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Four P Family Holdings, LP, and
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION, et al.¹	§	CASE NO. 20-33233 (DRJ)
	§	
DEBTOR.	§	

**BYRD FAMILY LIMITED PARTNERSHIP'S AND FOUR P FAMILY HOLDINGS,
LP'S RESPONSE TO REORGANIZED DEBTORS' FIFTH OMNIBUS OBJECTION TO
CERTAIN PROOFS OF CLAIM (CROSS-DEBTOR DUPLICATE CLAIMS)
[RELATES TO DOC. NO. 3296]**

COME NOW Byrd Family Limited Partnership ("Byrd Family") and Four P Family Holdings, LP ("Four P") (Byrd Family and Four P are collectively referred to herein as "Respondents") and file this Byrd Family Limited Partnership's and Four P Family Holding,

¹ A complete list of each of the Debtors (collectively referred to herein as the "Debtors") in these Chapter 11 cases may be obtained on the website of the Debtors' proposed claims and notices agent at <http://dm.epiq11.com/chesapeake>. The location of Debtor Chesapeake Energy Corporation's principal place of business and the Debtor's service address in these Chapter 11 cases is 3100 North Western Avenue, Oklahoma City, Oklahoma 73118.

L.P.'s Response to Reorganized Debtors' Fifth Omnibus Objection To Certain Proofs Of Claim (Cross-Debtor Duplicate Claims) and would show as follows:

I.

PRELIMINARY STATEMENT

1. On June 28, 2020 the Debtors filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. *See* 11 U.S.C. §101 et seq.

2. Timely proofs of claim were filed by Byrd Family (#3638, 4068, 3909, 3996, & 4227) and Four P (#3637, 4069, 3908, 3995, & 4226) against Chesapeake Energy Corporation, Chesapeake Energy Marketing, L.L.C., Chesapeake Exploration, L.L.C., Chesapeake Louisiana, L.P., and Chesapeake Operating, L.L.C. respectfully. All of the proofs of claim are for the same amount. Respondents do not seek the claim amounts from each of the Debtors, but as additional discovery is necessary, Respondents are unable to determine which of the Debtors owe what percentage of the amount claimed.

3. Respondents are owners of identical overriding royalty interests in Caddo Parish, Louisiana from a common source of title.

4. The wells related to Respondents' overriding royalty interests ("Wells") are operated by Chesapeake Operating, L.L.C., which has failed to correctly pay Respondents' royalties.

5. The natural gas produced from the Wells is sold by Chesapeake Operating, L.L.C. to an affiliate, Chesapeake Energy Marketing, L.L.C., in a non-arm's length transaction.

6. Since Respondents acquired their interest, additional Wells have been drilled on the applicable leases where Respondents' overriding royalty interests are located. Respondents currently have interests in 31 Wells in 21 units, but more Wells continue to be drilled. The entity

drilling those Wells has, in some cases, undercalculated Respondents' overriding royalty interest, and in other cases failed to include Respondents' interest in the applicable unit at all, causing Respondents not to receive their correct royalty payment, or not to receive royalty at all for that the unit and/or well. Pursuant to public filings, Chesapeake Louisiana, L.P. is primarily in the business of drilling oil and gas wells, including in Louisiana, on behalf of Chesapeake Energy Corporation. Additionally, per documentation provided by Debtors prebankruptcy, Chesapeake Louisiana, L.P. is the owner of multiple leaseholds where Respondents' overriding royalty interests are located.

7. Due to the miscalculation of Respondents' royalty interests, one or more of the Debtors have short-paid Respondents. Since the royalties constitute a property right as a well as contractual obligation, one or more of the Debtors improperly have withheld and continue to withhold Respondents' property. Respondents have been working with Debtors to correct Debtors' miscalculation. The majority of the decimal percentages have been corrected. Respondents and the Debtors are now in agreement on a substantial portion of the corrected overriding royalty interest; however, the Debtors have failed to pay Respondents the revenue based upon this corrected overriding royalty interest.

8. However, in at least one section (Section 13, Township 15 North, Range 16 West, Caddo Parish, Louisiana (the "Washout Section")), on information and belief, the Debtors attempted to "washout" Respondents overriding royalty interest by allowing a lease to expire, having a "third party" obtain a new lease, and then have the "third party" assign the lease to a Debtor affiliate three days later, in direct violation of the assignment to Debtors' containing an "anti-washout" provision.

II.

