee of the board of directors that approved merger agreements for other partnerships. ECF No. 41 at 7 (citing SAC, ECF No. 37 at ¶¶94–95). Defendants argue that these extraneous merger transactions are irrelevant to this lawsuit, and in any case, actions by a special committee in no way show that these individual defendants were involved in day-to-day operations of PDC. ECF No. 39 at 9.

Although I don't necessarily agree that all actions taken against other partnerships are irrelevant to a claim of an alleged wrongful corporate scheme, I agree that this singular action by a special committee concerning other partnerships fails to show that defendants substantially assisted in the alleged breach. It is simply another conclusory allegation that prevents me from even inferring that these individual defendants knowingly participated in the underlying scheme. "Under Delaware Law, there is no authority to support the attribution of knowledge to Outside Directors who are not alleged to be directly involved in the day-to-day operations of the company." *Taylor v. Kissner*, 893 F. Supp. 2d 659, 671 (D. Del. 2012) (internal citations and quotation marks omitted). Even the single case that plaintiffs cite fails to support their position. Plaintiffs' brief cites *In re TIBCO Software Inc. Stockholders Litig.* for the proposition that the "requirement of participation can be established if the alleged aider and abettor participated in the board's decisions, conspired with [the] board, or otherwise caused the board to make the decisions at issue." No. CV 10319-CB, 2015 WL 6155894, at *24 (Del. Ch. Oct. 20, 2015) (internal citation and quotation marks omitted). But again, plaintiffs have not plead any facts showing that these individual directors conspired with the board or caused the board to make unlawful decisions. Rather, the special committee simply voted to approve the previous merger agreements. Because plaintiffs have failed to plead any facts showing day-to-day involvement by the outside directors which might shed light that they directed or facilitated the alleged scheme, the claims against them are dismissed.

In sum, I find that plaintiffs have failed to sufficiently allege aiding and abetting by the individual defendants in claim two and claim six. Because plaintiffs have already submitted two amended complaints, these claims are dismissed with prejudice.

B. The Timeliness of Plaintiffs' Claims.

As highlighted above, one of plaintiffs' core allegations against PDC involve PDC's alleged failure to assign 32-acre spacing units to the Partnerships. *See* ECF No. 37 at ¶¶16, 53, 104. Instead, defendants assigned the Partnerships lesser wellbore interests. According to the SAC, these wellbore assignments were filed with the SEC in December 2007 for the 2006 Partnership and August 2008 for the 2007 Partnership. *Id.* at ¶53 n.6. The timing is important because under West Virginia law, the statute of limitations for a breach of contract claim is ten years. W. Va. Code § 55-2-6. Even more limiting is the statute of limitations for a breach of fiduciary duty claim, which carries a two-year limitation.[3] *Dunn v. Rockwell*, 689 S.E.2d 255, 268 (W. Va. 2009) (citing W. Va. Code. § 55-2-12). Like most states, the limitation period in West Virginia "begins to run either when the errors take place or when the errors are first known or should have been known." *Harris v. Cty. Comm'n of Calhoun Cty.*, 797 S.E.2d 62, 63 (W. Va. 2017).

[3] Plaintiff does not dispute that the two-year statute of limitations period applicable to a breach of fiduciary duty also applies to aiding and abetting a breach of fiduciary duty. Therefore, I will apply the "catchall" limitations period found in W. Va. Code. § 55-2-12 to the aiding and abetting claim. This appears to be in line with West Virginia caselaw, where a federal district court judge applied the two-year statute of limitations in § 55-2-12 to plaintiffs' claims for breach of fiduciary duty and aiding and abetting a tort. *W.W. McDonald Land Co. v. EQT Prod. Co.*, 983 F. Supp. 2d 790, 811 (S.D. W. Va. 2013).

Defendants argue that any contract claim relating to PDC's alleged failure to assign 32-acre spacing units to the Partnerships are time-barred per the constructive notice doctrine. ECF No. 39 at 11. In this case, plaintiffs filed the original complaint on December 20, 2017. ECF No. 1. Because PDC publicly recorded the 2006 Partnerships' wellbore assignments in Colorado in July 2007, defendants argue that plaintiffs filed their complaint five months too late.[4] ECF No. 39 at 13. Thus, they argue that any contract claims relating to the 2006 wellbore assignments (but not the 2007 wellbore assignments, which were filed with the SEC in August 2008) are time-barred. *Id.* Defendants further allege that any claims for breach of fiduciary duty relating to either the 2006 or 2007 assignments are barred by the two-year limitation period. *Id.*

Plaintiffs respond by arguing that the constructive notice doctrine in this context does not apply to investors, only subsequent purchasers of the property. ECF No. 41 at 10. Moreover, plaintiffs allege that the duty to investigate does not apply to situations where the recorder has a fiduciary relationship. *Id.* at 11. Finally, plaintiffs assert that defendants mislead them when they submitted their SEC 10-G filing in December 2007 in which PDC allegedly failed to disclose the wellbore assignments. *Id.* Defendants counter by arguing that the cited authority applied the constructive notice doctrine to not just subsequent purchasers of property but also to nonpurchasers such as plaintiffs bringing breaches of contract and fiduciary claims. ECF No. 42 at 3.