BACKGROUND FACTS

9. Sendero Energy, Inc. (“Sendero”) leased mineral in Caddo Parish, Louisiana and drilled numerous wells. Sendero partially assigned the leases to Daunis Properties, LP reserving an overriding royalty interest via a “Partial Assignment of Oil and Gas Leases” recorded as Registry Number 2080208, Caddo Parish, Louisiana. Sendero then partially assigned the leases to Four P Investments, LP reserving an overriding royalty interest via a “Partial Assignment of Oil and Gas Leases” recorded as Registry Number 2080210, Caddo Parish, Louisiana.

10. Sendero next assigned part of its royalty interests in its leases to Byrd Family Limited Partnership via an “Assignment of Overriding Royalty Interest” recorded as Registry Number 2080212, Caddo Parish, Louisiana (the “Byrd Assignment”). Sendero also assigned a royalty interest in its leases to Four P Family Holdings, L.P. via an “Assignment of Overriding Royalty Interest” recorded as Registry Number 2080213, Caddo Parish, Louisiana (the “Four P Assignment”). Both the Byrd Assignment and Four P Assignment provide that “[t]he overriding royalty interest herein conveyed shall be paid or delivered to Assignee in the manner provided in each of the instruments described above by which the overriding royalty was created.” The two (2) Assignments further provide that “[t]he overriding royalty interests herein conveyed shall bear its proportionate share of all severance, production, gathering or any other taxes now or hereafter applicable thereto or affecting same, and shall be burdened by such costs as burden the royalty paid to the lessor under each Lease,” a number of which limit post production deductions.² Finally, the Byrd Assignment and the Four P Assignment provide they “shall be

² The foregoing provisions require the Debtors to comply with the post-production limitations in the leases from which the overriding royalty interests originate.

binding upon and insure to the benefit of Assignor and Assignee and their respective heirs, successors and assigns.”³

11. Pursuant to a “Purchase and Sale Agreement” dated April 19, 2007 (the “PSA”) Sendero et al. (collectively the “Sellers”) agreed to convey certain Assets, as defined in the PSA, to Chesapeake Exploration Limited Partnership. Neither Byrd Family nor Four P were parties to the PSA. The Assets, as defined in the PSA included the Sellers’ oil and gas leases and wells, the gas gathering entity that gathered for the wells and owned the gathering system (which are no charging Respondents gathering fees), the Property Agreements⁴ related to the Assets, and the Sellers’ real and personal property interest related to thereto. Upon closing on the PSA, the Sellers conveyed the Assets to Chesapeake Exploration Limited Partnership⁵ via an “Assignment of Oil and Gas Leases” recorded as Registry Number 2097670 (the “Chesapeake Assignment”). However, the Chesapeake Assignment contains a reservation, a “save and except” from the conveyance, and an “anti-washout” clause that Debtors are violating. The Chesapeake Assignment states that the conveyance is “subject to the reservations set out below and to the other instruments and documents set out below.” Saved and excepted from the Chesapeake Assignment are “those certain Overriding Royalty Interests previously assigned to or reserved by

³ Sendero also partially assigned certain leases to Four P Investments, LP reserving an overriding royalty interest via a “Partial Assignment of Oil and Gas Leases” recorded as Registry Number 2088862, Caddo Parish, Louisiana. Those overriding royalty interests were then conveyed to Byrd Family via an “Assignment of Overriding Royalty Interest” recorded as Registry Number 2088866, Caddo Parish, Louisiana and to Four P via an “Assignment of Overriding Royalty Interest” recorded as Registry Number 2088867, Caddo Parish, Louisiana. Additionally, Sendero partially assigned certain leases to Four P Investments, LP reserving an overriding royalty interest via a “Partial Assignment of Oil and Gas Leases” recorded as Registry Number 2094120, Caddo Parish, Louisiana and to Daunis Properties, LP via a “Partial Assignment of Oil and Gas Leases” recorded as Registry Number 2094121, Caddo Parish, Louisiana, also reserving an overriding royalty interest. These overriding royalties were then assigned to Four P and Byrd Family via “Assignments of Overriding Royalty Interest” recorded in Registry Numbers 2094123 and 2094124 respectfully. The foregoing utilized identical forms as the prior partial assignments of leases, the Byrd Assignment, and the Four P Assignment.

⁴ The Property Agreements include all operating agreements, hydrocarbon purchase and sale contracts, leases, permits, rights-of-way, easements, servitudes, licenses, farmouts, options surface leases, surface fee interests, orders, and other contracts and agreements related to the Assets.