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[4] At defendants' request, the Court takes judicial notice of the public recording of the "Assignment of Working Interest, Wellbore Only" for the 2006 Partnership dated July 20, 2007 for Weld County and July 23, 2007 for Garfield County. *See* ECF Nos. 40, 40-1. Federal Rule of Evidence 201(b)(2) allows me to take judicial notice of facts which are "not subject to reasonable dispute because . . . [they] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Here, these recordings are publicly available through the Weld and Garfield County clerks' office and thus meet the definition found in Rule 201(b)(2). Next, this Court may consider matters of public record whose authenticity cannot be questioned "when resolving a motion to dismiss without converting the motion to one for summary judgment." *Thomas v. Kaven*, 765 F.3d 1183, 1197 (10th Cir. 2014). Consequently, I find judicial notice of the public recordings to be appropriate in this case.

The West Virginia Supreme Court of Appeals (the court of last resort) employs a five-step analysis to determine whether a claim is barred by an applicable statute of limitations. *Perrine v. E.I. du Pont de Nemours & Co.*, 694 S.E.2d 815, 851–52 (W. Va. 2010).

> First, the court should identify the applicable statute of limitation for each cause of action. Second, the court (or, if questions of material fact exist, the jury) should identify when the requisite elements of the cause of action occurred. Third, the discovery rule should be applied to determine when the statute of limitation began to run by determining when the plaintiff knew, or by the exercise of reasonable diligence should have known, of the elements of a possible cause of action, as set forth in Syllabus Point 4 of *Gaither v. City Hosp., Inc.*, 199 W.Va. 706, 487 S.E.2d 901 (1997). Fourth, if the plaintiff is not entitled to the benefit of the discovery rule, then determine whether the defendant fraudulently concealed facts that prevented the plaintiff from discovering or pursuing the cause of action. Whenever a plaintiff is able to show that the defendant fraudulently concealed facts which prevented the plaintiff from discovering or pursuing the potential cause of action, the statute of limitation is tolled. And fifth, the court or the jury should determine if the statute of limitation period was arrested by some other tolling doctrine. Only the first step is purely a question of law; the resolution of steps two through five will generally involve questions of material fact that will need to be resolved by the trier of fact.

Id. (internal citation and quotation marks omitted). Here, upon reaching the fourth step of this five-step framework, I find that I cannot dismiss this claim on statute of limitations grounds.

I have already addressed the first step. Under West Virginia law, the limitations period is ten years for a breach of contract claim and two years for a breach of fiduciary duty claim. Second, at least for the 2006 Partnership wellbore assignments, I find that there is no material fact dispute concerning the date defendants assigned this lesser interest. It occurred in July 2007 as evident by the public recording. The analysis becomes trickier at step three. The only authority that plaintiffs cite, which comes from Colorado and is thus persuasive authority in this case, stands for the proposition that the state's recording act operates to alert all future purchasers or grantees of the land. *See* ECF No. 41 at 10 (citing *Franklin Bank, N.A. v. Bowling*, 74 P.3d 308, 313 (Colo. 2003)). It does not affirmatively state that it applies solely to subsequent purchasers of the land, as plaintiffs suggest. To the contrary, the Colorado Supreme Court stated, “When a party properly records his interest in property with the appropriate clerk and recorder, he constructively notifies ‘all the world’ as to his claim,” not just subsequent purchasers. *Franklin Bank*, 74 P.3d at 313. This is consistent with West Virginia precedent. *See Curlett v. Newman*, 3 S.E. 578, 580 (W. Va. 1887).

Having decided that plaintiffs cannot prevail at step three, I turn to the fourth step. Here, plaintiffs allege that they are entitled to tolling of the statute of limitations because of affirmative representations PDC made. ECF No. 41 at 11. Because I am required to construe all facts in light most favorable to plaintiffs, I agree.

West Virginia precedent is clear that step four is generally a question of fact for the jury, and plaintiffs have sufficiently alleged a material fact dispute. Specifically, in responding to defendants’ statute of limitations defense, plaintiffs believe that defendants’ SEC 10-G filing on December 24, 2007 mislead them into thinking that defendants would assign the Partnerships spacing units instead of wellbore interests, as promised in the Partnership Agreements. *Id.* at 12. The SEC 10-G filing states that “[t]he Partnership’s properties consist of working interests in natural gas wells and the ownership in leasehold acreage in the spacing units for the ninety-seven wells drilled by the Partnership” and that “[a] thorough examination of title has been made with respect to all of the Partnership’s spacing units on which wells are drilled and the Partnership believes that it has generally satisfactory title to such properties.” *Id.* (citing Ex. A, ECF No. 41-1 at 32). Thus, plaintiffs assert that defendants affirmatively represented that the Partnerships possessed acreage in spacing units both before and after the recording. *Id.* at 12–13. Defendants counter by arguing that they attached the “wellbore-only” assignments to the SEC filings, and therefore, plaintiffs cannot claim that they were not on notice. ECF No. 42 at 4.