⁵ Chesapeake Exploration, L.L.C., a debtor herein, is the successor by merger to Chesapeake Exploration, L.P.

some, but not all, Assignors and recorded as set out in (ii) below, which interests are reserved by such Assignors.” (emphasis in original). The Chesapeake Assignment further states that it is “upon and subject to the following terms and provision: (i) The terms of the Leases [which would include the limitations on post-production deductions].” It further provides under (ii) the following:

The terms of all assignments under which each Assignor received its interest including, without limitation, those overriding royalty interests reserved in those Partial Assignments of Oil and Gas Leases recorded in the Conveyance Records of Caddo Parish, Louisiana; and Assignee does further agree that the Assignors hereunder in whose favor the overriding royalty interests were reserved in such recorded Partial Assignments, shall be entitled to an assignment of an overriding royalty from Assignee, its successors, agents, and assigns, equal to the same percentage interest in and to the oil and gas attributable to each Lease and reserved in the foregoing, as to any top lease of, or renewal or extension of any Lease and to any lease taken, directly or indirectly, by Assignee, its successors, agents, and assigns, covering the same interest previously covered by a lease and taken with 2 years after the expiration of said Lease, but not after April 1, 2022.

(emphasis of anti-washout provision added).

Also, the Debtors allowed one of Respondents’ leases in the Washout Section to terminate on July 12, 2007. One date later on July 13, 2007 Equity Oil Company took a new lease from Roy E. Wren et al. with Equity Oil Company reserving an overriding royalty interest. Three days later, on July 16, 2007 Chesapeake Louisiana, L.P., described as the “General Partner of Chesapeake Operating, Inc.,” was assigned the new lease, subject to this new override and attempting to washout Respondents’ interests. On information and belief this new lease was taken indirectly by Debtors and is subject to Respondents’ overriding royalty interests and the anti-washout provision.

III.

RESPONSE AND ARGUMENT

12. Respondents' share of production is the property of Respondents, and it is not property of the Debtors' bankruptcy estate(s) under 11 U.S.C. §541(d) as Respondents' have equitable title to their revenue due to their ownership of the corresponding production. *See* 11 U.S.C. §541(a)(6) & (d). Furthermore, Respondents' right is an interest in real property belonging to Four P and Byrd Family, and the Debtors owned no interest in it. *See Barnhill v. Johnson*, 503 U.S. 393, 398 (1992) (holding that applicable State law determines interests in property); *see also* La. R.S. 30:80 ("A mineral royalty is the right to participate in production of minerals from land owned by another or land subject to a mineral servitude owned by another.") (emphasis added).

13. As required by Louisiana law, Chesapeake has reported the production from the Wells/units where Respondents have overriding royalty interests. Filing a false report as to the gas production is a violation of Louisiana law. *See* La. R.S. 30:17.⁶ Respondents believe that Debtors have accurately reported their production from the Wells/units to the State of Louisiana. The production reports are public records, and Respondents have reviewed them. When the production the Debtors reported to State of Louisiana is compared to the royalty payments

⁶ False reports or entries; penalty

No person shall for the purpose of evading this Chapter, or any rule, regulation or order made thereunder:

- (1) Make or cause to be made any false entry or statement of fact in any report required to be made by this Chapter or by any rule, regulation or order made hereunder, or
- (2) Make or cause to be made any false entry in an account, record, or memorandum kept by any person in connection with the provisions of this Chapter or of any rule, regulation, or order made thereunder, or
- (3) Omit or cause to be omitted full, true, and correct entries in these accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of a person, as may be required by the commissioner under authority given in this Chapter or by any rule, regulation or order made thereunder, or
- (4) Remove out of the jurisdiction of the state, or destroy or mutilate, alter, or by any other means falsify any book, record, or other paper, pertaining to the transactions regulated by this Chapter or by any rule, regulation or order made thereunder.

Whoever violates this Section shall be fined not more than five thousand dollars, or imprisoned not more than six months, or both.

Respondents should have received based upon their royalty interests, the numbers do not match up as at least 26 of the 31 wells where Respondents have interests. As to at least 26 well, the Debtors paid Respondents a royalty based on less natural gas production than the Debtors reported to the State of Louisiana. The underpayment constitutes property wrongfully withheld from the Debtors as royalty owners.

14. Respondents made demand upon the Debtors in December 2019. As a result, Respondents were provided a tolling agreement and purported supporting documentation. However, Respondents and the Debtors were unable to agree upon the proper payment of Respondents' royalties. Louisiana law provides that after demand and a subsequent failure to properly pay royalties, Respondents may recover the amount of underpaid royalties, plus "damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney's fee, provided the original failure to pay royalties was either fraudulent or willful and without reasonable grounds. In all other cases, such as mere oversight or neglect, damages shall be limited to interest on the royalties computed from the date due, and a reasonable attorney's fee if such interest is not paid within thirty days of written demand therefor." La. R.S. 31:139. Debtors have failed to pay within thirty days of Respondents' demand. The course of dealing between the Debtor and Respondents indicates that the underpayments were not "mere oversight or neglect."