I cannot definitively say whether plaintiffs knew or should have known of the 2006 wellbore assignments in 2007, especially because plaintiffs affirmatively assert in the SAC that they were not aware of these assignments until they received a letter from PDC in October 2017. *See* SAC, ECF No. 37 at ¶53 n.6. Thus, at this stage, plaintiffs have met the pleading standard. However, this holding applies only to claims for breach of contract, which carry a ten-year statute of limitation. As I highlighted above, a claim for breach of fiduciary duty carries a much shorter two-year limitations period. Defendants point out that at least two of the five plaintiffs had actual knowledge of the wellbore assignments over two years ago—they were named plaintiffs in the *Schulein* action, in which those plaintiffs litigated this same issue. ECF No. 39 at 14 n.7.

Plaintiffs' sole response to defendants' attack on the breach of fiduciary duty claims is that the "continuing tort theory" bars defendants' motion to dismiss because it seeks to dismiss only a portion of plaintiffs' breach of fiduciary duty claims. ECF No. 41 at 13 n.6. I disagree. Under plaintiffs' cited authority, the Supreme Court of Appeals of West Virginia requires one "continuing cause of action," such as situations where each alleged event is "identical, occur repeatedly, at short intervals, in a consistent, connected, [and] rhythmic manner." *Copier Word Processing Supply, Inc. v. WesBanco Bank, Inc.*, 640 S.E.2d 102, 108 (W. Va. 2006). Here, the improper actions that form the breach of fiduciary duty claims include the alleged (1) improper wellbore assignments, (2) wrongful plugging of Partnerships' wells, (3) improper transfer of Partnerships' assets to third parties, and (4) ongoing waste of Partnerships' assets. *See* SAC, ECF No. 37 at ¶¶16, 60–61, 63–65. It is plain to me that these actions are not identical, did not occur repeatedly, and were not consistent. Thus, they do not amount to a continuing tort. As such, plaintiffs cannot use the alleged improper wellbore assignments to support their breach of fiduciary duty claims.

Accordingly, defendants' motion to dismiss plaintiffs' claims concerning the alleged improper wellbore assignments is denied as to plaintiffs' breach of contract claims. But plaintiffs are time-barred from using the wellbore assignments to support their breach of fiduciary duty claims.

C. The Timeliness of Plaintiffs' Class Claims Relating to the 2006 Partnership.

Plaintiffs first brought class claims in their first amended complaint ("FAC"), which they filed on April 26, 2018. ECF No. 26. Defendants allege that any class claims relating to the 2006 Partnership wellbore assignments are time-barred because defendants filed notice of those assignments with the SEC on December 24, 2007. ECF No. 39 at 14. Plaintiffs admit this fact in the SAC. SAC, ECF No. 37 at ¶53 n.6. Defendants contend that the SEC filing put class plaintiffs on constructive notice. *Id.* Defendants, anticipating plaintiffs' response, argue that these class claims do not relate back to the original complaint because defendants believe that they were entitled to notice of the number and generic identities of the potential plaintiffs within the ten-year limitations period. *Id.* at 14–15. Predictably, plaintiffs respond by arguing that their class claims relate back to the original complaint. ECF No. 41 at 13–15.

Because of my holding above, I find that the relation back doctrine is not an issue in this case. I have already ruled that plaintiffs have adequately pled a factual dispute concerning the issue of constructive notice. If the jury decides that plaintiffs should have known about the alleged improper wellbore assignments in 2007, the class claims relating to the 2006 Partnership will be time-barred because the original complaint will be untimely. The relation back doctrine would not save the class claim. However, if the jury reaches the opposite conclusion, relation back would still not be an issue because the amended complaint itself would be timely per the ten-year statute of limitations. And the same is true if plaintiffs seek to use the wellbore assignments relating to either the 2006 or 2007 Partnerships to support their breach of fiduciary duty claims—relation back wouldn't help those claim because the original class claim would be untimely anyway.

Accordingly, defendants' motion to dismiss plaintiffs' class claims concerning the alleged improper wellbore assignments is denied as to class plaintiffs' breach of contract claims. But class plaintiffs are time-barred from using the wellbore assignments to support their breach of fiduciary duty claims.

ORDER

For the reasons above, defendants' motion to dismiss, ECF No. 39, is GRANTED in part and DENIED in part.

DATED this 19th day of February, 2019.

BY THE COURT:

R. Brooke Jackson
United States District Judge