15. For many years the Debtors charged Respondents no postproduction costs. Some of the leases from which Respondents' overriding royalty interest originate specifically provide for restrictions on postproduction charges. Nevertheless, the Debtors began charging excessive gathering and other postproduction expenses to Respondents that over time continued to increase to upwards of 50% of the gross revenue just prior to bankruptcy. These charges were either not

permitted, were limited by the leases, and/or were excessive, and on information and belief, the result of another transaction benefitting the Debtors to the detriment of Respondents. As the Debtors' economic fortunes soured and cash flow dwindled, they invented reasons to reduce their required royalty payments to Respondents. The royalty payments wrongfully withheld did not become property of the Debtors' estate, and Respondents are entitled to be made whole.

16. On March 24, 2021 the Debtors filed their Reorganized Debtors' Fifth Omnibus Objection To Certain Proofs Of Claim (Cross-Debtor Duplicate Claims) ("Fifth Objection"). Due to the lack of discovery, at this points Respondents are unable to determine which of the Debtors currently possesses Respondents' revenue derived from the Debtors' sale of Respondents hydrocarbons.

17. The amounts in Respondents' proofs of claim that are identified in Debtors' Fifth Objection are not asserted to be independent claims against Chesapeake Energy Corporation, Chesapeake Energy Marketing, L.L.C., Chesapeake Exploration, L.L.C., Chesapeake Louisiana, L.P., and Chesapeake Operating, L.L.C. with each owing that amount, but the full claim amount is owed by one or more of the foregoing. But, as explained above, Respondents are unaware of which of the Debtors is responsible for the obligations.

18. Respondents believe that discovery of the factual record is necessary to determine the entity or entities that are responsible for the obligations in Respondents' proofs of claim and in what percentages. Dismissing the proofs of claim as requested by Debtors prior to confirming which of the Debtors is responsible for the obligations would likely prejudice Respondents by effectively mooting legitimate proofs of claim because the Debtors seek to settle which claim "will control for distribution purposes" before the parties actually know which proof of claim should control. In short, dismissing the requested claims will result in the Debtors arguing that

Respondents' sole remaining proof of claim against Chesapeake Exploration, L.L.C. is against the wrong entity.

19. Respondents believe they are each entitled to recover from one or more Debtors \$1,092,563.71 due to non-paid royalties prior to the bankruptcy filings. This includes for each Respondent \$116,488.55 in miscalculated interests in numerous Wells (using Chesapeake's own corrections), \$62,428.46 in deductions from leases that do not permit postproduction deductions, \$147,108.19 in improper and excessive postproduction deductions, \$37,383.77 in under payment of production when comparing the Debtors' pay documents to production filings with the state of Louisiana (total \$363,408.97), and \$2,336.79 in pre-petition attorneys' fees. Additionally, Louisiana law allows for the award of interest from the date the royalty payment was due until paid, attorneys' fees, and trebling of the nonpayment of the royalty amount (but not the interest and attorneys' fees), resulting the royal amounts owed being \$1,090,563.70, plus interest.

20. Respondents continue to engage and attempt to reach a commercially reasonable resolution with Debtors, if possible, and great progress has been made. However, Respondents, out of an abundance of caution, file this Response should resolution not occur.

THEREFORE, Respondents respectfully request that this Honorable Court deny Reorganized Debtors' Fifth Omnibus Objection To Certain Proofs Of Claim (Cross-Debtor Duplicate Claims) as to Respondents.

August 16, 2021.

Respectfully submitted,

WHITAKER CHALK SWINDLE & SCHWARTZ PLLC

/s/ **Robert A. Simon**

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CERTIFICATE OF SERVICE

I hereby certify on this the 16th day of August 2021, I caused to be served a true and correct copy of the foregoing Byrd Family Limited Partnership's and Four P Family Holding, L.P.'s Response to Reorganized Debtors' Fifth Omnibus Objection to Certain Proofs of Claims (Cross-Debtor Duplicate Claims) upon all parties registered to receive service via this Court's ECF notification system, and via email to Kristhy M. Peguero at kpeguero@jw.com.

/s/ **Robert A. Simon**

Robert A. Simon